

Friday, 29 April 2016

Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Rakic v Johns Lyng Insurance Building Solutions (Victoria) Pty Ltd (Trustee) (FCA) - trade practices - contract - employee's claim against employer under Australian consumer law established - employee's contractual claim of entitlement to share of net profits established - lease issue decided in employer's favour (I B C)

Griffiths v State of New South Wales (No 3) (NSWSC) - costs - plaintiff's statement of claim dismissed - State's application for lump sum costs order granted - plaintiff to pay State's costs in gross sum (I)

Eker Medical Pty Ltd v Revesby Workers Club Ltd (NSWSC) - contract - commercial lease - claim by lessee against lessor in relation to payment of outgoings - statement of claim dismissed (I B)

Secure Funding Pty Ltd v Bee (NSWSC) - real property - loan agreement - possession - *Farm Debt Mediation Act 1994* (NSW) applied to mortgage - plaintiff required to mediate before enforcement - enforcement proceedings void (I B C)

Syed v Crumpton (NSWSC) - motor accident compensation - blameless accident provisions - application by insurer that relief sought against it be struck out or proceedings dismissed (I)

Lee v Abedian (QSC) - pleadings - negligence - malicious prosecution - unlawful means conspiracy - lawful means conspiracy - certain claims struck out - certain paragraphs of

pleadings struck out - leave to replead granted in respect of some paragraphs (I B C)

Civic Video Pty Ltd v Paterson (WASCA) - contract - inducing breach of contract - primary judge erred in assessment of damages and costs orders - appeal against assessment of damages allowed (I B)

Summaries With Link (Five Minute Read)

Rakic v Johns Lyng Insurance Building Solutions (Victoria) Pty Ltd (Trustee) [2016] FCA 430

Federal Court of Australia

Bromberg J

Trade practices - contract - misleading or deceptive conduct - respondent was insurance builder - applicant employed by respondent - applicant alleged respondent made representations concerning its profitability which were misleading or deceptive under Australian Consumer Law and that she left prior employment and accepted employment with respondent on basis of representations - applicant claimed she would have become employed elsewhere if she had not relied on representations - applicant also sought relief arising out of contractual entitlement to amount of respondent's net profit (debt claim) - respondent demanded applicant pay amount of lease payments in respect of vehicle - applicant sought declaration she did not owe sum in relation to novated lease arrangement - Sch 2 cl 4, 18, 31, 236 *Competition and Consumer Act 2010* (Cth) - ss 9 & 14 *Fair Trading Act 1987* (WA) - ss52 & 53B *Trade Practices Act 1974* (Cth) - held: applicant established claim under Australian Consumer Law - debt claim also established - lease issue decided against applicant.

[Rakic](#) (I B C)

Griffiths v State of New South Wales (No 3) [2016] NSWSC 501

Supreme Court of New South Wales

Schmidt J

Costs - Court ordered dismissal of plaintiff's amended statement of claim - State sought lump sum costs order under s98(4) *Civil Procedure Act 2005* (NSW) - plaintiff sought that Court pay his costs and also made claim for exemplary damages on basis he was unable to complete "fair, just and concise statement of claim" due to defendant's denial of access to material - plaintiff also complained of other wrongs done to him and State's failure to deal with them - held: no evidence of misconduct by State - plaintiff had refused offers of settlement which were to his benefit - there was just basis for lump sum costs order - Court satisfied its power to make lump sum costs order could be exercised fairly - plaintiff to pay State's costs in gross sum.

[Griffiths](#) (I)

Ekera Medical Pty Ltd v Revesby Workers Club Ltd [2016] NSWSC 527

Supreme Court of New South Wales

Stevenson J

Contract - commercial lease - defendant was registered proprietor of centre - plaintiff was lessee of part of centre - plaintiff contended in statement of claim that "[The Club] has sought to levy and has levied upon [Ekeru] a Tenant's Outgoing Contribution that is not properly calculated by reference to the Outgoings as defined by [the relevant clause of the Lease]" - plaintiff contended that stated estimates were not estimates, and that the figure was an 'assumption' - construction of lease - tenant's liability to pay outgoings - calculation of outgoings by lessor - "estimate" - held: lessee failed to make out claim against lessor - statement of claim dismissed.

[Ekeru](#) (I B)

Secure Funding Pty Ltd v Bee [2016] NSWSC 521

Supreme Court of New South Wales

Wilson J

Real property - loan agreement - possession - plaintiff filed statement of claim asserting debt owed by defendant secured by mortgage over land - plaintiff sought to file amended statement of claim seeking order for possession and order for payment of sum - defendant contended proceeding void due to operation of *Farm Debt Mediation Act 1994* (NSW) - defendant contended mortgage was a "farm mortgage" under s4 and that plaintiff had not served notice on him concerning mediation as required by s8 - whether Act applied to debt - held: debt was a farm debt - mortgage was a farm mortgage - Act applied to mortgage - plaintiff obliged to engage in mediation before enforcement - enforcement action void - amended statement of claim dismissed.

