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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)

Mesa Minerals Ltd v Mighty River International Ltd (FCAFC) - corporations - authorisation granted for inspection and taking copies of appellant's books - appeal dismissed

Lifepan Australia Friendly Society Ltd v Woff (FCA) - equity - fiduciary duties - corporations - contract - inducing breach of contract - passing off - applicants granted declaration and orders

Perera v Genworth Financial Mortgage Insurance Pty Ltd (NSWCA) - pleadings - negligence - novel duties of care - defamation - leave to appeal against strike-out of statement of claim granted

Zepinic v Chateau Constructions (Aust) Ltd (NSWCA) - leave to appeal - competency - requirement of local address for service - application for leave to appeal was incompetent - application dismissed

Global Investments Limited v Babcock & Brown LP (VSC) - validity of writ - substituted service - attempts to serve defendants were not reasonable - renewal of writ declined - summons for substituted service dismissed

Jakimowicz v Jacks (VSCA) - standing - bankruptcy - trusts and trustees - bankrupt respondent had standing to sue for damages for breach of trust - leave to appeal refused

Keeley v Horton (QCA) - damages - adequacy of damages - breach of warranties in share sales agreement - erroneous award of only nominal damages for breach of earnings warranties - appeal allowed in part

Summaries With Link (Five Minute Read)

Mesa Minerals Ltd v Mighty River International Ltd [2016] FCAFC 16

Full Court of the Federal Court of Australia

Siopis, Gilmour & Katzmann JJ

Corporations - respondent was substantial shareholder in appellant - primary judge authorised respondent to inspect and take copies of appellant's books - appellant contended statutory preconditions for the exercise of Court's discretion not established or errors in exercise of discretion and in orders - ss232, 247A & 461 *Corporations Act 2001* (Cth) - held: no deficiency in reasoning process or findings against evidence - no error in exercise of discretion or determination of scope of order - appeal dismissed.

[Mesa](#)

Lifeplan Australia Friendly Society Ltd v Woff [2016] FCA 248

Federal Court of Australia

Besanko J

Equity - fiduciary duties - corporations - contract - inducing breach of contract - passing off - applicants sought declarations, injunction, delivery up of documents and account of profits against respondents and 'Foresters' - first and second respondents were employees of employees of first applicant - first and second respondents left and became employees of Foresters - prior to ceasing employment first and second respondents established third respondent and were its two directors - third respondent entered agreement with Foresters to provide services for commission - applicant claimed first and second respondents breached fiduciary duties, duties of confidence and contractual duties, and that first respondent contravened *Corporations Act 2001* (Cth) concerning duties of a corporation's officers and employees - applicants claimed Foresters liable for knowingly assistance and involved in contraventions of the Corporations Act - applicants also claimed passing off against respondents and Foresters, and claimed Foresters vicariously liable for respondents' equitable "wrongdoing" - ss9, 79, 180, 181, 182, 183, 232, 471B, 1317E, 1317H, 1317HD & 1317J *Corporations Act 2001* (Cth) - ss16C & 21 *Life Insurance Act 1995* (Cth) - s10 *Partnership Act 1890* (UK) - held: applicants entitled to declaration sought against respondents - Foresters liable for knowing assistance but applicants not entitled to profits from Foresters - applicants entitled to orders concerning documents - first respondent to account to applicants in sum of \$24,238 and second respondent in sum of \$24,198.

[Lifeplan](#)

Perera v Genworth Financial Mortgage Insurance Pty Ltd [2016] NSWCA 53

Court of Appeal of New South Wales

McColl & Leeming JJA

Pleadings - leave to appeal - negligence - novel duties of care - defamation - self-represented

litigant - applicant valuer sought leave to appeal from judgment striking out his statement of claim in proceedings against respondent mortgage insurer - applicant sought to sue respondent for economic harm caused by negligence, defamation and nervous shock - held: matter raised issues of principle concerning strike-out power - there was possibility of substantial injustice to applicant - duty of care contended for in economic loss claim was novel - economic loss claim did not disclose no reasonable cause of action - economic loss claim should not have been struck out - factual basis of duty of care in relation to nervous shock claim also yet to be ascertained but it was arguable that nervous shock claim ought not to have been struck out - defamation claim should not have been struck out - leave to appeal granted.

[Perera](#)

Zepinic v Chateau Constructions (Aust) Ltd [2016] NSWCA 50

Court of Appeal of New South Wales

McColl & Leeming JJA

Leave to appeal - competency - applicant sought leave to appeal judgment in which judge permitted respondent's money judgments to be included in funds distributed from sale of property - respondent sought dismissal or strike-out of summons or provision of security for costs - address for service - s126 *Civil Procedure Act 2005* (NSW) - art 10 *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* - s46 *Supreme Court Act 1970* (NSW) - Pt 11A, rr4.2, 4.5, 10.20, 11A.12 & 51.41 *Uniform Civil Procedure Rules 2005* (NSW) - held: applicant's litigation concerned service - applicant had omitted local address for service and had not applied to amend - applicant had not complied with rules facilitating defendants' return of process - application for leave to appeal was incompetent - application dismissed.

[Zepinic](#)

Global Investments Limited v Babcock & Brown LP [2016] VSC 107

Supreme Court of Victoria

Randall AsJ

Validity of writ - substituted service - plaintiff sought extension of period of validity of writ pursuant to r5.1.12(2) *Supreme Court (General Civil Procedure) Rules 2015* (Vic) and orders for substituted service pursuant to r6.10 - plaintiff contended it made all reasonable efforts to serve defendants during period of writ's validity for service and that there was good reason to extend writ's validity because of difficulty with service - held: plaintiff's attempts to service defendants were not reasonable in the circumstances - no 'other good reason' to for extending time - renewal of writ declined - summons for substituted service dismissed.

[Global](#)

Jakimowicz v Jacks [2016] VSCA 42

Court of Appeal of Victoria

Warren CJ; Tate & Ferguson JJA

Standing - bankruptcy - trusts and trustees - appellant and former partner (Jakimowicz) sold

property to respondent - respondent paid using compensation money he received for injury at work - dispute arose between respondent and Jacimowicz - settlement of proceedings incorporated deed of trust by which Jacimowicz obliged to make payments and discharge mortgage - Jacimowicz breached obligation - respondent evicted - property sold by mortgagee - respondent made bankrupt - respondent sued appellant for breach of trust - trial judge held damages protected and awarded damages in respondent's favour - appellant sought to appeal - ss27, 58(1), 116(1), 116(2)(g) & (n), 116(3) - whether respondent had standing to bring claim for damages - protection of compensation payments for personal injury under *Bankruptcy Act 1966* (Cth) - held: grounds of appeal had no real prospects of success - no error in judge's decision - respondent had standing to bring claim - respondent entitled to amount awarded by trial judge - leave to appeal refused.

[Jakimowicz](#)

Keeley v Horton [2016] QCA 68

Court of Appeal of Queensland

Damages - adequacy of damages - share sales agreement - breach of warranties - respondents found breached warranties under share sale agreement with first appellants - first appellants obtained judgment for breach of warranties as to earnings and second appellant company obtained judgment for breach of warranties concerning pending claims - primary judge found first appellants suffered no loss from breach of earnings warranties and awarded nominal damages of \$100 - company awarded \$271.48 - appellants challenged adequacy of damages and costs orders - held: primary judge wrong to conclude first appellants suffered no loss due to breach of earnings warranties - damages in sum of \$93,367 substituted - no error in award of damages for breach of claims warranties - appeal allowed in part.

[Keeley](#)

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