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1. [*Moore v Scenic Tours Pty Ltd*](#)

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Search Terms: case-name(Moore v Scenic Tours Pty Ltd)

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Moore v Scenic Tours Pty Ltd

CaseBase | (2020) 268 CLR 326 | [\(2020\) 377 ALR 209](#) | [\[2020\] HCA 17](#) | [BC202003224](#)

Moore v Scenic Tours Pty Ltd

(2020) 268 CLR 326; [\(2020\) 377 ALR 209](#); [\[2020\] HCA 17](#); [BC202003224](#)

Court: HCA

Judges: Kiefel CJ and Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ

Judgment Date: 24/4/2020

Abstract

The High Court of Australia (HCA) has unanimously allowed an appeal against the decision of the New South Wales Supreme Court of Appeal which precluded the appellant from award of damages notwithstanding respondent's contravention of consumer guarantees. The HCA held that (NSW) Civil Liability Act s 16 operate as an assessment and quantification of damages rather than law that imposed limitation upon liability.

Catchwords & Digest

Contract — Breach of contract — Consumer guarantees — Damages

Appeal against decision of New South Wales Supreme Court of Appeal (NSWCA).

Appellant and wife booked holiday cruise tour supplied by respondent.

Cruise tour had been severely disrupted by adverse weather conditions.

NSWCA found that appellant not entitled to award of damages because (NSW) Civil Liability Act (CLA) s 16 applied notwithstanding respondent's contraventions of consumer guarantees.

Proceeding concerned whether CLA s 16 applied to preclude appellant from recovering damages as result of

respondent's breach of contract.

Held, allowing the appeal: (7:0):

Did (CTH) Competition and Consumer Act 2010 (CCA) Sch 2 s 275 picked up and applied CLA s 16?

Per Kiefel CJ, Bell, Gageler, Keane, Nettle and Gordon JJ: No. Appellant properly construed that CCA Sch 2 s 275 was directed to State and Territory laws that limit or preclude liability for breach of contract and was not concerned with laws that limit the assessment of damages once liability had been established. Appellant correctly argued that CLA s 16 governed assessment and quantification of damages rather than law that imposed limitation upon liability.

Per Edelman J: No. The scheme in (CLA Pt 2 might be comprehensive in its coverage of damages that were consequential upon physical injury so that, for instance, it would include damages for mental harm where the effect of the physical injury was to ruin or prevent the appellant's holiday. But where the claim for breach of contract or for breach of a statutory guarantee was not for damages that were consequential upon physical injury then CLA Pt 2 did not apply to either of the components of a claim for compensatory damages for breach of contract, namely the performance interest or consequential losses.

Litigation History



[*Moore v Scenic Tours Pty Ltd*](#)

11/2/2020

HCATrans

[2020] HCATrans 7

Related



[*Moore v Scenic Tours Pty Ltd*](#)

26/11/2015

NSWSC

[2015] NSWSC 1777; BC201511729

Related



[*Moore v Scenic Tours Pty Ltd*](#)

20/3/2015

NSWSC

[2015] NSWSC 237; BC201501695

Moore v Scenic Tours Pty Ltd

Related

[Moore v Scenic Tours Pty Ltd \(No 2\)](#)31/8/2017
NSWSC[\[2017\] NSWSC 733](#); [BC201706772](#)

Related

[Moore v Scenic Tours Pty Ltd \(No 3\)](#)15/11/2017
NSWSC[\[2017\] NSWSC 1555](#); [BC201709770](#)

Related

[Scenic Tours Pty Ltd v Moore](#)24/10/2018
NSWCA[\(2018\) 361 ALR 456](#); (2018) 339 FLR 244; [\[2018\] NSWCA 238](#); [BC201809862](#)

Related

[Scenic Tours Pty Ltd v Moore \(No 2\)](#)7/12/2018
NSWCA[\[2018\] NSWCA 300](#); [BC201811863](#)

Related

Cases referring to this case

[Chief Executive Officer \(Housing\) v Young](#)4/2/2022
NTCA[\[2022\] NTCA 1](#); [BC202200437](#)

Cited

*Gindy v Capital Lawyers Pty Ltd (No 2)*

17/12/2021

ACTSC

[\[2021\] ACTSC 304](#); [BC202114042](#)

