

Friday, 3 June 2016

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

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Gloucester Shire Council v Fitch Ratings, Inc (FCA) - representative proceedings - notice to produce - subpoena - legitimate forensic purpose established - application to set aside notice to produce and subpoena dismissed (I B C G)

Mr Rental Australia Pty Ltd v IRD Services Pty Ltd (NSWSC) - contract - franchise agreement - franchisor entitled to orders for specific performance and delivery up - cross-summons dismissed - direction (I B C G)

WIN Corporation Pty Ltd v Nine Network Australia Pty Limited (NSWSC) - costs - motor accidents compensation - alteration to grounds of review in amended summons - Court would have set aside Proper Officer's decision on ground set out in original summons - usual order as to costs (I B C G)

Nine Network Australia Pty Ltd v Birketu Pty Ltd (NSWSC) - costs - capitulation by defendant - successful plaintiff entitled to interest and usual order as to costs (I B C G)

Walpole v Insurance Australia Limited t/as NRMA Insurance (NSWSC) - costs - no unreasonable rejection of Calderbank offer - successful defendant to have costs on ordinary basis (I B C G)

Trpceva v Spotless Facility Services Pty Ltd (VSC) - judicial review - workers compensation - Medical Panel's reasons inadequate - opinion quashed (I G)

Barron v Barron (VSC) - testator's family maintenance - binding agreement to compromise proceeding not established - application to dismiss claim refused - costs reserved (I B C G)

Summaries With Link (Five Minute Read)

Gloucester Shire Council v Fitch Ratings, Inc [2016] FCA 587

Federal Court of Australia

Wigney J

Notice to produce - subpoena - representative proceeding - applicants alleged that they and group members sustained losses from investments in financial products - respondents sought to set aside notice to produce and subpoena served on Commonwealth Bank of Australia - whether legitimate forensic purpose - "on the cards" - "throw light on" - *Australian Securities and Investments Commission Act 2001* (Cth) - *Corporations Act 2001* (Cth) - Pt IVA, s31A(2) *Federal Court of Australia Act 1976* (Cth) - r26.01 *Federal Court Rules 2011* (Cth) - held: applicants had legitimate forensic purpose - interlocutory application dismissed.

[Gloucester](#) (I B C G)

Mr Rental Australia Pty Ltd v IRD Services Pty Ltd [2016] NSWSC 700

Supreme Court of New South Wales

Meagher JA

Contract - franchise agreement - first to fifth defendants (franchisees) operated "Mr Rental" businesses - defendants purported to terminate franchise agreements due to repudiatory conduct by plaintiff franchisor - plaintiff sought to terminate on basis franchisees' termination was repudiatory conduct - plaintiff also relied on term which entitled it to terminate where franchisee "voluntarily abandons" agreement or relationship - plaintiff sought to exercise option in agreement to purchase assets of franchisee's business, specific performance of asset purchase agreements, and delivery up of records and rental agreements - uncertainty - unconscionable conduct - s93AA *Australian Securities and Investments Commission Act 2001* (Cth) - ss21 & 237 *Competition and Consumer Act 2010* (Cth) - ss5(1), 6, 29 & 35 *National Consumer Credit Protection Act 2009* (Cth) - held: plaintiff entitled to specific performance and delivery up - cross-summons dismissed - direction.

[Mr Rental](#) (I B C G)

WIN Corporation Pty Ltd -v- Nine Network Australia Pty Limited [2016] NSWSC 695

Supreme Court of New South Wales

Hammerschlag J

Costs - Calderbank offer - Court dismissed plaintiff's proceedings in which plaintiff sought injunction to restrain breach of contract - successful defendant sought indemnity costs on basis of plaintiff's failure to accept Calderbank offer - plaintiff accepted costs should follow event but sought reduction in costs due to significant amount of evidence which was inadmissible or not

relied on - held: defendant should have costs on ordinary basis only - offer had required capitulation by plaintiff - no unreasonable for plaintiff to decline offer - defendant to have costs on ordinary basis.

[WIN Corporation](#) (I B C G)

Nine Network Australia Pty Ltd v Birketu Pty Ltd [2016] NSWSC 694

Supreme Court of New South Wales

Hammerschlag J

Costs - plaintiff sought payment of balance of sum owed under Variation Agreement - defendant capitulated and paid claimed sum - determination of costs - s100(2) *Civil Procedure Act 2005* (NSW) - held: it could be "safely inferred" that defendant had capitulated due to having no defence - plaintiff had been entitled to commence proceedings for sum - plaintiff should be awarded interest to compensate for loss due to defendant's breach - costs should follow event.

