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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)

Arida v Arida (NSWCA) - contract - Heads of Agreement did not relieve respondent from obligation to pay interest under contract for sale of property - appeal allowed (I B)

Colin Joss & Co Pty Ltd v Cube Furniture Pty Ltd (NSWSC) - costs - commercial arbitration - unsuccessful challenge to arbitral award - indemnity costs awarded to successful defendant (I B)

Australia and New Zealand Banking Group Ltd v Kurzer (NSWSC) - default judgment - possession - no arguable defence to merits of bank's entitlements - default judgment not set aside (B)

Groves v Matt O'Connor & Associates Pty Ltd (No. 2) (NSWSC) - costs - indemnity costs refused - unsuccessful plaintiff to pay defendants' costs on ordinary basis - defendants to pay plaintiff's costs of application for indemnity costs (I)

Zhong v Melbourne Health (VSCA) - negligence - unrepresented litigant - diagnosis of mental illness resulting in involuntary inpatient treatment - claim against hospital and Melbourne Health dismissed - appeal dismissed (I)

Harmonious Blend Building Corp v Keene (No 2) (VSC) - pleadings - trade and commerce - misleading or deceptive conduct - leave to file and serve amended statement of claim (I B C)

The Avenues Tavern (Townsville) v K P Architects (QSC) - negligence - plaintiff's claim

apportionable claim for purposes of Pt2 Ch2 *Civil Liability Act 2003* (Qld) (I C)

Summaries With Link (Five Minute Read)

Arida v Arida [2015] NSWCA 170

Court of Appeal of New South Wales

Bathurst CJ, Macfarlan JA & Sackville AJA

Contract - appellants and respondent co-owned property - respondent purchased property at auction from Trustees for sale - purchase not completed on completion date - special condition in contract for sale provided for payment of interest to Trustees if sale not completed on completion date - Heads of Agreement entered between appellants, respondent and Trustees in order to resolve wider disputes between appellants and respondent - whether Heads of Agreement amended contract of sale to remove respondent's obligation to pay interest unless and until appellants paid money to him pursuant to Heads of Agreement - s66G *Conveyancing Act 1919* - held: primary judge erred in construing Heads of Agreement so as to relieve respondent from obligation to pay interest pursuant contract of sale - Heads of Agreement did not relieve respondent from obligation to pay interest - appeal allowed.

[Arida](#) (I B)

Colin Joss & Co Pty Ltd v Cube Furniture Pty Ltd [2015] NSWSC 829

Supreme Court of New South Wales

Hammerschlag J

Commercial arbitration - costs - Court dismissed plaintiff's challenge under public policy exception in s34(2)(b)(ii) *Commercial Arbitration Act 2010* to arbitral award - defendant sought costs of proceedings on indemnity basis - held: presumption in favour of award of indemnity costs against unsuccessful challenger to award, which had been applied in Hong Kong, did not represent law in New South Wales - no presumption required or warranted - indemnity costs warranted where party maintained proceedings that it should have known had no real prospects of success - it ought to have been obvious to plaintiff that its challenge would not meet threshold required and it had no realistic prospect of success - indemnity costs awarded.

[Colin Joss](#) (I B)

Australia and New Zealand Banking Group Ltd v Kurzer [2015] NSWSC 815

Supreme Court of New South Wales

McCallum J

Default judgment - possession - default judgment for possession and judgment in money sum awarded in bank's favour - defendants sought to have default judgment set aside or stayed - held: defendants did not establish a good or arguable defence on merits to bank's entitlement to enforce loan and security held in respect of loan - contention that default judgment entered irregularly, illegally or against good faith not made out - no utility in setting aside default judgment - notice of motion dismissed.

[Australia](#) (B)

Groves v Matt O'Connor & Associates Pty Ltd [2015] NSWSC 817

Supreme Court of New South Wales

Slattery J

Costs - Court found defendants successful in proceedings - defendants sought indemnity costs on basis action was commenced or continued when moving party should have known it had no prospects of success and that defendants' result bettered Calderbank letters which they had served - held: defendants failed to make out contention that plaintiff should have known proceedings had no chance of success - Calderbank letters did not found order for indemnity costs - plaintiff to pay defendants' costs of the proceedings on the ordinary basis - defendants to pay plaintiff's costs of application for indemnity costs.

[Groves](#) (I)

Zhong v Melbourne Health [2015] VSCA 165

Court of Appeal of Victoria

Santamaria & McLeish JJA, Dixon AJA

Negligence - unrepresented litigant - plaintiff claimed defendants were negligent in diagnosing him as suffering from a mental illness as result of which he was subjected to involuntary inpatient treatment at hospitals - trial judge dismissed plaintiff's claim - ss12 & 12AA *Mental Health Act 1986* - held: trial judge did not fail to permit plaintiff to make an opening statement - no bias on part of trial judge - no failure to give fair trial or give plaintiff procedural fairness - appeal dismissed.

[Zhong](#) (I)

Harmonious Blend Building Corp v Keene (No 2) [2015] VSC 276

Supreme Court of Victoria

Dixon J

Pleadings - trade and commerce - plaintiff claimed it suffered loss by defendants engaging in misleading or deceptive conduct in contravention of s18 *Australian Consumer Law* - plaintiff sought leave to amend further amended statement of claim in relation - s236(1) - damage to commercial reputation - loss of business - whether tenable claim - causal nexus between impugned conduct and deception of prospective purchasers - held: leave to amend statement of claim granted on basis that claim for general damages to commercial reputation and business was to remain but proposed claim for damages for lost profits may not be advanced.

[Harmonious](#) (I B C)

The Avenues Tavern (Townsville) v K P Architects [2015] QSC 182

Supreme Court of Queensland

Douglas J

Negligence - plaintiff owned property on which tavern constructed - defendant architect designed tavern at least in part - original design placed tavern on power and sewerage easements - redesign required resulting in delay - plaintiff alleged delay caused it loss -



defendant claimed acts and omissions of Council and town planner contributed to loss claimed - defendant sought declaration that plaintiff's claim against defendant was an apportionable claim for purpose of Pt2 Ch2 *Civil Liability Act 2003* - held: claim could be described as action arising from a breach of duty of care so there was substance to argument in support of declaration - practical consequence of declaration was that it would assist defendant at to decide whether or not to join another party or parties to proceedings as third party - there was utility in seeking declaration at this stage of proceedings - orders made that claim was apportionable claim.

[The Avenues](#) (I C)

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