

Benchmark

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Daily Insurance A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Energizer Australia Pty Ltd v Procter & Gamble Australia Pty Ltd (FCA) - contempt - multiple contraventions of interlocutory injunction by broadcast of television commercial - declaration - fine imposed

Hassoun v Wesfarmers General Insurance Ltd t/a Lumley General (NSWCA) - security for costs - want of prosecution - no error in refusal to discharge order for security or dismissal of statement of claim - leave to appeal refused

Gresham Property Investments Limited v Global Consulting Services Pty Ltd (NSWSC) - cross-vesting - application to transfer proceedings to Supreme Court of Victoria dismissed

Sgargetta v Hayes (VSC) - summary judgement - advocate's immunity - proceeding against barristers had no prospects of success - proceeding dismissed

Tolteca Pty Ltd v Stacks Managed Investments Ltd (QCA) - security for costs - loans and mortgages - appellant required to pay security for costs of appeal

Bestjet Travel Pty Ltd v The Australian Federation of Travel Agents Ltd (QSC) - interlocutory injunction - contract - oppressive conduct - restraint of trade - applicant failed to make out *prima facie* case - interlocutory injunction refused

Kingsfield Holdings Pty Ltd v Rutherford (WASC) - defamation - slander - two actions arising out of words spoken to one person - actions dismissed

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Summaries With Link (Five Minute Read)

Energizer Australia Pty Ltd v Procter & Gamble Australia Pty Ltd [2016] FCA 347

Federal Court of Australia

Nicholas J

Contempt - applicant sought declaration respondent guilty of contempt and should be punished by fine - respondent accepted it contravened interlocutory injunction multiple times by broadcast of television commercial - whether respondent should be required to pay fine and if so fine's amount - s31 *Federal Court of Australia Act 1976* (Cth) - s24 *Judiciary Act 1903* (Cth) - contempt's nature and circumstances culpability - administration of justice - deterrence - whether prior conviction for contempt - financial means - whether apology - held: contravention as result of lack of diligence warranted fine - however fine imposed to be relatively modest due to circumstances and mitigating factors - declaration granted - fine imposed.

[Energizer](#)

Hassoun v Wesfarmers General Insurance Ltd t/a Lumley General [2016] NSWCA 76

Court of Appeal of New South Wales

Ward JA; Sackville & Barrett AJJA

Security for costs - want of prosecution - primary judge dismissed applicant's application to vacate order that he provide security for costs - primary judge also dismissed applicant's statement of claim against insurer in relation to destruction of premises by deliberately lit fire for want of prosecution or failure to comply with Court's orders - applicant sought leave to appeal - s127(2)(a) *District Court Act 1973* (NSW) - ss56, 61 *Civil Procedure Act 2005* (NSW) - rr12.7(1) & 42.21(3) *Uniform Civil Procedure Rules 2005* (NSW) - held: no error in primary judge's dismissal of statement of claim or in refusal to discharge order for security - leave to appeal refused.

[Hassoun](#)

Gresham Property Investments Limited v Global Consulting Services Pty Ltd [2016] NSWSC 415

Supreme Court of New South Wales

McDougall J

Cross-vesting - first and second defendants sought transfer of proceedings to Supreme Court of Victoria pursuant to s 5(2)(b)(iii) *Jurisdiction of Courts (Cross-vesting) Act 1987* (Vic) - interests of justice - "connecting factors" - "natural forum" - r44.5 *Uniform Civil Procedure Rules 2005* (Vic) - held: Court not persuaded one forum rather than the other forum was more natural for resolution of dispute - evidence did not justify conclusion that Supreme Court of Victoria was more natural forum - interests of justice did not require transfer of proceedings - application dismissed.

[Gresham](#)

Tolteca Pty Ltd v Stacks Managed Investments Ltd [2016] QCA 064

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Court of Appeal of New South Wales

Fraser JA

Security for costs - loans and mortgages - respondent sought that appellant pay security for costs of appeal - appellant accepted it would not be able to pay respondent's costs if it failed in appeal - appellant contended it had already offered amount of security, that its impecuniosity resulted from respondent's conduct, that it had good prospects of success, and that appeal raised point of general importance - held: Court satisfied it was appropriate to order security for costs - security not to be assessed on indemnity basis.

[Tolteca](#)

Sgargetta v Hayes [2016] VSC 150

Supreme Court of Victoria

Macaulay J

Summary judgment - advocate's immunity - defendants represented plaintiff on plaintiff's failed appeal against trial judge's decision to grant bank possession of plaintiff's property and order plaintiff to pay sum under mortgage - plaintiff's application for special leave to appeal to High Court dismissed - plaintiff sued barristers alleging they breached various duties - defendants sought summary judgment pursuant to ss62 & 63 *Civil Procedure Act 2010* (Vic) - held: plaintiff's claim lacked real prospect of success - Court not persuaded to exercise discretion under s64 to allow case to proceed - proceeding dismissed.

[Sgargetta](#)

Bestjet Travel Pty Ltd v The Australian Federation of Travel Agents Ltd [2016] QSC 81

Supreme Court of Queensland

Applegarth J

Interlocutory injunction - contract - oppressive conduct - restraint of trade - applicant operated online travel agent business - respondent company operated accreditation scheme - respondent refused to renew applicant's accreditation - applicant contended respondent's conduct including impugned decision was breach of contract, oppressive conduct, and unlawful restraint of trade - applicant sought to restrain respondent from acting on or publishing refusal to renew applicant's accreditation - whether applicant established "prima facie case" - held: applicant failed to show likelihood of success sufficient to justify interlocutory injunction - application refused.

[Bestjet](#)

Kingsfield Holdings Pty Ltd v Rutherford [2016] WASC 117

Supreme Court of Western Australia

K Martin J

Defamation - slander - two actions arising from words spoken by defendant in conversation with one person - plaintiff in first action was corporation - plaintiff in second action was corporation's sole direction and shareholder - defendant accepted that he spoke the words - innuendo meanings - defamatory meanings - qualified privilege - malice - injurious falsehood - damages -

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ss30, 33 & 34 *Defamation Act 2005* (WA) - held: plaintiffs did not succeed in actions - actions dismissed - defendant should *prima facie* have costs of actions assessed on basis of one action - costs orders reserved.

[Kingsfield](#)

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