[Nine Network Australia](#) (I B C G)

Walpole v Insurance Australia Limited t/as NRMA Insurance [2016] NSWSC 702

Supreme Court of New South Wales

Harrison AsJ

Costs - motor accidents compensation - parties agreed that decision of Proper Officer of Medical Assessment Service be set aside - Court satisfied it was appropriate to make consent order - both parties sought costs - r42.1 *Uniform Civil Procedure Rules 2005* (NSW) - whether amended summons altered grounds for review - held: amended summons expanded issues in original summons and was more specific - however Court would have set aside decision of Proper Officer on ground contained in original summons - first defendant to pay plaintiff's costs.

[Walpole](#) (I B C G)

Trpceva v Spotless Facility Services Pty Ltd [2016] VSC 233

Supreme Court of Victoria

Bell J

Judicial review - workers compensation - plaintiff sought judicial review of opinion of medical panel under *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) on basis panel took into account a relevant consideration failed to provide adequate reasons - O56 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - held: only necessary to determine with panel provided adequate reasons - held: panel's statement of reasons statement not sufficiently detailed for Court to see whether Panel's opinion involved error of law - opinion quashed - questions remitted to differently constituted medical panel.

[Trpceva](#) (I G)

Barron v Barron [2016] VSC 302

Supreme Court of Victoria

Derham AsJ

Testator's family maintenance - defendant sought dismissal of proceeding and indemnity costs

on basis that claim under Part IV *Administration and Probate Act 1958* (Vic) had been compromised by binding agreement - held: defendant did not establish binding agreement - application to dismiss proceeding was based on agreement's existence - plaintiff's lack of response to letters from defendants' solicitors contributed to misconception agreement reached - costs reserved.

[Barron](#) (I B C G)

CRIMINAL

Executive Summary

Villis v R (NSWCCA) - criminal law - supplying commercial quantity of methylamphetamine - unanimous jury verdict reached through pressure of time restraints - appeal against conviction allowed - retrial

Robb v The Queen; DPP v Robb (VSCA) - criminal law - manslaughter - leave to appeal against conviction refused - Director's appeal against sentenced dismissed

Summaries With Link

Villis v R [2014] NSWCCA 74

Court of Criminal Appeal of New South Wales
Bathurst CJ; Fullerton & Bellew JJ

Criminal law - appellant convicted on one count of supplying commercial quantity of methylamphetamine contrary to s25(2) *Drug Misuse and Trafficking Act 1985* (NSW) and sentenced to 4 years in prison with non-parole period of 2 years and 3 months - appellant appealed - held: Court rejected appellant's contention that trial judge erred by not discharging jury on basis prosecution witness had given evidence amounting to appellant's bad character - Court not satisfied refusal to discharge jury had resulted in miscarriage of justice - Court upheld ground of appeal that that jury verdict should be set aside on basis unanimous verdict had been reached through "pressure of time restraints rather than proper deliberation" - appeal allowed - conviction quashed - retrial.

[Villis](#)

Robb v The Queen; DPP v Robb [2016] VSCA 125

Court of Appeal of Victoria
Ashley, Osborn & Priest JJA

Criminal law - manslaughter - applicant convicted of manslaughter and sentence to four years imprisonment with non-parole period of two years and six months - applicant sought to appeal

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against conviction on ground verdict was unsafe and unsatisfactory - Director appealed against sentence on ground it was manifestly inadequate - causation between assault injuries and subsequent cardiac arrest and death - held: no reasonable doubt relative to critical issue of causation - manslaughter verdict open to jury - sentence was "very lenient" but open to trial judge in exercise of discretion - application for leave to appeal against conviction dismissed - Director's appeal dismissed.

[Robb](#)



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The Lover's Maze

Attributed to Sir Walter Raleigh

Her Face, her Tonge, her Wytte,
So fayre, so sweete, so sharpe,
First bent, then drew, then hytte,
Myne Eye, mine Eare, my Hartt:

Myne eye, mine eare, mine Harte,
To Lyke, to Learne, to Love,
Your face, your Tonge, your Wytt,
Doth Leade, doth teache, doth move:

Her face, her Tongue, her Wytt,
With Beames, with Sound, with Arte,
Doth bynde, doth Charm, doth Rule,
Myne eye, myne eare, my harte.

Myne eye, myne eare, my harte,
With Lyfe, with Hope, with Skill,
Your face, your Tonge, your wytt,
Doth feed, doth feast, doth fill:

Oh face, Oh Tonge, Oh Wytte,
With Frownes, with Checkes, with Smarte,
Wronge not, vex not, wound not,
Mine eye, mine eare, my Harte.

This Eye, This eare, This harte,
Shall joy, shall bynd, shall sweare
Your Face, your Tonge, your Wytt,
To Serve, to Love, to Feare.

[Attributed to Sir Walter Raleigh](#)

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