[Secure Funding](#) (I B C)

Syed v Crumpton [2016] NSWSC 500

Supreme Court of New South Wales

Schmidt J

Motor accident compensation - plaintiff riding motorbike behind car driven by first defendant - car collided with wallaby - wallaby struck by plaintiff's bike - plaintiff ejected and injured - plaintiff sued first defendant in negligence or alternatively made claim against first defendant and third party insurer of bike under blameless accident provisions of *Motor Accidents Compensation Act 1999* (NSW) - insurer sought that relief sought against it be struck out or proceedings dismissed - insurer claimed plaintiff had no reasonable cause of action against it - rr14.28(1)(a) & 13.4 *Uniform Civil Procedure Rules 2005* (NSW) - held: construction of Act for which insurer contended not accepted by Court - insurer did not make out basis for orders sought - motion dismissed.

[Syed](#) (I)

Lee v Abedian [2016] QSC 92

Supreme Court of Queensland

Bond J

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Pleadings - negligence - malicious prosecution - unlawful means conspiracy - lawful means conspiracy - plaintiff employed by government body in United Arab Emirates - fifth defendant ("Sunland") by subsidiary purchased land from entity controlled by government body - plaintiff claimed he was "arrested and interrogated by prosecution authorities in the UAE" concerning alleged bribe by Sunland to third party - plaintiff incarcerated without charge, held in solitary confinement and subsequently released on bail - plaintiff subjected to criminal prosecution and acquitted - acquittal affirmed on appeal - plaintiff sued first, second and third defendants for conspiracy to injure by unlawful means and conspiracy to injure by lawful means - plaintiff sued first, second and third defendants and Sunland (Sunland defendants) for malicious prosecution and claimed damages for negligence against third defendant and fourth defendants - plaintiff claimed fourth defendants vicariously liable for third defendant's negligence - fourth defendants sought to strike out plaintiff's claim on grounds alleged duty of care in negligence not known to law - Sunland defendants sought to strike out third statement of claim, supporting fourth defendants' application and attacking adequacy of plaintiff's expression of causes of action - held: in relation to fourth defendants' application, claim against fourth defendants struck out - in relation to Sunland defendants' claim, claim in negligence against third defendant struck out, certain paragraphs of claims struck out, and certain paragraphs struck out with leave to replead. [Lee](#) (I B C)

Civic Video Pty Ltd v Paterson [2016] WASCA 69

Court of Appeal of Western Australia

McLure P, Newnes JA & Corboy J

Contract - inducing breach of contract - primary judge found second and third respondents repudiated two franchise agreements entered with appellant by selling their businesses' assets to first respondent and ceasing operation of businesses - appellant contended primary judge erred in dismissing its claim against first respondent that he induced breach of franchise agreements and erred in assessment of damages to which it was entitled - held: ground of appeal upheld that primary judge wrongly assessed damages on basis of loss of opportunity not loss of bargain - primary judge erred in costs orders made against appellant - assessment of damages remitted to primary judge - costs orders set aside - costs orders to be determined by primary judge following assessment of damages.

[Civic Video](#) (I B)

CRIMINAL

Executive Summary

Tran & Chang v The Queen (VSCA) - criminal law - drug trafficking - dealing with proceeds of crime - possession of unregistered Category D longarm - leave to appeal against convictions and sentences refused



Summaries With Link

Tran & Chang v The Queen [2016] VSCA 79

Court of Appeal of Victoria

Weinberg, Santamaria & McLeish JJA

Criminal law - applicants each convicted of indictment that they trafficked commercial quantity of drug of dependence - one applicant (Chang) also convicted of dealing with proceeds of crime - one applicant (Tran) convicted for being in possession of an unregistered Category D longarm - applicants sought to appeal against conviction and sentence - held: grounds of appeal rejected that trial judge erred in permitting translator to give voice identification evidence and to give evidence as a lay witness - ground of appeal rejected that direction on lay evidence of voice identification inadequate and confusing - no error in sentencing - each applicant refused leave to appeal against conviction and sentence.

[Tran & Chang](#)



Benchmark

Book 1, Epigram 5: Ad lectorem de subjecto operis sui
BY THOMAS BASTARD

The little world, the subject of my muse,
Is a huge task and labor infinite;
Like to a wilderness or mass confuse,
Or to an endless gulf, or to the night:
How many strange Meanders do I find?
How many paths do turn my straying pen?
How many doubtful twilights make me blind,
Which seek to limb out this strange All of men?
Easy it were the earth to portray out,
Or to draw forth the heavens' purest frame,
Whose restless course, by order whirls about
Of change and place, and still remains the same.
But how shall man's, or manner's, form appear,
Which while I write, do change from what they were?

[THOMAS BASTARD](#)

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