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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)

Ogbonna v CTI Logistics Ltd (FCA) - human rights - racial discrimination - payment of allowances and superannuation - dismissal of claims - appeal dismissed (I B C)

Campton v Hedges (NSWSC) - wills and estates - probate - informal document - probate of altered Will granted (B)

Linfield Developments Pty Ltd v Shuangxing Development Pty Ltd (NSWSC) - contract - development agreement - enforcement of call option - specific performance granted (I B C)

Australian Dream Homes v Stojanovski (VSCA) - security for costs - termination of domestic building contract - evidence of impecuniosity not compelling - matters of public importance - security for costs of appeal refused (I B C)

Distinctive FX Pty Ltd v Van Der Slot (VSCA) - injunctions - freezing order - respondent granted access to proceeds of life insurance policy held in trust account and subject of freezing order - leave to appeal refused (I B)

Maggs v RACQ Insurance Ltd (QSC) - damages - negligence - terms of settlement sanctioned less amount for component of fund management fees (I B)

Sinnamon v Maher (QSC) - damages- negligence - assessment of management fees - Super Platform Costs constituted part of award of damages (I B)

Summaries With Link (Five Minute Read)

Ogbonna v CTI Logistics Ltd [2016] FCA 239

Federal Court of Australia

Barker J

Human rights - racial discrimination - Federal Circuit Court dismissed applicant's claim alleging racial discrimination under *Racial Discrimination Act 1975* (Cth) against respondents and also dismissed further claim that applicant was not paid allowances and superannuation - applicant sought extension of time to appeal - whether time should be extended - whether appeal had merit - standard of review - appointment to perform first aid - role as team leader - admission of hearsay - direction to work at site - claims regarding allowances under *Road Transport and Distribution Award 2010* - travelling allowance - admission of evidence - defamation - held: extension of time failed - grounds of appeal failed - appeal dismissed.

[Ogbonna](#) (I B C)

Campton v Hedges [2016] NSWSC 201

Supreme Court of New South Wales

Hallen J

Wills and estates - probate - succession - informal document - altered Will - dispute concerned whether document signed by deceased without formalities should be admitted to probate - ss6 & 8(2) *Succession Act 2006* (NSW) - held: Court satisfied deceased intended altered Will to form his Will - Court satisfied deceased intended to revoke typewritten Will - probate of altered Will granted to plaintiffs.

[Campton](#) (B)

Linfield Developments Pty Ltd v Shuangxing Development Pty Ltd [2016] NSWSC 68

Supreme Court of New South Wales

Pembroke J

Contract - specific performance - plaintiff sought to enforce a call option contained in development agreement - first defendant was in administration - first defendant agreed to purchase land and entered development agreement with third party plaintiff - development agreement contained call option in plaintiff's favour - event of default occurred - plaintiff called for land under option - main dispute was between plaintiff and sixth defendant - sixth defendant claimed its interest as equitable mortgagee had priority over plaintiff's interest in respect of call option - *Australian Consumer Law - Contracts Review Act 1980* (NSW) - credit - contractual construction - contemporaneous notes and documents - held: no genuine dispute about circumstances of plaintiff's exercise of call option - arguments about exercise of option not supportable - plaintiff entitled to relief sought - specific performance granted - judgment for plaintiff.

[Linfield](#) (I B C)

Australian Dream Homes v Stojanovski [2016] VSCA 38

Court of Appeal of Victoria
Santamaria & McLeish JJA

Security for costs - builder sought to appeal decision in which primary found it was not open to Tribunal to hold owners acted unreasonably in terminating domestic building contract - contract was in form of Master Builders Association of Victoria New Homes Contract (HC-6 Edition 1-2007) - owners sought security for costs - *Domestic Building Contracts Act 1995 (NSW)* - termination provisions of contract - r64.38(2) *Supreme Court (General Civil Procedure) Rules 2015 (Vic)* - held: evidence of builder's impecuniosity not compelling - there had been delay in seeking security - appeal concerned matters of public importance - security for costs refused.

[Australian Dream Homes](#) (I B C)

Distinctive FX Pty Ltd v Van Der Slot [2016] VSCA 39

Court of Appeal of Victoria
Beach & McLeish JJA

Injunctions - freezing order - dispute concerning respondent's ability to deal with proceeds of life insurance - policy taken out on life of respondent's deceased husband - proceeds paid into trust account and subject of freezing order - applicants sought leave to appeal against decision in which trial judge permitted respondent access to funds to pay expenses and legal expenses - held: no substance to complaint that trial judge took into account irrelevant considerations and/or mistook facts - Court not persuaded trial judge's orders plainly unjust or unreasonable - trial judge reason's not inadequate - no error in evaluation of balance of convenience - appeal had no prospects of success - leave to appeal refused.

[Distinctive FX](#) (I B)

Maggs v RACQ Insurance Ltd [2016] QSC 41

Supreme Court of Queensland
Boddice J

Damages - negligence - applicant sought sanctioning of terms of settlement of her claim for damages resulting from parents' death in motor vehicle accident - parties agreed on terms of settlement in relation to quantification of heads of damages - whether applicant entitled to receive component of fund management fees - ss7 & 65 *Civil Proceedings Act 2011 (Qld)* - *Public Trustee Act 1978 (Qld)* - limitation on recoverable damages - held: component of fund management fees not recoverable as damages resulting from parents' death - Court satisfied proposed settlement less component of fund management fees in applicant's best interest - parties to prepare short minutes of order.

[Maggs](#) (I B)

Sinnamon v Maher [2016] QSC 51

Supreme Court of Queensland
Flanagan J

Damages - negligence - plaintiff injured in pedestrian traffic accident - proceedings brought by litigation guardian - claim settled - administrator appointed - assessment of management fees -



sole issue whether “Super Platform Costs” should be allowed - s57 Civil Liability Act 2003 (Qld) - s61(4) *Civil Proceedings Act 2011* (Qld) - ss12 & 51 *Guardianship and Administration Act 2000* (Qld) - s59(1) *Public Trustee Act 1978* (Qld) - s 24(1) *Trusts Act 1973* (Qld) - held: Super Platform Costs constituted fee payable by administrator to superannuation fund’s trustee and constituted part of award of damages - orders made.

[Sinnamon](#) (I B)

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