Cited

*Arsalan v Rixon*

8/12/2021

HCA

[\(2021\) 395 ALR 390](#); [\[2021\] HCA 40](#); [BC202112939](#)

Cited

*Seltsam Pty Ltd v Reid*

29/11/2021

VSCA

[\[2021\] VSCA 326](#) at [\[83\]](#);[BC202112056](#) at [\[83\]](#)

Cited

*Bradshaw v Emirates*

12/11/2021

FCA

[\(2021\) 395 ALR 97](#) at [\[136\]](#);[\[2021\] FCA 1407](#) at [\[136\]](#);[BC202111061](#) at [\[136\]](#)

Cited

*Millen v Skyview Homes Pty Ltd*

29/10/2021

NSWCATCD

[\[2021\] NSWCATCD 137](#); [BC202114296](#)

Cited

*Egan v Julalikari Aboriginal Council Corporation*

29/10/2021

NTCAT

[2021] NTCAT 47; BC202113449

Cited

*Ashrafi v Director of Public Prosecutions (DPP) (Cth)*

4/10/2021

TASSC

[2021] TASSC 48; BC202109352

Cited

Torpey v Stewart

30/8/2021

NSWCATAP

[2021] NSWCATAP 248; BC202107974

Cited

Worth v HDI Global Specialty SE

26/8/2021

NSWCA

[2021] 393 ALR 93; [2021] NSWCA 185; BC202109071

Cited

*Zhang v Jian ER Huang t/as Auchland & Co*

24/8/2021

NSWCATCD

[2021] NSWCATCD 88; BC202109075

Cited

*Chandrasekaran v Western Sydney Local Health District*

29/7/2021

NSWSC

[2021] NSWSC 920; BC202106993

Cited

*Smiths Specialised Building Services Pty Ltd v
Brisull Industries Pty Ltd*

21/7/2021

NSWDC

[\[2021\] NSWDC 331](#); [BC202140494](#)

Cited

[Capic v Ford Motor Co of Australia Pty Ltd](#)

29/6/2021
FCA

[\(2021\) 154 ACSR 235](#) at [\[891\]](#);

[\[2021\] FCA 715](#) at [\[891\]](#);

[BC202105652](#) at [\[891\]](#)

Cited



[Greco v NSW Land & Housing Corp](#)

18/6/2021
NCAT

[\[2021\] NSWCATCD 25](#); [BC202106977](#)

Cited

[Prygodicz v Commonwealth of Australia \(No 2\)](#)

11/6/2021
FCA

[\(2021\) 173 ALD 277](#) at [\[212\]](#);

[\[2021\] FCA 634](#) at [\[212\]](#);

[BC202105028](#) at [\[212\]](#)

Considered



[Williams v Nugara](#)

11/6/2021
VSC

[\[2021\] VSC 331](#); [BC202104992](#)

Cited

[Wickremeratne v Dr Van Der Merwe t/as Balgowlah](#)

31/5/2021
NCAT

Family Practice

[2021] NSWCATAP 161; BC202104481

Cited

*Mohareb v State of New South Wales*14/5/2021
NSWDC[2021] NSWDC 177; BC202140268

Cited

*Cappello v Hammond & Simonds NSW Pty Ltd*14/4/2021
NSWCA[2021] NSWCA 57; BC202102682

Considered

*Makowska v St George Community Housing Ltd*26/3/2021
NSWSC[2021] NSWSC 287; BC202102114

Cited

*Australian Executor Trustees (SA) Ltd v Kerr*4/2/2021
NSWCA(2021) 151 ACSR 204; [2021] NSWCA 5; BC202100422

Cited

*Panico v Mollier Enterprises Pty Ltd t/a JC Diesel
Tune*12/1/2021
NSWCATCD

[2021] NSWCATCD 56; BC202107650

Cited

Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority t/as Seqwater (No 26)

4/12/2020
NSWSC

[\[2020\] NSWSC 1728](#); [BC202011996](#)

Considered



Wade v J Daniels and Associates Pty Ltd

27/11/2020
FCA

[\[2020\] FCA 1708](#); [BC202011776](#)

Cited



Australian Competition and Consumer Commission (ACCC) v Jayco Corp Pty Ltd

20/11/2020
FCA

[\[2020\] FCA 1672](#); [BC202011475](#)

Cited

Green v Legal Profession Admission Board

20/11/2020
NSWSC

[\[2020\] NSWSC 1655](#); [BC202011422](#)

