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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)

Leonie's Travel Pty Ltd v British Airways Plc - application for increased security for costs - proposed further legal expenditure disproportionate to objective importance of case - small increase ordered (I, B)

ACCC v Apple Pty Ltd - s33 *Australian Consumer Law* - admitted contravention - factors relevant to penalty - parties agreed on penalty (I, B)

Valder v Wolak - reinstatement of dismissed summons for leave to appeal - no arguable case for leave - not a matter in which the Court would grant leave to appeal (I)

Cordon Investments Pty Ltd v Lesdor Properties Pty Ltd - building and construction contracts - respondent entitled to terminate contract but not entitled to damages (B, C)

Chief Commissioner of State Revenue v Tasty Chicks Pty Ltd - payroll tax - grouping of companies trial judge held taxpayers not a group - appeal allowed in part (B)

BestCare Foods v Origin Energy - damages and interest - date from which interest to be awarded - rate of interest - practice note SC Gen 16 (I)



Mango Media Pty Ltd v Smith - real property - unregistered second mortgage - equitable charge - order for possession - order not binding on registered mortgagee (B, C)

Ren v Shi - caveats over real property - untenable interest claimed - caveat defective - amendment not allowed - no explanation for errors (B, C)

Bank of Western Australia Ltd v Floreani - contract and consumer law - guarantee - alleged breach of contract and misleading or deceptive conduct by bank not established (I, B, C)

Leonard v Pollock - appeals - family dispute - action in negligence - no reasonable cause of action - no extension of time - appeal dismissed (I)

Commissioner for Consumer Protection v Armstrong - consumer protection - breaches of enforceable undertaking - injunction made restraining further breaches (I, B)

Summaries with links (5 minute read)

Leonie's Travel Pty Ltd v British Airways Plc [2012] FCA 635

Federal Court of Australia

Robertson J

Representative proceedings - whether airlines had to pay travel agents' commission on fuel surcharge element of ticket prices - one airline increased its projected legal costs - sought orders for further security for costs - small amount now in issue between the parties - litigation relates to a closed period in the past - no precedent value for current commercial operations - airline's proposed further legal expenditure disproportionate to objective importance of case - overarching purpose of court rules - s37M *Federal Court of Australia Act 1976* (Cth) - small increase in security for costs ordered.

[Leonie's Travel](#) (I, B)

ACCC v Apple Pty Ltd [2012] FCA 646

Federal Court of Australia

Bromberg J

S33 *Australian Consumer Law* - conduct liable to mislead the public as to the nature of goods - incorrect description of iPads as having 4G capabilities - Apple admitted contravention - factors



relevant to penalty - size of the contravening company - deliberateness of contravention - period of contravention - whether senior management were involved - corporate culture - cooperation with authorities - court's responsibility to determine appropriate penalty where parties agreed - agreed penalty will be ordered if within the permissible range - held: agreed penalty was within appropriate range - \$2.25M penalty ordered.

[ACCC](#) (I, B)

Valder v Wolak [2012] NSWCA 189

Court of Appeal of New South Wales

Beazley JA & Tobias AJA

Reinstatement of dismissed summons for leave to appeal - no appearance by applicant at first instance - judge dismissed summons - application to reinstate - explanation for non-appearance - applicant suffered medical condition and misunderstood time of hearing - summons filed out of time - no extension of time sought - no arguable case for leave - held: need for extension of time put to one side - no immediate threat requiring urgent relief - not a matter in which the Court would grant leave to appeal - application dismissed with costs.

[Valder](#) (I)

Cordon Investments Pty Ltd v Lesdor Properties Pty Ltd [2012] NSWCA 184

Court of Appeal of New South Wales

Bathurst CJ, Macfarlan & Meagher JJA

Building and construction contracts - joint venture agreement for Cordon to develop property owned by Lesdor - building had substantial defects - Lesdor purported to terminate contract - Cordon took as repudiation and accepted it - Cordon sued - Lesdor cross-claimed - trial judge dismissed both claim and cross-claim, with costs to be set - off - held: interdependency of promises a question of construction - objective construction - resort to surrounding circumstances known to parties where ambiguity - Lesdor had no obligation to hand over strata plan until Codon completed the work - no room for doctrine of substantial performance - waiver not made out - breach of implied duty of good faith not made out - Lesdor entitled to terminate contract - Lesdor not entitled to damages as rectification work on premises would be unreasonable - appeal and cross - appeal dismissed.

