



Monday, 16 November 2015

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)

Australian Competition and Consumer Commission v Chrisco Hampers Australia Ltd (FCA) - consumer law - supply of Christmas hampers to customers - breaches of Australian Consumer Law established (I B)

The Owners – Strata Plan No 74602 v Brookfield Australia Investments Ltd (NSWSC) - leave to reopen - proceedings concerning alleged defects in strata title residential development - leave to reopen case to tender emails, photographs and documents refused (I B C)

Buses + 4WD Hire Pty Ltd v Oz Snow Adventures Pty Ltd (NSWSC) - negligence - bus crash - unusual order sought pursuant to r7.8 *Uniform Civil Procedure Rules 2005* (NSW) refused (I B)

Stealth Enterprises Pty Ltd trading as The Gentleman's Club v Calliden Insurance Ltd (No 2) (NSWSC) - costs - offer of compromise - indemnity costs ordered in favour of successful defendant (I)

GLS v Goodman Group Pty Ltd (VSC) - solicitor's' costs agreement - dismissal of application for costs review on basis of "accord and satisfaction" - appeal dismissed (I)

Orbito Nominees Pty Ltd v Betts Nominees Pty Ltd (WASC) - subpoena - legitimate forensic purpose - abuse of process - application to set aside subpoenas dismissed (B)

Lazarus v Azize (ACTSC) - defamation - stay or dismissal of proceedings refused - leave

granted to amend statement of claim (I)

Summaries With Link (Five Minute Read)

Australian Competition and Consumer Commission v Chrisco Hampers Australia Ltd [2015] FCA 1204

Federal Court of Australia

Edelman J

Consumer law - applicant claimed respondent contravened Australian Consumer Law (ACL) in course of supplying customers with Christmas hampers - respondent's contracts contained term (HeadStart term) requiring customers to allow it to withdraw funds from customer's bank account even after full payment made for goods - term applied unless opted out of - whether HeadStart term "unfair term" under s24 ACL - whether HeadStart term caused significant imbalance in parties' rights and obligations under contract - duty in s97(3) ACL on supplier who was party to lay-by agreement to "ensure" amount of termination charge not more than supplier's reasonable costs - whether Chrisco contravened s29(1)(m) ACL by making false or misleading representation that consumer could not cancel lay-by agreement once order fully paid and before delivery of goods - held: term was unfair - ACCC did not prove respondent contravened s97(3) by agreements' cancellation charges - respondent's representation in website terms and conditions and Order Confirmation that "your order cannot be cancelled once it is fully paid for" contravened s29(1)(m) ACL - parties to confer on programme for hearing of issues on penalty and consequential orders.

[ACCC](#) (I B)

The Owners – Strata Plan No 74602 v Brookfield Australia Investments Ltd [2015] NSWSC 1682

Supreme Court of New South Wales

Stevenson J

Leave to reopen - alleged defects in strata title residential development - plaintiff was owners corporation - plaintiff sued builder and builder's sub-contractor - plaintiff sought leave to reopen its case to tender emails, documents and photographs - relevance of material - explanation for failure to adduce evidence - prejudice - possibility of need to reconvene hearing - *Evidence Act 1995* (NSW) - held: Court not prepared to allow owners corporation to reopen its case - motion dismissed.

[The Owners](#) (I B C)

Buses + 4WD Hire Pty Ltd v Oz Snow Adventures Pty Ltd [2015] NSWSC 1687

Supreme Court of New South Wales

Schmidt J

Negligence - bus accident in which bus hired by first plaintiff to first and/or second defendant, driven by second plaintiff crashed through guardrail and rolled down embankment injuring

passengers - proceedings commenced in District Court and transferred to Supreme Court - plaintiffs sought unusual order pursuant to r7.8 *Uniform Civil Procedure Rules 2005* (NSW) that senior associate of law firm be appointed to conduct issues between first plaintiff and first and second defendants - motion supported by plaintiffs' solicitor who was acting for statutory insurer under policy issued to first plaintiff - defendants and senior associate opposed order - law firm acted for property insurer of bus and senior associate had carriage of matter - held: Court not satisfied order sought could justly be made given senior associate's interest in proceedings flowed only from employment by law firm and current retainer with insurer - problems lying between first plaintiff, insurer of bus and the defendants must be resolved in some other way - motion dismissed.

[Buses](#) (I B)

Stealth Enterprises Pty Ltd trading as The Gentleman's Club v Calliden Insurance Ltd (No 2) [2015] NSWSC 1691

Supreme Court of New South Wales

Schmidt J

Costs - judgment given for defendant in proceedings - defendant sought indemnity costs on basis of offer of compromise - defendant contended offer of compromise did not reflect genuine compromise - whether rejection of offer unreasonable - whether judgment no less favourable than terms of offer - rr42.15A & 101(4) *Uniform Civil Procedure Rules 2005* (NSW) - held: there was real compromise by defendant - by refusing offer of compromise, plaintiff took risk it would be ordered to pay defendant's costs on indemnity basis if it failed to establish case - no basis on which Court could justly order otherwise - indemnity costs ordered.

[Stealth](#) (I)

GLS v Goodman Group Pty Ltd [2015] VSC 627

Supreme Court of Victoria

Macaulay J

Solicitor's costs agreement - firm charged client amount in legal fees and disbursements for legal services - client sought review of costs under Div 7, Pt 3.4 *Legal Profession Act 2004* (Vic) - firm sought summary dismissal of application on basis parties reached accord and satisfaction in respect of outstanding fees - Court dismissed application - client appealed - r77.06 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - evidence - agency - whether conveyancer was client's agent with authority to bind client - held: no legal error in holding parties reached accord and satisfaction in relation to legal fees and rights of review - appeal in relation to agency and 'contracting out' issues failed - appeal dismissed.

[GLS](#) (I)

Orbito Nominees Pty Ltd v Betts Nominees Pty Ltd [2015] WASC 431

Supreme Court of Western Australia

Master Gething

Subpoena - plaintiff sought to set aside subpoenas on ground of abuse of process - application made in context of application pursuant to s77 *Trustees Act 1962* (WA) (TA) to remove trustee

of unit trust - plaintiff submitted each subpoenas sought material which had no apparent relevance to issues or legitimate forensic purpose - O36B *Rules of the Supreme Court 1971* (WA) - held: application to set aside subpoenas failed - application dismissed.

[Orbito](#) (B)

Lazarus v Azize [2015] ACTSC 344

Supreme Court of the Australian Capital Territory

Mossop AsJ

Stay - dismissal - pleadings - defamation - first, second, fourth and fifth defendants sought dismissal or stay of plaintiff's action - plaintiff sought leave to amend statement of claim - s139E *Civil Law (Wrongs) Act 2002* (ACT) - ss16 & 21 *Human Rights Act 2004* (ACT) - ss56 & 60 *Civil Procedure Act 2005* (NSW) - rr430 & 433 *Court Procedures Rules 2006* (ACT) - r13.4 *Uniform Civil Procedure Rules 2005* (NSW) - held: proportionality did not indicate present case was abuse of process - dismissal or permanent stay refused - plaintiff granted leave to amend statement of claim.

[Lazarus](#) (I)

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