



Monday, 8 February 2016

## 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)

**Assarapin v Australian Community Pharmacy Authority (FCAFC)** - administrative law - grant of authority to supply pharmaceutical benefits from new premises - no error in Authority's recommendation or Secretary's decision to accept it - appeal and cross-appeal dismissed (I B G)

**Director of Consumer Affairs Victoria v The Good Guys Discount Warehouses (Australia) Pty Ltd (FCA)** - trade practices - no misleading and deceptive conduct, or conduct which was likely to mislead or deceive established - proceedings dismissed (I B)

**Lock v Australian Securities and Investments Commission (FCA)** - pleadings - negligence - representative proceedings - further amended statement of claim struck out in entirety (I B)

**Consolidated Lawyers Ltd v Abu-Mahmoud; Abu-Mahmoud v Consolidated Lawyers Ltd (NSWCA)** - professional negligence - solicitors' duties - negligent restructure advice caused client's loss - appeal dismissed (I B C)

**Latol Pty Ltd v Robin Gersbeck (No 2) (NSWSC)** - damages - assessment of damages - disputed items assessed 'seriatum' - judgment for plaintiff in total sum of \$176,529 (I B)

**Saunders v Legal Profession Admission Board (No 2) (NSWSC)** - costs - Law Society to pay 30% of successful appellant's costs after it commenced as amicus curiae (I)

**Re De Bruyn (VSC)** - Wills and estates - questions answered concerning construction of

clauses of Will which established trusts (B)

## Summaries With Link (Five Minute Read)

### **Assarapin v Australian Community Pharmacy Authority [2016] FCAFC 9**

Full Court of the Federal Court of Australia

Bromberg, Rangiah & Perry JJ

Administrative law - applicants sought judicial review of Secretary's grant of approval to second respondent under s90 *National Health Act 1953* (Cth), and Authority's preceding recommendation - approval authorised second respondent to supply pharmaceutical benefits from new premises - appellants authorised to dispense pharmaceutical benefits from premises close to second respondent's premises - appellants contended Authority misconstrued criterion that "the existing premises are not in a facility" within meaning of Part 1 of Sch 1 *National Health (Australian Community Pharmacy Authority Rules) Determination 2011*- held: Authority's recommendation and decision to accept it not affected by error of law or jurisdictional error - appeal dismissed - appellants had standing under *Administrative Decisions (Judicial Review) Act 1977* (Cth) Act as persons aggrieved - cross-appeal dismissed.

[Assarapin](#) (I B G)

### **Director of Consumer Affairs Victoria v The Good Guys Discount Warehouses (Australia) Pty Ltd [2016] FCA 22**

Federal Court of Australia

Moshinsky J

Trade practices - misleading and deceptive conduct - Director of Consumer Affairs Victoria alleged respondent engaged in conduct which was misleading and deceptive or likely to mislead and deceive, in connection with promotion of goods and extended warranties - ss107, 108, 109, 110, 111, 142, 143, 144, 145 & 149-181 *Australian Consumer Law and Fair Trading Act 2012* (Vic) - ss13 & 38 *Charter of Human Rights and Responsibilities Act 2006* (Vic) - ss2, 4, 18, 29(1)(l) and (m), 51-59, 228, 232, 246, 247, 259-261, 263 & 264 *Competition and Consumer Act 2010* (Cth) - held: objections to evidence on basis of s138 *Evidence Act* (Cth) rejected - conduct not misleading or deceptive, or likely to mislead or deceive - proceedings dismissed.

[Director of Consumer Affairs](#) (I B)

### **Lock v Australian Securities and Investments Commission [2016] FCA 31**

Federal Court of Australia

Gleeson J

Pleadings - negligence - representative proceedings - misfeasance in public office - defendant sought to strike out further amended statement of claim which attempted to plead claim against it for misfeasance in public office and negligence in relation to its regulation of company (Storm) - plaintiffs contended defendants conduct resulted in financial loss to Storm's clients - plaintiffs complained of defendant's failure to impose conditions on Storm's licence and/or to inform

market of its concerns - ss1, 11, 12A, 12DA, 12DB, 13, 19(2), 30(1) & 93AA(1) *Australian Securities and Investments Commission Act 2001* (Cth) - ss5B, 739(1), 760A, 761A, 761G, 766B, 912A, 912C(1), 914A(1), 915C(1), 923A, 945A & 1041H *Corporations Act 2001* (Cth) - held: further amended statement of claim so deficient that it was struck out entirely - leave granted to file second further amended statement of claim.

[Lock](#) (I B)

## **Consolidated Lawyers Ltd v Abu-Mahmoud; Abu-Mahmoud v Consolidated Lawyers Ltd [2016] NSWCA 4**

Court of Appeal of New South Wales

Bathurst CJ, Macfarlan JA & Tobias AJA

Professional negligence - solicitors' duties - respondent property developer sued appellant lawyers for allegedly negligent advice ("restructure advice") in relation to purchase of property - primary judge found in favour of respondent - causation - post-caveat advice - "independent unreasonable conduct" - held: no error in primary judge's finding that restructure advice was negligent and that negligence caused respondent's loss - appellants precluded from raising argument as to unreasonable conduct and causation for first time on appeal - no error established by primary judge in relation to costs - appeal dismissed.

[Consolidated Lawyers Ltd](#) (I B C)

## **Latol Pty Ltd v Robin Gersbeck (No 2) [2016] NSWSC 25**

Supreme Court of New South Wales

Hamill J

Damages - Court gave judgment for plaintiff in proceedings and ordered damages to be reduced by 20% pursuant to s12GF(1B) *Australian Securities and Investments Commission Act 2001* (Cth) - parties in dispute on quantum of damages - parties disagreed on some items of damage - assessment of damages - principal of loan - interest on principal - whether entitlement to damages for loss in attempt to recover amount from third party - remoteness - offer of compromise - held: items dealt with seriatim - judgment for plaintiff in total sum of \$176,529.

[Latol](#) (I B)

## **Saunders v Legal Profession Admission Board (No 2) [2016] NSWSC 27**

Supreme Court of New South Wales

Schmidt J

Costs - Court allowed appellant's appeal from Legal Profession Board's decision that appellant not a fit and proper person for admission - Law Society appeared as amicus curiae - appellant sought order that Law Society of New South Wales bear 30% of actual costs incurred - Society opposed order - whether costs order could be made against Society - whether discretion to award costs should be exercised - held: justice demanded costs order should be made in appellant's favour on party/party basis - Society to bear 30% of costs incurred after it commenced acting as amicus curiae.

[Saunders](#) (I)



**Re De Bruyn [2016] VSC 6**

Supreme Victoria of Victoria

McMillan J

Wills and estates - deceased left Will appointing plaintiff's son as executor and trustee of estate - probate granted to plaintiff - deceased survived by plaintiff and another son (Robert) - Will provided deceased's residuary estate to be divided into two equal parts, one to be bequeathed to plaintiff and other held on trusts established by clause of Will ('the clause 8 trusts') which provided for Robert's benefit - plaintiff sought determination of questions concerning construction of clause 8 trusts - principles of construction - nature of Robert's interest - construction of Will - O54.02 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - held: questions concerning clause 8 trusts answered.

[Re De Bruyn \(B\)](#)

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