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Daily Insurance A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Kazal v Fairfax Media Publications Pty Limited (No 2) (NSWSC) - costs - defamation - various iterations of draft pleadings - plaintiff to pay defendant's wasted costs and costs of application to amend draft pleading

Ziogos v FSS Trustee Corporation as Trustee of the First State Superannuation Scheme (NSWSC) - insurance - superannuation - total and permanent disablement - insurer did not act reasonably or with utmost good faith in rejecting claims

NuCoal Resources Ltd v Independent Commission Against Corruption (NSWSC) - judicial review - recommendation in relation to revocation of exploration licence - Commission did not breach duty to "fully investigate" - summons dismissed

Epichealth Pty Ltd v Yang (VSC) - restraint of trade - contract - injunction granted restraining defendant from providing medical clinic services within 10 kilometre radius of clinic operated by plaintiff

Stacks Managed Investments Limited v Tolteca Pty Ltd (QSC) - contract - default on loan - no unconscionable conduct by lender - lender entitled to recovery of mortgaged property

Summaries With Link (Five Minute Read)

Kazal v Fairfax Media Publications Pty Limited (No 2) [2015] NSWSC 1422

Supreme Court of New South Wales

Adamson J

Costs - defamation - pleadings - wasted costs - plaintiff had served various iterations of further draft pleadings - Court ultimately determined plaintiff's application for leave to amend then current draft pleading - determination of costs - Pt52A, r9 *Supreme Court Rules 1970* (NSW) - rr15.9 & 42.7 *Uniform Civil Procedure Rules 2005* (NSW) - held: no exceptions in present case to general rule that amending party obliged to pay other party's costs thrown away by reason of amendment - appropriate that costs in relation to First Draft be payable forthwith - plaintiff had sought indulgence by leave being granted to file further amended statement of claim - plaintiff ought pay the defendants' costs of the hearing.

[Kazal](#)

Ziogos v FSS Trustee Corporation as Trustee of the First State Superannuation Scheme [2015] NSWSC 1385

Supreme Court of New South Wales

Ball J

Insurance - plaintiff employed by police force was member of superannuation scheme established by *First State Superannuation Act 1992* (NSW) - first defendant (FSS) was trustee of scheme - FSS obtained two policies of insurance with second defendant insurer to provide cover for members' total and permanent disablement (TPD) - plaintiff was insured person under policies - plaintiff lodged claim with FSS claiming that she suffered from TPD consequent on work in police force - insurer advised FSS claim had been declined - claims review committee determined decision to decline claim correct- whether insurer acted with "utmost good faith" - whether plaintiff "unlikely ever to engage in any gainful profession, trade or occupation for which she is reasonably qualified by reason of her education, training or experience" - held: insurer could not reasonably have reached conclusions it did on evidence available to it - insurer did not act reasonably or with utmost good faith - insurer breached policies in rejecting claims - plaintiff had suffered total and permanent disablement within meaning of policies - parties to bring in short minutes of order.

[Ziogos](#)

NuCoal Resources Ltd v Independent Commission Against Corruption [2015] NSWSC 1400

Supreme Court of New South Wales

Rothman J

Judicial review - plaintiff sought judicial review of Independent Commission against Corruption's recommendation in relation to revocation of exploration licence - plaintiff alleged recommendation performed in breach of conditions necessary for performance - plaintiff's critical challenge related to Commission's duty to "fully investigate" - s73(2) *Independent*

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Commission Against Corruption Act 1988 (NSW) - Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014 (NSW) - held: no breach of duty to investigate - Commission did not act otherwise than in accordance with law - findings if made were not made otherwise than in accordance with law - summons dismissed.

[NuCoal](#)

Epichealth Pty Ltd v Yang [2015] VSC 516

Supreme Court of Victoria

John Dixon J

Restraint of trade - plaintiff operated medical clinic - defendant was medical practitioner employed at clinic under contract - defendant gave plaintiff 6 months' notice of termination of contract which plaintiff accepted - defendant ceased to provide services under contract before 6 month period had expired - contract included restraint clause - plaintiff sought injunction restraining defendant from providing services associated with carrying on of a general medical clinic within 10 kilometre geographical radius of clinic - contractual terms - serious question to be tried - adequacy of damages - balance of convenience - held: Court satisfied course which appeared to carry lower risk of injustice if wrong was to grant plaintiff relief sought.

[Epichealth](#)

Stacks Managed Investments Limited v Tolteca Pty Ltd [2015] QSC 276

Supreme Court of Queensland

Ann Lyons J

Contract - defendant borrowed \$1,000,000 from plaintiff for purpose of subdivision of land - defendant granted plaintiff mortgage over property where defendant's sole director resided with husband - plaintiff sued defendant for recovery of property on basis amount of repayment outstanding from loan - defendant counterclaimed for relief on basis of 'unconscionable conduct' by plaintiff in breach of s12CC *Australian Securities and Investments Commission Act 2001* (Cth) - held: Court not satisfied plaintiff's failures to investigate further or verify information amounted to unconscionable conduct - Court not satisfied plaintiff's conduct in relation to loan could be characterised as unconscionable - defendant had otherwise admitted loan, mortgage and default - plaintiff entitled to relief sought.

[Stacks](#)

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