

Tuesday, 9 June 2015

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

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### Executive Summary (1 minute read)

**Jetivia SA and another v Bilta (UK) Ltd (in liq)** (UKSC) - insolvency - pleadings - unlawful means conspiracy to injure - claim not struck out - appeal dismissed (I B)

**Shaw v Australian Pump Industries Pty Ltd** (FCA) - bias - effect of bankruptcy on capacity to continue prosecuting claims - apprehended bias not made out - recusal refused (B)

**Fairfax Media Publications Pty Ltd v Bateman** (NSWCA) - defamation - no error in striking out 'Hore-Lacy' pleading - appeal dismissed (I)

**Williams v ATM & CPA Projects Pty Ltd** (NSWSC) - contract - no entitlement to commission under agreement for provision of marketing consultancy services (B)

**Xchanging Integrated Services (Australia) Pty Ltd v Williams** (NSWSC) - injunction - detainee - detention of goods - injunction granted restraining defendant from copying or distributing confidential documents concerning third party (I)

**Allianz Australia Insurance Ltd v Gonzalez (No 2)** (NSWSC) - judicial review - motor accidents compensation - no error in claims assessor's orders - proceedings dismissed (I G)

**Morocz v Marshman** (NSWSC) - costs - offer of compromise - successful defendant entitled to costs on indemnity basis (I)

**The Environment Centre Northern Territory (NT) Incorporated v The Minister for Land**

**Resource Management (NTSC)** - judicial review - water extraction licences - failure to consider Controller's decision on the merits - Minister's decisions set aside (C G)

## Summaries With Link (Five Minute Read)

### **Jetivia SA and another v Bilta (UK) Ltd (in liq) [2015] UKSC 23**

Supreme Court of the United Kingdom

Lord Neuberger, President; Lord Mance, Lord Clarke, Lord Sumption, Lord Carnwath, Lord Toulson & Lord Hodge

Insolvency - pleadings - Bilta (UK) Ltd was English company compulsorily wound up - Bilta's liquidators sued its two former directors, one of which was sole shareholder - liquidators also sued a Swiss company and its chief executive resident in France - the four appellants were alleged to be parties to unlawful means conspiracy to injure Bilta by fraudulent scheme - appellants sought to strike out Bilta's claim on ground Bilta could not maintain proceedings in view of 'ex turpi causa non oritur actio' principle, or that appellants were bound to defeat claims on basis of illegality defence - appellants also claimed insofar as claims based on s213 *Insolvency Act 1986* it could not be invoked as it did not have extra-territorial effect - held: Court of Appeal right to hold that illegality could not be raised by Jetivia or chief executive as defence to Bilta's claim because wrongful activity of Bilta's directors and shareholder could not be attributed to Bilta in proceedings - Court of Appeal right to hold that s213 had extra-territorial effect - appeal dismissed.

[Jetivia](#) (I B)

### **Shaw v Australian Pump Industries Pty Ltd [2015] FCA 547**

Federal Court of Australia

Foster J

Bias - bankruptcy - applicant sought that judge recuse himself on basis he demonstrated bias towards him at directions hearing when discussing effect his bankruptcy had on capacity to continue prosecuting claims for relief - whether judge obliged to recuse himself from determining whether bankrupt entitled to prosecute claims made by him in proceeding which pre-dated making of sequestration order - whether pre-judgment - s60 *Bankruptcy Act 1966* - held: apprehended bias not made out - judge declined to recuse himself.

[Shaw](#) (B)

### **Fairfax Media Publications Pty Ltd v Bateman [2015] NSWCA 154**

Court of Appeal of New South Wales

McColl, Basten & Macfarlan JJA

Defamation - respondent alleged defamatory imputations arising from articles published by applicants in newspaper and on websites - applicants sought to plead in reliance on *David Syme & Co Ltd v Hore-Lacy* [2000] 1 VR 667 (Hore-Lacy) as alternative way of pleading defence of justification - primary judge found that Hore-Lacy established a separate form of

pleading not available in New South Wales and struck out Hore-Lacy defence - applicants sought leave to appeal - rr14.30-14.32 *Uniform Civil Procedure Rules 2005* (NSW) - 'the general law' - ss6 & 24 *Defamation Act 2005* (NSW) - held : in absence of binding authority to contrary, primary judge correct to strike out defence as not complying with pleading practice and procedures in NSW - Court need not consider correctness of reasoning in *Setka v Abbott* [2014] VSCA 287 - appeal dismissed.

