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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)

Merost Pty Ltd v CPT Custodian Pty Ltd (FCA) - corporations - consumer law - company relied on vendor's erroneous breakeven figure as an inducement to purchase shopping centre - damages (B)

Pham v NRMA Insurance Ltd (NSWCA) - motor accidents compensation - no error in assessment of damages for future economic loss - appeal allowed - summons dismissed (I G)

Veljanovska v Verduci (VSCA) - accident compensation - appeal against jury's verdict and assessment of damages dismissed (I)

Telstra Corporation Ltd v Singtel Optus Pty Ltd (VSC) - corporations - trade practices - advertisement by operator of digital phone network was misleading and deceptive (B G)

JNJ Resources P/L v Crouch & Lyndon (QSC) - limitation of actions - professional negligence - client's action against solicitor not statute-barred - summary judgment refused (I B)



Commissioner for Consumer Protection -v- Standley (WASC) - consumer law - no misleading and deceptive conduct by associates of real estate agency in relation to property advertisements - appeal dismissed (I B C G)

Summaries with links (5 minute read)

Merost Pty Ltd v CPT Custodian Pty Ltd [2014] FCA 97

Federal Court of Australia

North J

Corporations - misleading and deceptive conduct - consumer law - damages - applicant company (Merost) purchased shopping centre from respondent company (Centro) - Merost claimed Centro misled it about amount of rent payable by major tenant and that it had suffered loss and damage as a result - Centro argued that if Merost suffered loss and damage, it was caused or contributed to by Merost and that damages should be reduced by extent of Merost's contribution - Centro also argued that if it was liable to Merost then Merost's solicitors independently caused loss or damage and that Centro's liability should be proportionately reduced - s18(1) *Australian Consumer Law* (ACL) - ss137B & 87CB(3) *Competition and Consumer Act 2010* (Cth) - held: Centro's erroneous statement of breakeven figure in information memorandum was misleading and deceptive within meaning of s18 ACL - Merost had relied on erroneous breakeven figure as an inducement to purchase shopping centre - amount recoverable from Centro reduced by 20% for Merost's share in responsibility for loss and damage - law firm not a concurrent wrongdoer - Centro's liability not reduced as result of law firm's acts.

[Merost](#) (B)

Pham v NRMA Insurance Ltd [2014] NSWCA 22

Court of Appeal of New South Wales

Macfarlan & Leeming JJA; Tobias AJA

Motor accidents compensation - appellant operated drycleaning business - appellant involved in motor vehicle accident which caused him serious injury and destroyed income earning capacity - insurer admitted liability - appeal to Supreme Court from assessment of damages referred to claims assessor under s90 *Motor Accidents Compensation Act 1999* (NSW) and to Court of Appeal - trial judge held there was no evidence before assessor to support basis upon which she assessed appellant's future economic loss and that she did not comply with requirements of s126 of the Act



in respect of that head of damages - held: basis upon which assessor made her award of damages for future economic loss not erroneous - assessor did not assess damages on basis appellant would have been forced to take up salaried employment – assessor determined that earnings of salaried employee were guide to minimum loss of business income - assessor's reasons complied with s94(5) of the Act - assessor identified her assumptions as to appellant's most likely future circumstances but for the injury as required by s126 of the Act - appeal allowed - summons dismissed.

[Pham](#) (I G)

Veljanovska v Verduci [2014] VSCA 15

Court of Appeal of Victoria

Osborn & Beach JJA; Sifris AJA

Accident compensation - appellant was employed by respondent as a solicitor - after she ceased work, appellant commenced proceedings alleging she sustained injury in course of employment when a chair on which she attempted to sit moved and caused her to fall and as a result of carrying heavy files and documents- appellant challenged jury's finding that employer was not negligent, assessment of contributory negligence at 50% and assessment of damages - held: jury did not act irrationally in finding breach of statutory duty but no negligence - no failure by trial judge to give appropriate directions to jury - no basis for contending jury's apportionment of contributory negligence was wrong - assessment of damages not unreasonable - appeal dismissed.

