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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)

Unilever Australia Ltd v Revlon Australia Pty Ltd (No 2) (FCA) - consumer law - misleading and deceptive conduct - passing off - injunction restraining sale of products refused (I B)

Aldous v State of NSW (NSWCA) - pleadings - denial of procedural fairness and natural justice - summary judgment set aside - leave to replead defence (I B G)

First Mortgage Managed Investments Pty Limited v Pittman (No 2) (NSWCA) - judgments and orders - mortgage - permission to re-open judgment refused (I B)

Tate v Duncan-Strelec (NSWSC) - contempt of court - publication of material on internet by unsuccessful party - destruction of documents (I B)

Re 700 Form Holdings Pty Ltd (VSC) - commercial arbitration - shareholders' agreement - stay of oppression proceedings pursuant to arbitration clause (I B)

Kaycee Trucking Pty Ltd v M and C Rogers Transport Pty Ltd (QSC) - security of payments - adjudicator's determination not void (C)



In the Matter of the Estate of Jones (Deceased) (ACTSC) - Wills - deceased lacked testamentary capacity to make purported wills (B)

Summaries with links (5 minute read)

Unilever Australia Ltd v Revlon Australia Pty Ltd (No 2) [2014] FCA 875

Federal Court of Australia

Gleeson J

Consumer law - misleading and deceptive conduct - passing off - parties were competitors in supply of deodorant products - Unilever's products sold under brand names *Rexona* and *Dove* - Revlon's products sold under brand name *Mitchum Clinical* - Unilever claimed Revlon contravened ss18, 29(1)(a) & 29(1)(g) *Consumer Law* by representations in advertising and on packaging - Revlon counter-claimed Unilever contravened same provisions and engaged in passing off - Revlon sought urgent interlocutory injunction restraining Unilever from selling, offering for sale or marketing in Australia any Rexona clinical protection products in *New Rexona Packaging* - held: Revlon did not demonstrate significant likelihood it would succeed in claim that features of *Mitchum Clinical* packaging had become sufficiently distinctive and associated in minds of substantial number of potential purchasers so that Revlon could be said to have acquired a relevant trade reputation - interlocutory relief refused.

[Unilever Australia Ltd](#) (I B)

Aldous v State of NSW [2014] NSWCA 280

Court of Appeal of New South Wales

Barrett & Emmett JJA; Tobias AJA

Pleadings - self-represented litigant - procedural fairness - appellant was former member of NSW police service - appellant entered deed with Commissioner of Police by which he promised to make payments in events related to his receipt of disability benefit - NSW sued appellant for incomplete performance of obligations - appellant filed defence - NSW sought order under r14.28 *Uniform Civil Procedure Rules 2005* (NSW) that defence be struck out as embarrassing - primary judge found defence disclosed no ground of defence, struck out defence and ordered summary judgment in favour of NSW - there had been no application for summary judgment before Court - appellant granted leave to appeal from refusal of leave to replead - held: appellant not on notice that outcome of NSW's motion could be a judgment against him with no further opportunity to defend himself - denial of procedural fairness and natural justice - appeal allowed - appellant given leave to replead defence.

[Aldous](#) (I B G)

First Mortgage Managed Investments Pty Ltd v Pittman (No 2) [2014] NSWCA 272

Court of Appeal of New South Wales

Beazley P; Gleeson JA & Sackville AJA



Judgments and orders - in principal judgment Court partly allowed appeal by mortgagee from orders declaring loan and mortgage unenforceable - Court upheld primary judge's finding mortgage was unjust but found primary judge erred in finding borrowers should be relieved entirely of obligation to repay money under mortgage - borrowers sought to re-open judgment on grounds principal judgment did not consider submissions made on their behalf - s7 *Contracts Review Act 1980* (NSW) - rr6.24, 36.16 & 51.4 *Uniform Civil Procedure Rules 2005* (NSW) - held: borrowers did not establish Court overlooked arguments that were put or misapprehended evidence in material respects - borrowers did not identify submissions which Court failed to consider and which could have affected outcome of appeal - motion dismissed.

[First Mortgage Managed Investments Pty Ltd](#) (I B)

Tate v Duncan-Strelec [2014] NSWSC 1125

Supreme Court of New South Wales

Bergin CJ in Eq

Contempt of court - parties were local politicians whose relationship soured following failed joint venture - joint venture proceedings concluded - plaintiff sought that defendant be found guilty of contempt of court and punished accordingly for publication of material on internet to exact reprisal against plaintiff for successfully defending proceedings - held: Court satisfied beyond reasonable doubt defendant made material available for publication on website and published or caused it to be published on website and mirror websites with intention to exact reprisal - Court satisfied beyond reasonable doubt misrepresentations and statements in material on website calculated to impair confidence of people in Court's judgments and lower authority of Court and amount to scandalising the Court - defendant guilty of destruction of documents - defendant guilty of contempt of Court.

[Tate](#) (I B)

Re 700 Form Holdings Pty Ltd [2014] VSC 385

Supreme Court of Victoria

Robson J

Commercial arbitration - oppression - defendants sought order pursuant to s8 *Commercial Arbitration Act 2011* (Vic) or general law that plaintiffs' oppression application under s233 *Corporations Act 2001* (Cth) against them be stayed until further order as relevant parties had agreed under arbitration clause of shareholders' agreement to refer oppression dispute to arbitration - one plaintiff and one defendant not parties to the shareholders' agreement - construction of shareholders' agreement - held: Court satisfied matter was a dispute arising in connection with shareholders' agreement - dispute between shareholders encompassed in oppression claim stayed but not to extent parties to oppression claim were not parties to shareholders' agreement - stay of claims not subject to arbitration agreement refused.

[Re 700 Form Holdings Pty Ltd](#) (I B)

**Kaycee Trucking Pty Ltd v M and C Rogers Transport Pty Ltd [2014] QSC 185**

Supreme Court of Queensland

Phillipides J

Security of payments - first respondent (Rogers Transport) sought adjudication of payment claim it gave to applicant (Kaycee Trucking) - Kaycee Trucking sought declaration that adjudicator's determination pursuant to *Building and Construction Industry Payments Act 2004* (Qld) in favour of Rogers Transport was void - ss30 & 31 - characterisation of relevant construction contract in respect of which payment claim made - validity of payment claim - held: claim in payment claim not made in relation to two contracts - adjudication application did not seek adjudication of claim other than that made in payment claim - application dismissed.

[Kaycee Trucking Pty Ltd](#) (C)**In the Matter of the Estate of Jones (Deceased) [2014] ACTSC 200**

Supreme Court of the Australian Capital Territory

Refshauge J

Wills - testamentary capacity - deceased left three documents purporting to be Wills to applicant's knowledge (Public Trustee) - Public Trustee sought orders as to validity of the two further purported Wills pursuant to s97A *Administration and Probate Act 1929* (ACT) - held: Court satisfied that on date on which deceased executed first Will she was of testamentary capacity - first Will was a testamentary document fit to be admitted to probate - Court satisfied that at the time at which she made the two further purported Wills the deceased lacked the testamentary capacity to make a valid Will.

[In the Matter of the Estate of Jones \(Deceased\)](#) (B)**Hours**

By Hazel Hall

I have known hours built like cities,
House on grey house, with streets between
That lead to straggling roads and trail off,
Forgotten in a field of green;

Hours made like mountains lifting
White crests out of the fog and rain,
And woven of forbidden music-
Hours eternal in their pain.



Life is a tapestry of hours
Forever mellowing in tone,
Where all things blend, even the longing
For hours I have never known.

[Hazel Hall](#)

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