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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Kijurina (as liquidator of ET Family Pty Ltd) v Taouk (FCA) - corporations - unreasonable director-related transactions - breach of directors' duties (B)

Graham v Friswell t/as Ripcord Skydivers (NSWSC) - pleadings - trade practices - unconscionable conduct - rights of parties governed by law of ACT - causes of action not made out (I B)

Madden International Ltd v Lew Footwear Holdings Pty Ltd (VSCA) - trade practices - service - strongly arguable claim for misleading and deceptive conduct - writ not set aside - leave to appeal refused (I B)

Midfield Meat Processing Pty Ltd v Fish (VSC) - judicial review - workers compensation - medical panel breached rules of natural justice - decision quashed (I G)

Braham v Stephan (No 2) (VSC) - damages - breach of lease - costs where defendant successful on substantial issues (I B)

Helti (Australia) Pty Ltd v Vulcan Steel Pty Ltd (VSC) - corporations - statutory demand - genuine disputes - statutory demand varied (B C)

Italiano v Lake (VSC) - legal practitioners - succession - plaintiff's mother not restrained from acting for her in proceedings (B)

Summaries With Link (Five Minute Read)

Kijurina (as liquidator of ET Family Pty Ltd) v Taouk [2015] FCA 424

Federal Court of Australia

Edmonds J

Corporations - liquidators sought declarations that transfers of parcels of real estate from third plaintiff to defendant's wife, and transfer of another parcel of real estate from fourth plaintiff to defendant's wife were unreasonable director-related transactions under s588FDA *Corporations Act 2001*, uncommercial transactions under s588FB and insolvent transactions under s588FC - plaintiffs also sought declaration that defendant in capacity as director of third plaintiff and as director of fourth plaintiff contravened duties he owed pursuant to ss180, 181, 182 & 183, and that he breached his fiduciary obligations - plaintiffs sought statutory damages, statutory compensation and equitable compensation - whether reasonable person in company's circumstances would not have entered transactions - held: transfers were unreasonable director-related transactions - director breached duties and fiduciary obligations to third and fourth plaintiffs - declarations and orders.

[Kijurina](#) (B)

Graham v Friswell t/as Ripcord Skydivers [2015] NSWSC 504

Supreme Court of New South Wales

Bellew J

Pleadings - plaintiff claimed damages for injuries sustained in sky-diving attempt - plaintiff transfer of proceedings to Supreme Court of Australian Capital Territory or leave to file third amended statement of claim - defendant contended no causes of action maintainable - defendant also submitted plaintiff originally intended to sue corporation and that amendment which correctly named defendant was filed after expiry of limitation period - whether failure to properly identify defendant should be viewed as mistake or whether plaintiff originally sought to sue different party such that amendment could only take effect from date it was made - held: failure to properly identify defendant was a case of misnomer - parties had agreed rights would be governed by laws of ACT - causes of action on implied warranties under *Trade Practices Act 1974* (NSW) and cause of action based on unconscionable conduct contrary to *Fair Trading Act 1992* could not be made out - claim in negligence failed - parties to bring in short minutes in light of conclusions.

[Graham](#) (I B)

Madden International Ltd v Lew Footwear Holdings Pty Ltd [2015] VSCA 90

Court of Appeal of Victoria

Mandie & Beach JJA; Dixon AJA

Trade practices - service - applicant (Madden) supplied footwear to respondents (Lew) pursuant to written Licence Agreement - Lew alleged Madden engaged in misleading and deceptive conduct under *Trade Practices Act 1974* (Cth) and claimed damages - Madden incorporated in Hong Kong and wholly owned subsidiary of company in New York - Madden had no offices or

employees in Australia - statement of claim served on Madden in Hong Kong - Madden sought that writ be set aside - primary judge dismissed application on basis Lew's claims fell within r7.01(1) *Supreme Court (General Civil Procedure) Rules 2005* and that Lew had a 'strong arguable case' of misleading and deceptive conduct - Madden sought leave to appeal - held: Madden's appeal did not have reasonable prospect of success - open to primary judge to conclude Lew's misleading and deceptive conduct claim strongly arguable - leave to appeal refused.

[Madden](#) (I B)

Midfield Meat Processing Pty Ltd v Fish [2015] VSC 195

Supreme Court of Victoria

Bell J

Judicial review - workers compensation - worker sought weekly payments of compensation from employer - employer sought judicial review of decision of medical panel on questions referred to it under *Accident Compensation Act 1985* - employer contended panel breached rules of natural justice, failed to take into account relevant considerations, made decision no reasonable panel could have made and failed to provide adequate reasons - held: panel's reasons did not explain what an 'undifferentiated somatoform disorder' was or identify basis for making diagnosis - employer could not reasonably have anticipated panel might adopt diagnosis - panel breached rules of natural justice - jurisdictional error - decision quashed - matter remitted.

[Midfield](#) (I G)

Braham v Stephan [2015] VSC 194

Supreme Court of Victoria

Hargrave J

Damages - costs - Court refused to grant the specific relief sought by plaintiffs in originating motion but determined that plaintiffs had established breach of lease by defendant and were entitled to damages in respect of breach - held: first plaintiff awarded amount of adverse costs order awarded against him in Magistrate's Court and certain legal costs arising from breach of lease - damages for distress unavailable - plaintiffs' success was marginal - substantial justice between parties required that plaintiffs pay 70 % of defendant's costs of proceeding - defendant had won the substantial issues but allowance must be made for costs plaintiffs incurred in proving breach and related submissions.

[Braham](#) (I B)

Helti Pty Ltd v Vulcan Steel Pty Ltd [2015] VSC 192

Supreme Court of Victoria

Efthim AsJ

Corporations - plaintiff sourced fabricated and installed steel products for building projects - defendant was supplier of steel to plaintiff - plaintiff sought to set aside statutory demand served on it by defendant for amount allegedly owing for goods sold and delivered to it - plaintiff asserted it had genuine disputes and off-setting claims - held: plaintiff had three genuine disputes in respect of amount of steel not supplied, amount overcharged by defendant and



amount paid for steel - statutory demand varied.

[Helti](#) (B C)

Italiano v Lake [2015] VSC 189

Supreme Court of Victoria

Rush J

Legal practitioners - succession - defendant sought to restrain plaintiff from retaining her mother or mother's domestic partner from acting on her behalf in proceeding - defendant submitted mother and domestic partner were conflicted between obligations to their client and overarching responsibility to court and to the administration of justice - held: a fair-minded, reasonably informed member of public would not conclude proper administration of justice required mother and her domestic partner to be prevented from acting for plaintiff - a fair-minded, reasonably informed member of public would consider on balance the mother should continue to act - application dismissed.

[Italiano](#) (B)

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