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

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Executive Summary (1 minute read)

Fan v South Eastern Sydney Local Health District (NSWCA) - medical negligence - claims against Health District for failure to diagnose conditions and perform operation dismissed - appeal dismissed (I)

The Owners – Strata Plan No. 69743 v TRT Constructions Pty Ltd (NSWSC) - building and construction - preliminary issues - there was contract between builder and developer for building works - proceedings not commenced within time (I B C)

Jackson v Abram (No 2) (SASCFC) - costs - negligent misstatement - not appropriate to depart from general rule as to costs - respondent to pay appellants' costs of appeal (I)

George 218 Pty Ltd v Bank of Queensland Ltd (WASCA) - security for costs - primary judge found guarantors liable to bank - bank granted security for costs of appeal (I B C)

Daynite Towing Service (WA) Pty Ltd v Regrowth Karri Pty Ltd (WASCA) - negligence - tourist coach destroyed by fire while being towed - claim against towing contractor upheld - appeal dismissed (I B C)

Trafalgar West Investments Pty Ltd as Trustee for the Trafalgar West Investments Trust v Superior Lawns Australia Pty Ltd [No 10] (WASC) - discovery - confidential agreement - plaintiff to produce copy of litigation agreement to defendant's solicitors (I B)

Elmaraazey v Capital Lawyers Pty Ltd (ACTSC) - subpoena - Magistrate set aside two subpoenas issued at applicant's request - leave to appeal refused (I)

Summaries With Link (Five Minute Read)

Fan v South Eastern Sydney Local Health District [2016] NSWCA 64

Court of Appeal of New South Wales

McColl, Basten & Simpson JJA

Medical negligence - appellant sued respondent Health District for failure to diagnose Type 2 diabetes, failure to diagnose cholecystitis and failure to carry out cholecystectomy - trial judge found appellant did not establish respondent breached duty of care or that if it breached its duty or duties of care it caused appellant to suffer any injury or damage - appellant's case against respondent in negligence and breach of contract failed - appellant appealed - s98 *Civil Procedure Act 2005* (NSW) - s75A *Supreme Court Act 1970* (NSW) - held: appellant failed in challenges to trial judge's findings on liability - not necessary to address arguments as to assessment of damages - appeal dismissed.

[Fan](#) (I)

The Owners – Strata Plan No. 69743 v TRT Constructions Pty Ltd [2016] NSWSC 375

Supreme Court of New South Wales

McDougall J

Building and construction - preliminary issues - plaintiff owner of strata title development claimed defendant was builder who carried out development for former registered proprietor of land on which development built - owners contended work was defective and it was entitled to recover cost of rectification under s18D *Home Building Act 1989* (NSW) - whether there was contract to which builder was party - whether proceedings out of time - held: Court satisfied there was a contract between builder and developer - proceedings not commenced within time - preliminary questions answered.

[The Owners – Strata Plan No. 69743](#) (I B C)

Jackson v Abram (No 2) [2016] SASCFC 36

Full Court of the Supreme Court of South Australia'

Peek, Stanley & Lovell JJ

Costs - negligent misstatement - Supreme Court allowed appeal against claim for negligent misstatement advice regarding investments - held: appellant sought that respondents pay costs of appeal - respondents sought it was appropriate they should have 70% costs of appeal in light of arguments on which appellants did or did not succeed - held: not appropriate to depart from general rule that costs follow event - costs to follow event - respondents to pay appellants' costs of appeal.

[Jackson](#) (I)

George 218 Pty Ltd v Bank of Queensland Ltd [2016] WASCA 56

Court of Appeal of Western Australia

Murphy JA

Security for costs - primary judge found appellant guarantors liable to respondent bank - first, second and fourth appellants were corporate guarantors - bank sought security for costs of appeal - application made pursuant to pt 5 r44(1) *Supreme Court (Court of Appeal) Rules 2005* (WA) and under s1335(1) *Corporations Act 2001* (Cth) in relation to corporate guarantors - ss10, 12, 117, 147, 153 & 332 *Personal Property Securities Act 2009* (Cth) - held: there was reason to believe corporate guarantors would be unable to pay bank's costs - substantial risk that third appellant guarantor would not be able to meet costs order against her - Court concluded it was interests of justice to grant security for costs - orders made.

[George](#) (I B C)

Daynite Towing Service (WA) Pty Ltd v Regrowth Karri Pty Ltd [2016] WASCA 55

Court of Appeal of Western Australia

McLure P, Buss JA & Corboy J

Negligence - respondent was bus and coach operator - appellant was towing contractor - District Court upheld respondent's claim for damages for destruction of tourist coach by fire while appellant was towing it - held: primary judge's finding that caging of brakes was necessary for exercise of reasonable care not in error - open to primary judge to find that before fire occurred there were changes in pressure gauges which tow truck operator failed to detect - no error in finding on causation or assessment of evidence's reliability - appeal dismissed.

[Daynite](#) (I B C)

Trafalgar West Investments Pty Ltd as Trustee for the Trafalgar West Investments Trust v Superior Lawns Australia Pty Ltd [No 10] [2016] WASC 111

Supreme Court of Western Australia

K Martin J

Discovery - confidential litigation funding agreement - defendants sought production of copy of confidential document and access to document - held: litigation funding agreement was relevant and could bear on plaintiff's disposition to interrupt springing orders which were being made - copy of agreement to be produced by plaintiff to defendant's solicitors.

[Trafalgar](#) (I B)

Elmaraazey v Capital Lawyers Pty Ltd [2016] ACTSC 54

Supreme Court of the Australian Capital Territory

Mossop AsJ

Subpoena - applicant sought leave to appeal against Magistrate's order setting aside two subpoenas issued at applicant's request - s274 *Magistrates Court Act 1930* (ACT) - r5103 *Court Procedures Rules 2006* (ACT) - s36 *Evidence Act 2011* (ACT) - held: Court not satisfied proposed grounds of appeal reasonably arguable - applicant failed to demonstrate injustice by refusal of leave - leave to appeal refused.

[Elmaraazey](#) (I)



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