[Cordon Investments](#) (B, C)

Chief Commissioner of State Revenue v Tasty Chicks Pty Ltd [2012] NSWCA 181

Court of Appeal of New South Wales

Meagher & Barrett JJA, Sackville AJA

Payroll tax - grouping of companies - if taxpayers not grouped, each would be entitled to benefit of threshold - Chief Commissioner treated taxpayers as group - trial judge held taxpayers not a group - appeal to Court of Appeal - notice of contention - held: taxpayers not engaged in a single business - requirement that first taxpayer employ staff at premises of second taxpayer, and that



those staff comply with directions of second taxpayer, were requirements with respect to the performance of duties of those employees - businesses not carried on substantially independently, although separately owned and controlled - appeal allowed in part.

[Chief Commissioner of State Revenue](#) (B)

BestCare Foods v Origin Energy [2012] NSWSC 670

Supreme Court of New South Wales

McDougall J

Interest on damages - costs - date from which interest to be awarded on damages - rate of interest - held: no reason to depart from the default rate set out in practice note SC Gen 16 - calculation propounded by plaintiff adopted - defendant submitted plaintiff should receive no costs because its costs had been paid by insurer - held: this proposition not only novel but alarming - proposition rejected - interest on costs allowed.

[BestCare Foods](#) (I, B, C)

Mango Media Pty Ltd v Smith [2012] NSWSC 686

Supreme Court of New South Wales

Hallen AsJ

Real property - Mr Smith's property subject to registered first mortgage - unregistered second mortgage in favour of Mango Media - Mango Media entitled to take possession of and sell the property on default - Mango Media alleged default - no appearance by Mr Smith at hearing - at second hearing, Mr Smith sought an adjournment - adjournment refused - held: registered mortgage of Torrens Title land is a statutory charge - unregistered mortgage is an equitable charge - Mango Media entitled as equitable mortgagee - order that Mr Smith give possession to Mango Media - order did not bind registered mortgagee - Mr Smith given 28 days to try to pay Mango Media.

[Mango Media](#) (B, C)

Ren v Shi [2012] VSC 271

Supreme Court of Victoria

McMillan J

Caveats over real property - Mrs Ren and her husband owned property - Mr Shi claimed debt pursuant to guarantee allegedly signed by husband - Mr Shi registered a caveat over property, claiming he had an "estate in fee simple" - Mrs Ren sued to remove caveat - held: caveat was defective - guarantee did not purport to convey an estate in fee simple in the property - no document signed by Mrs Ren - no document purported to bind Ms Ren - amendment to caveat not allowed - proposed amendments would result in an entirely different estate or interest being claimed - no explanation of errors in caveat - parties to be heard on compensation for lodging caveat without reasonable care - Mr Shi to pay Mrs Ren's costs on an indemnity basis.

[Ren](#) (B, C)

**Bank of Western Australia Ltd v Floreani [2012] VSC 261**

Supreme Court of Victoria

Sifris J

Contract and consumer law - directors guaranteed loan to company - bank sought payment under guarantee - directors denied default by company - defendants alleged breach of contract and misleading or deceptive conduct by bank - breach of contract said to be enforcing limit on the amount lent, and refusing to advance funds as required - misleading or deceptive conduct said to be representation that bank would lend enough money to undertake a particular development - held: contractual terms alleged to have been breached did not exist - no misleading or deceptive conduct - judgment for bank on guarantee - counterclaim dismissed.

[Bank of Western Australia](#) (I, B, C)

Leonard v Pollock [2012] WASCA 108

Court of Appeal of Western Australia

Newnes & Murphy JJA

Appeals - family dispute - action in negligence constituted by false and defamatory statements, preventing some family members from having contact with other family members - statement of claim struck out by registrar of District Court as disclosing no reasonable cause of action - notice of appeal filed 3 years later - District Court refused extension of time and dismissed appeal - appeal to Court of Appeal - held: could not be assumed that matters not expressly referred to in reasons of District Court judge were overlooked - reasons for decision must adequately disclose intellectual process resulting in decision - not necessary to refer to all evidence or every contention - delay exceptional - no denial of procedural fairness - no reasonable apprehension of bias - prejudice to respondents inevitable if extension of time granted - application to adduce new evidence refused - appeal dismissed.

[Leonard](#) (I)

Commissioner for Consumer Protection v Armstrong [2012] WASC 206

Supreme Court of Western Australia

Beech J

Consumer protection - defendant sold puppies - misrepresentations that puppies had been vet checked, vaccinated, and wormed - defendant gave Commissioner enforceable undertaking to cease misrepresentations - Commissioner alleged breach - no appearance by defendant - held: multiple breaches - injunction made restraining defendant from breaching enforceable undertaking - injunction not made restraining defendant from selling dogs - compensation orders made in favour of persons who had bought puppies.

[Commissioner for Consumer Protection](#) (I, B)

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