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Daily Civil Law Review A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Air New Zealand Ltd v Australian Competition and Consumer Commission; PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission (HCA) - trade practices - price fixing by airlines in contravention of s45(2) *Trade Practices Act 1974* (Cth) - there was market in Australia for air cargo services for which airlines competed - appeals dismissed (I B C G)

Waaka v Francois (NSWSC) - estoppel - defendant not bound by equitable proprietary estoppel to enter contract for sale of property to plaintiffs - judgment for defendant (I B C G)

TJ & RF Fordham Pty Limited t/as TRN Group v Starhill Property Group Pty Ltd (No 2) (NSWSC) - costs - indemnity costs - delinquency - basis for indemnity costs order established - successful plaintiff granted indemnity costs (I B C G)

The Prothonotary of the Supreme Court of New South Wales v Coren (NSWSC) - contempt - contempt arising from conduct with tendency to frustrate Court's orders for possession of property - contemnor sentenced to 150 hours of community service (I B C G)

Kearney v 2HD Broadcasters Pty Ltd t/as 1143 2HD and Radio New FM (NSWSC) - judgments and orders - enforcement - deed of assignment and rights - applicant entitled to enforcement of judgment - judgment creditor in Court's orders amended (I B C G)

Gurner 57 Johnston Street Developments Pty Ltd v Yarra City Council (VSC) - planning

and environment - refusal of development permit - denial of procedural fairness by determination of review application - appeal allowed - matter remitted to differently constituted Tribunal (I B C G)

RSSB Australia Pty Ltd v Ross (VSC) - planning and development - refusal of permit to develop land to build place of worship - proposed development satisfied definition of 'place of worship' - appeal allowed (I B C G)

Summaries With Link (Five Minute Read)

Air New Zealand Ltd v Australian Competition and Consumer Commission; PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission [2017] HCA 21

High Court of Australia

Kiefel CJ; Bell, Keane, Nettle & Gordon JJ

Trade practices - price fixing - market identification - primary judge found Air New Zealand Ltd and PT Garuda Indonesia Ltd were parties to price fixing and that conduct would have contravened s45(2) *Trade Practices Act 1974* (Cth) but did not do so because competition between the airlines did not occur in any Australian market - Full Court of Federal Court allowed appeal against primary judge's decision - whether primary judge correct in finding no market in Australia for air cargo services for which airlines competed - ss12 & 13 *Air Navigation Act 1920* (Cth) - ss4, 4E, 45(2), 45(3) & 45A *Trade Practices Act 1974* (Cth) - held: primary judges factual findings led 'irresistibly to the conclusion that there was a market in Australia for the airlines' air cargo services' - appeals dismissed.

[Air New Zealand](#) (I B C G)

Waaka v Francois [2017] NSWSC 744

Supreme Court of New South Wales

Darke J

Estoppel - plaintiffs resided at property owned by defendant - arrangement had been made involving plaintiffs moving into property 'with a view to subsequently purchasing it' from defendant (arrangement) - plaintiffs alleged defendant bound by equitable proprietary estoppel to enter contract to sell property to plaintiffs - defendant denied plaintiffs' allegations and denied shed had acted unconscionably towards them - consideration of terms of arrangement between parties - elements of equitable estoppel by encouragement - circumstances in which proprietary estoppel would arise - held: plaintiffs did not establish equitable proprietary estoppel case against defendant - judgment for defendant.

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

TJ & RF Fordham Pty Limited t/as TRN Group v Starhill Property Group Pty Ltd (No 2) [2017] NSWSC 748

Supreme Court of New South Wales

Schmidt J

Costs - indemnity costs - security of payments - successful plaintiff company sought indemnity costs on basis of 'relevant delinquency' by corporate defendant - held: defendant had not challenged original adjudicated certificate, judgment and orders - defendant had failed to pay what was owed to plaintiff - defendant had sought to dispose of asset which could have funded debt to plaintiff - defendant had taken further steps to ensure debt would remain unsatisfied - proper basis for indemnity costs order established - plaintiff granted order for indemnity costs.

[TJ & RF Fordham](#) (I B C G)

The Prothonotary of the Supreme Court of New South Wales v Coren [2017] NSWSC 754

Supreme Court of New South Wales

Walton J

Contempt - sentencing - defendant charged with contempt arising from conduct with tendency to frustrate Court's orders for possession of property - defendant pleaded guilty to charge - determination of sentence - personal circumstances - explanation - contrition and apology - contempt's objective seriousness - whether contemnor aware of consequences - actual consequences - personal and general deterrence - denunciation - guilty pleas - available penalties - held: declaration of contempt made - defendant sentenced to 150 hours of community service.

[The Prothonotary](#) (I B C G)

Kearney v 2HD Broadcasters Pty Ltd t/as 1143 2HD and Radio New FM [2017] NSWSC 751

Supreme Court of New South Wales

Davies J

Judgments and orders - enforcement - Court gave judgment in defendant's favour against cross-defendant - applicant had acted for defendant in proceedings - defendant and applicant had entered into deed of assignment and release in which defendant assigned rights against cross-defendant to applicant - Notice of Assignment sent to cross-defendant under s12 *Conveyancing Act 1919* (NSW) stipulating that amount under assignment was due and payable to applicant within ten days - debt not paid - applicant sought to execute and enforce judgment and that judgment creditor be amended to applicant - r39.1 *Uniform Civil Procedure Rules 2005* (NSW) - s135(1) *Civil Procedure Act 2005* (NSW) - held: Court satisfied by evidence that applicant was entitled to enforce judgment - judgment creditor amended in Court's orders - orders made.

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

Gurner 57 Johnston Street Developments Pty Ltd v Yarra City Council [2017] VSC 290

Supreme Court of Victoria

Emerton J

Planning and environment - applicant sought to develop land occupied by club - respondent refused permit - Victorian Civil and Administrative Tribunal affirmed respondent's decision - whether denial of procedural fairness when Tribunal decided application without giving applicant

adequate opportunity to be heard - ss98, 102 & 148 *Victorian Civil and Administrative Tribunal Act 1998* (Vic) - held: Tribunal determined application without giving applicant opportunity to call expert to give evidence, challenge evidence and make submissions, constituting denial of procedural fairness to applicant - appeal allowed - matter remitted to differently constituted Tribunal.

[Gurner 57](#) (I B C G)

RSSB Australia Pty Ltd v Ross [2017] VSC 314

Supreme Court of Victoria

Emerton J

Planning and environment - applicant was registered proprietor of land - applicant sought to build place of worship, along with two dwellings, on land - Council granted permit to construct a place of worship on land - Victorian Civil and Administrative Tribunal set aside decision on basis use of land was for 'place of assembly' and not a 'place of worship' - definition of 'place of worship' under Frankston Planning Scheme (Scheme) - held: principal activities for development involved 'meditation to enhance the follower's connection with his or her God and practices aimed at developing and enhancing that connection' - activities were religious activities - definition of 'place of worship' in Scheme satisfied - appeal allowed.

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

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