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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)

Fistar v Riverwood Legion and Community Club Ltd (NSWCA) - equity - fraud - club and appellant were both victims of fraudster - club could not recover amount from appellant - appeal allowed

Palermo Seafoods Pty Ltd v Lunapas Pty Ltd (NSWCA) - pleadings - leases and tenancies - failure to address case pleaded by appellant - substantial miscarriage of justice - new trial - appeal allowed

Probuild Constructions (Aust) Pty Ltd v DDI Group Pty Ltd (NSWSC) - security of payments - no denial of procedural fairness by adjudicator in relation to determination whether plaintiff entitled to claimed set-off - application dismissed

Hendrex v Keating (TASSC) - negligence - contract - plaintiff injured in fall from ladder while working on defendants' house - defendants liable

Clarkson Williams Partners Pty Ltd v Vaughan (No 2) (ACTCA) - costs - successful appellant succeeded on only one of five grounds of appeal - failed grounds significantly added to costs of appeal - no order as to costs of appeal

Opbroek bhnf Crittall v Australian Capital Territory (ACTSC) - pleadings - medical negligence - claim arising out of plaintiff's birth - leave to amend statement of claim to add claims of negligence refused

Summaries With Link (Five Minute Read)

Fistar v Riverwood Legion and Community Club Ltd [2016] NSWCA 81

Court of Appeal of New South Wales

Bathurst CJ, Leeming JA & Sackville AJA

Equity - fraud - appellant gave cheque to fraudster who was sole director of company and held herself out as financial adviser who could invest money - most funds provided by appellant dissipated - CEO of respondent club transferred amount from club's bank account to fraudster's company account - fraudster procured bank cheque made out to vendor of property and provided it to appellant's solicitors - solicitors delivered cheque to vendor's representatives - club sued fraudster, fraudster's company, CEO of club and appellant - appeal was against judgment obtained by club against appellant - appellant claimed personal action for money had and received could not be maintained and also challenged findings whether she was recipient of funds and volunteer - whether respondent club could recover against appellant where both were fraudster's victims - whether personal action for money had and received would "outflank" knowing receipt claim under *Barnes v Addy* - held: club's claim turned on whether appellant was a volunteer - appellant did not receive bank cheque as volunteer - appellant by solicitors had received bank cheque as repayment by fraudster's company of existing enforceable debt - appeal allowed.

[Fistar](#)

Palermo Seafoods Pty Ltd v Lunapas Pty Ltd [2016] NSWCA 82

Court of Appeal of New South Wales

Simpson JA; Sackville & Emmett AJJA

Pleadings - leases and tenancies - self-represented litigant - appellant claimed declarations and orders arising out of lease of first respondent's premises - appellant claimed first respondent wrongfully prevented its access to premises - in first judgment primary judge answered certain questions and identified questions not properly addressed, calling for further submissions - in second judgment primary judge found appellant entitled to judgment against second respondent - second judgment was subject of appeal - grounds of appeal related to claim concerning alleged use of and refusal to return its goods - held: primary judge failed to address case which appellant pleaded and presented resulting in substantial wrong or miscarriage of justice - new trial necessary in interests of justice - appeal allowed.

[Palermo](#)

Probuild Constructions (Aust) Pty Ltd v DDI Group Pty Ltd [2016] NSWSC 462

Supreme Court of New South Wales

Meagher JA

Security of payments - procedural fairness - plaintiff head contractor sought to quash adjudication determination made under *Building and Construction Industry Security of Payment Act 1999* (NSW) concerning first defendant's payment claim - plaintiff contended it was denied procedural fairness - plaintiff contended adjudicator rejected set-off claim on bases not

contended for - held: no denial of procedural fairness by adjudicator as to whether plaintiff entitled to claimed set-off - application dismissed.

[Probuild](#)

Hendrex v Keating [2016] TASSC 20

Supreme Court of Tasmania

Blow CJ

Negligence - contract - damages - defendants were married and living together in house - defendant husband arranged for removal and replacement of roof cladding and for friends to help - plaintiff was one of the friends - defendant arranged to pay plaintiff for his work - defendant set up ladder for workers to use to travel to and from roof via roof of carport - plaintiff injured when he fell from ladder - plaintiff sued for negligence, breach of contract and breach of statutory duties under *Workplace Health and Safety Act 1995* (Tas) and *Workplace Health and Safety Regulations 1998* (Tas) - ss11 & 12(a) *Civil Liability Act 2002* (Tas) - held: claim for breach of statutory duties failed - defendants breached duty to take reasonable care to protect plaintiff from harm - damages reduced by 60% for contributory negligence - judgment for plaintiff in sum of \$1,126,904.

[Hendrex](#)

Clarkson Williams Partners Pty Ltd v Vaughan (No 2) [2016] ACTCA 8

Court of Appeal of the Australian Capital Territory

Penfold, Burns & Rangiah JJ

Costs - misleading and deceptive conduct - damages - appellant succeeded on appeal and sought that respondent pay its costs - appellant succeeded on only one of five grounds of appeal - respondent sought that there be no order for costs on basis appellant failed on most grounds and that the costs of appeal were increased by the failed grounds - rr1705 & 1721 *Court Procedures Rules 2006* (ACT) - held: failed grounds had added to costs of appeal significantly enough to displace rule that costs follow event - no order for costs of appeal.

[Clarkson](#)

Opbroek bhnf Crittall v Australian Capital Territory [2016] ACTSC 64

Supreme Court of the Australian Capital Territory

Mossop AsJ

Pleadings - medical negligence - plaintiff sought leave to amend statement of claim alleging negligence in relation to plaintiff's birth - statement of claim alleged negligence by defendants arising after plaintiff's mother presented at hospital - proposed amended statement of claim added claims of negligence arising before mother's presentation at hospital - rr501, 502 & 503 *Court Procedures Rules 2006* (ACT) - s7 *Human Rights Commission Act 2005* (ACT) - ss30, 30B *Limitation Act 1985* (ACT) - prejudice - delay - limitations - *Montgomery v Lanarkshire Health Board* [2015] UKSC 11- held: leave to amend to add three claims of negligence refused.

[Opbroek](#)



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