[Fairfax](#) (I)

## **Williams v ATM & CPA Projects Pty Ltd [2015] NSWSC 703**

Supreme Court of New South Wales

Ball J

Contract - first and second plaintiffs alleged that pursuant to agreement defendants agreed to pay commission for marketing consultancy services provided in relation to real estate project owned by first defendant - plaintiffs alleged defendants obliged to pay commission calculated at rate of 4 percent on sale price of land together with 4 percent on contract price of building contract which parties anticipated ATM would enter with purchaser - construction of agreement - whether commission only payable if plaintiffs arranged sale within six week period stated in second bullet point - whether commission payable even if the only contract entered into was contract for sale of land - held: on correct construction of agreement plaintiffs not entitled to commission - proceedings dismissed.

[Williams](#) (B)

## **Xchanging Integrated Services Pty Ltd v Williams [2015] NSWSC 692**

Supreme Court of New South Wales

Hamill J

Injunction - detinue - detention of goods - plaintiff conducted workers' compensation services on behalf of or delegated by WorkCover - plaintiff sought urgent injunctive relief attempting to restrain defendant from publishing, copying, reproducing, distributing or disseminating certain documents subject of proceedings - documents concerning third party accidentally attached to letter sent to defendant - rights of innocent third party whose documents had mistakenly fallen into defendant's hands - held: injunction granted and ancillary orders made.

[Xchanging](#) (I)

## **Allianz Australia Insurance Ltd v Gonzalez (No 2) [2015] NSWSC 693**

Supreme Court of New South Wales

Campbell J

Judicial review - insurer sought judicial review of two 'decisions' made under *Motor Accidents Compensation Act 1999* in assessing claim by first defendant for damages for injuries suffered in motor accident - first decision was referral of matter under s58 for "assessment ... again" - second decision was the action taken Proper Officer arranging referral - whether discretion to refer matter for assessment again miscarried - whether further referral 'grossly illogical' - whether letter drafted by claims assessor to be put before medical officer was clearly impermissible means of carrying decision into effect - held: insurer did not succeed in challenge



to legality of orders made by claims assessor - proceedings dismissed.

[Allianz](#) (I G)

**Morocz v Marshman [2015] NSWSC 612**

Supreme Court of New South Wales

Harrison J

Costs - Court dismissed plaintiff's claim - defendant sought costs on indemnity basis in reliance on offer of compromise which plaintiff did not accept - defendant submitted plaintiff did not obtain better result than she would have achieved by accepting offer - plaintiff took no part in defending or responding to defendant's application - rr20.26 & 42.15A *Uniform Civil Procedure Rules 2005* - held: defendant entitled to special costs order sought and costs of application.

[Morocz](#) (I)

**The Environment Centre Northern Territory (NT) Incorporated v The Minister for Land Resource Management [2015] NTSC 30**

Supreme Court of the Northern Territory

Hiley J

Judicial review - plaintiff sought judicial review of two decisions made by Minister which upheld earlier decisions by Controller to grant a number of water extraction licences under *Water Act 1992* - plaintiff contended Minister erred in reviews of Controller's decisions and that they should be set aside - whether Minister required to undertake merits review - held: Court rejected defendant's contentions to effect that Minister was not obliged to review merits of Controller's decision in absence of some kind of error on Controller's part - Minister erred in approaching his review of applications and thus failing to consider Controller's decisions on the merits - Minister's decisions set aside - Minister to determine applications for review of Controller's decisions afresh.

[Environment](#) (C G)

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