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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)

Flight Centre Ltd v Australian Competition and Consumer Commission (FCAFC) - competition - impugned conduct did not occur in market where Flight Centre and airlines supplied services in competition - appeal allowed (I G)

Insurance Australia Ltd v O'Shannessy (NSWSC) - motor accidents compensation - assessment of liability of insurer - no jurisdictional error or denial of procedural fairness - summons dismissed (I G)

Cosmetic Laser Clinic Pty Ltd v Pirintji (NSWSC) - pleadings - professional negligence - solicitors' duties - permission refused to make opposed amendments to defence (I)

Clarke v State of New South Wales (NSWSC) - summary dismissal - pleadings - further amended statement of claim struck out with leave to replead - summary dismissal refused (I)

Stewart v Moden (VSC) - wills and estates - misappropriated money - deceased's mental capacity - defendant's share of deceased's estate to be retained by plaintiff for benefit of residuary beneficiaries (B)

Ferrari Estate Holdings Pty Ltd v Sovereign Resort Developments Pty Ltd (No 2) (QSC) - dismissal - claim against second and third defendants dismissed for want of prosecution (I B C)

Andersfurn Pty Ltd v Banks (NTSC) - workers compensation - no error in permission to reopen case and tender letters - no error in finding worker suffering major depressive disorder -

appeal dismissed (I)

Summaries With Link (Five Minute Read)

Flight Centre Ltd v Australian Competition and Consumer Commission [2015] FCAFC 104

Full Court of the Federal Court of Australia

Allsop CJ, Davies & Wigney JJ

Competition - Australian Competition and Consumer Commission commenced proceedings against Flight Centre alleging it contravened s45(2)(a)(ii) *Trade Practices Act 1974* (Cth) - ACCC alleged that Flight Centre attempted to induce other airlines to make contract, arrangement, or understanding containing provision which substantially lessened competition in a market - primary judge found Flight Centre engaged in alleged conduct and that conduct occurred in market in which Flight Centre and airlines competed, being the market for supply of distribution and booking services in relation to available international passenger air travel - Flight Centre ordered to pay pecuniary penalties totalling \$11 million - parties appealed and cross-appealed - whether primary judge correctly characterised supplies made by participants in market for international air passenger transportation - held: primary judge erred in finding Flight Centre and airlines competed in market for distribution and booking services - impugned conduct took place in market for supply of international passenger air travel - in this market Flight Centre acted as agent for, not in competition with, the airlines - appeal allowed - cross-appeal dismissed.

[Flight](#) (I G)

Insurance Australia Ltd v O'Shannessy [2015] NSWSC 1047

Supreme Court of New South Wales

Beech-Jones J

Motor accidents compensation - first defendant injured in collision between motor cycle and motor vehicle - plaintiff insured vehicle - first defendant claimed damages - plaintiff sought judicial review of claims assessor's assessment under *Motor Accidents Compensation Act 1999* (NSW) of liability of plaintiff's insured at \$903,794.28 - plaintiff contended assessor wrongly assumed or found plaintiff and first defendant agreed on lost earning capacity - plaintiff claimed this constituted jurisdictional error because by wrongly assuming existence of agreement assessor did not complete own assessment under s94 and otherwise denied plaintiff procedural fairness - plaintiff also contended assessor denied it procedural fairness in making finding that first defendant would have most likely returned to previous work but for accident - held: Court did not accept assessor proceeded on incorrect assumption - no denial of procedural fairness - summons dismissed.

[Insurance](#) (I G)

Cosmetic Laser Clinic Pty Ltd v Pirintji [2015] NSWSC 983

Supreme Court of New South Wales

Garling J

Pleadings - professional negligence - solicitors' duties - Cosmetic Laser sued solicitor for negligence in discharging retainer to act for them in sale of their businesses - solicitor sought leave to amend defence - proportionate liability defence - delay - prejudice - held: solicitor did not discharge onus to persuade Court to exercise its discretion to grant opposed amendments - grant of amendments would significantly delay allocation of hearing date - application had come after proceedings on foot for number of years - solicitor had had more than adequate opportunity to investigate proceedings and form view of available defences - no explanation for failure to address matters earlier - Court did not see how allowing amendments would further overriding purpose to ensure just and speedy resolution in cost effective way of proceedings - Court not prepared to permit opposed amendments.

[Cosmetic](#) (I)

Clarke v State of New South Wales [2015] NSWSC 1054

Supreme Court of New South Wales

Garling J

Summary dismissal - pleadings - plaintiff claimed damages from State for false imprisonment and malicious prosecution - State sought summary dismissal of proceedings or that further amended statement of claim be struck out - held: Court satisfied pleading of false imprisonment and malicious prosecution could not stand and must be struck out - two previous versions of statement of claim had been struck out - further amended statement of claim repeated large parts of previous versions - further amended statement of claim was an abuse of process - further amended statement of claim did not comply with rules - Court not satisfied plaintiff had conducted case with want of due dispatch and declined to dismiss proceedings - further amended statement of claim struck out - leave to re-plead granted.

[Clarke](#) (I)

Stewart v Moden [2015] VSC 369

Supreme Court of Victoria

McMillan J

Wills and estates - plaintiff beneficiary and executor of deceased's estate sought declarations as to defendant's entitlements under deceased's Will - plaintiff sought that defendant's entitlement be offset from money misappropriated by defendant during deceased's lifetime - deceased's mental capacity - rule in *Cherry v Boulton* [1839] EngR 1099 - defendant's inability to repay estate - held: even if deceased knew how her assets were being spent by defendant it was unlikely his spending was for deceased's benefit - plaintiff entitled to declaration sought that defendant's share of estate be retained by plaintiff, as executor for benefit of residuary beneficiaries other than defendant.

[Stewart](#) (B)

Ferrari Estate Holdings Pty Ltd v Sovereign Resort Developments Pty Ltd (No 2) [2015] QSC 220

Supreme Court of Queensland

Henry J

Dismissal - want of prosecution - plaintiff alleged its land and building flooded and damaged as result of development works undertaken by second and third defendants at hotel for first defendant owner of hotel - Court dismissed plaintiff's claim against first defendant for want of prosecution - second and third defendants sought dismissal of claim against them for want of prosecution - held: plaintiff engaged in prolonged delays - plaintiff failed to comply with implied undertaking to proceed in expeditious way - explanation for delay inadequate - case did not have good prospects of success and was far short of being ready to be listed for trial - plaintiff had long considered defendants should wait for case to be progressed when it suited plaintiff's director to progress it - claim against second and third defendants dismissed for want of prosecution.

[Ferrari](#) (I B C)

Andersfurn Pty Ltd v Banks [2015] NTSC 43

Supreme Court of the Northern Territory

Hiley J

Workers compensation - respondent worker injured back while moving furniture in course of employment with appellant - worker brought proceedings in Work Health Court seeking declaration he suffered mental injury namely Major Depressive Disorder as consequence of injury - Work Health Court made declaration sought - employer appealed pursuant to s16 *Workers Rehabilitation and Compensation Act 1986* (NT) - procedural fairness - held: primary judge did not err in law by permitting worker to re-open case and tender four letters, or in finding that worker was suffering a Major Depressive Disorder at the relevant times - appeal dismissed.

[Andersfurn](#) (I)

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