[Veljanovska](#) (I)

Telstra Corporation Ltd v Singtel Optus Pty Ltd [2014] VSC 35

Supreme Court of Victoria

Elliott J

Consumer law - trade practices - misleading and deceptive conduct - parties operated digital mobile networks in Australia - defendant (Optus) broadcast advertisement on television and on its website comparing coverage of parties' networks - plaintiff (Telstra) sought orders preventing any further broadcasting of advertisement together with orders to remedy its effect - Telstra alleged advertisement made representations concerning geographic coverage of parties' respective mobile networks which were false, misleading and/or deceptive in contravention of *Australian Consumer Law* (ACL) contained in Sch 2 *Competition and Consumer Act 2010* (Cth) - knowledge of class concerning coverage - dominant message of advertisement - ss18, 29(1)(b) & 29(1)(g) ACL - held: Telstra established case with respect of each of the representations - appropriate relief to be determined.

[Telstra](#) (B G)



[NJ] Resources P/L v Crouch & Lyndon [2014] QSC 13

Supreme Court of Queensland

Jackson J

Limitation of actions - summary judgment - professional negligence - contract - solicitors' duties - plaintiff's directors retained defendant to act as solicitor in relation to sale of land to company and simultaneous purchase of portion of land from company - plaintiff alleged solicitor was negligent in advising it with result it suffered loss and damage - solicitor sought summary judgment on plaintiff's claim under r293 *Uniform Civil Procedure Rules 1999* (Qld) because plaintiff's cause of action arose more than six years before proceeding was started - s10 *Limitation of Actions Act 1974* (Qld) - time of accrual of cause of action - held: application for summary judgment dismissed - cannot be said that cause of action accrued on entry into contracts - inappropriate to consider question as interlocutory issue

[\[NJ\] Resources](#) (I B)

Commissioner for Consumer Protection -v- Standley [2014] WASC 45

Supreme Court of Western Australia

Allanson J

Consumer law - misleading and deceptive conduct - respondent operators of real estate agency placed advertisement on website - respondents charged with making false or misleading representation concerning location of land or price payable for land - magistrate entered verdicts of acquittal on all charges - appellant sought to challenge magistrate's decision - ss32 & 95 *Fair Trading Act 2010* (WA) - s152 *Australian Consumer Law* (WA) - *false or misleading representation* - held: although magistrate erred in way she approached decision concerning one advertisement, no substantial miscarriage occurred - magistrate correct to find advertisement of first property was not false or misleading concerning location of land because it was unlikely to lead a reasonable consumer to error - appeal dismissed.

[Commissioner for Consumer Protection](#) (I B C G)

My Childhood Home I See Again

by Abraham Lincoln

My childhood home I see again,
And sadden with the view;
And still, as memory crowds my brain,
There's pleasure in it too.



O Memory! thou midway world
'Twixt earth and paradise,
Where things decayed and loved ones lost
In dreamy shadows rise,

And, freed from all that's earthly vile,
Seem hallowed, pure, and bright,
Like scenes in some enchanted isle
All bathed in liquid light.

As dusky mountains please the eye
When twilight chases day;
As bugle-notes that, passing by,
In distance die away;

As leaving some grand waterfall,
We, lingering, list its roar--
So memory will hallow all
We've known, but know no more.

Near twenty years have passed away
Since here I bid farewell
To woods and fields, and scenes of play,
And playmates loved so well.

Where many were, but few remain
Of old familiar things;
But seeing them, to mind again
The lost and absent brings.

The friends I left that parting day,
How changed, as time has sped!
Young childhood grown, strong manhood gray,
And half of all are dead.



I hear the loved survivors tell
How nought from death could save,
Till every sound appears a knell,
And every spot a grave.

I range the fields with pensive tread,
And pace the hollow rooms,
And feel (companion of the dead)
I'm living in the tombs.

[Abraham Lincoln](#)

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