Considered



Castle v Perisher Blue Pty Ltd

20/11/2020
NSWSC

[\[2020\] NSWSC 1652](#) at [\[214\]](#);

[BC202011445](#) at [\[214\]](#)

Considered



Rurik v Travers

18/11/2020
NCAT

[\[2020\] NSWCATAP 242](#); [BC202011313](#)

Cited

Murphy v Zubkrycki

17/9/2020

NSWDC

[\[2020\] NSWDC 538](#); [BC202040827](#)

Cited

*Owlstara v State of New South Wales*

15/9/2020

NSWCA

[\[2020\] NSWCA 217](#); [BC202008885](#)

Cited

*Young & Conway v Chief Executive Officer, Housing*

8/9/2020

NTSC

[\[2020\] NTSC 59](#) at [\[90\]](#);[BC202008743](#) at [\[90\]](#)

Considered

*Singh v Lugondela (by litigation guardian, Robinson)*

31/8/2020

VSC

[\(2020\) 63 VR 355](#); [\[2020\] VSC 544](#); [BC202008286](#)

Cited

Makowska v St George Community Housing Ltd

29/7/2020

NCAT

[\[2020\] NSWCATAP 159](#); [BC202007013](#)

Cited

*City of Wanneroo v Tah Land Pty Ltd*

3/7/2020

WASC

[\[2020\] WASC 249](#) at [\[481\]](#);

[BC202013394](#) at [\[481\]](#)

Considered

[York v Ken Ross Repairs Mudjee Pty Ltd](#)

25/5/2020

NCAT

[2020] NSWCATAP 93; BC202004438

Cited

Publications referring to this case

	'Plain Sailing'?; Damages for Distress under the ACL and the Performance Interest in Contract	2020 36 JCL 272
	Damages for distress or disappointment for breach of contract or breach of consumer guarantees; Case Note - Moore v Scenic Tours Pty Ltd	(2020) 16(4) CL 56
	General Editor's Note	(2020) 36(3) ILB 34
	Luxury Holiday or bitter disappointment? An insight by the HCA	(2020) 36(3) ILB 49

Cases considered by this case

[Rizeq v Western Australia](#)

21/6/2017

HCA

(2017) 262 CLR 1 at [58]-[63];

(2017) 262 CLR 1 at [58]-[63];

[\(2017\) 344 ALR 421](#) at [\[58\]-\[63\]](#);

(2017) 91 ALJR 707 at [58]-[63];

[\(2017\) 57 Fam LR 294](#) at [\[58\]-\[63\]](#);

[2017] HCA 23 at [58]-[63];

[BC201704787](#) at [\[58\]-\[63\]](#)

Cited

[Tralee Technology Holdings Pty Ltd v Yun Chen](#)

11/9/2015

NSWSC

[2015] NSWSC 1259 at [\[61\]](#);

[BC201508896](#) at [\[61\]](#)

Cited

[Clark v Macourt](#)

18/12/2013

HCA

(2013) 253 CLR 1 at [11], [27], [61], [107];

[\(2013\) 304 ALR 220](#) at [\[11\]](#), [\[27\]](#), [\[61\]](#), [\[107\]](#);

(2013) 88 ALJR 190 at [11], [27], [61], [107];

[\[2013\] HCA 56](#) at [\[11\]](#), [\[27\]](#), [\[61\]](#), [\[107\]](#);

[BC201315809](#) at [\[11\]](#), [\[27\]](#), [\[61\]](#), [\[107\]](#)

Cited

[New South Wales v Williamson](#)

12/12/2012

HCA

(2012) 248 CLR 417 at [33]-[34], [45];

[\(2012\) 293 ALR 440](#) at [\[33\]-\[34\]](#), [\[45\]](#);

(2012) 87 ALJR 154 at [33]-[34], [45];

[\[2012\] HCA 57](#) at [\[33\]-\[34\]](#), [\[45\]](#);

[BC201209681](#) at [\[33\]-\[34\]](#), [\[45\]](#)

Considered

Insight Vacations Pty Ltd t/as Insight Vacations v Young

11/5/2011

HCA

(2011) 243 CLR 149; [\(2011\) 276 ALR 497](#); (2011) 85 ALJR 629; [\[2011\] HCA 16](#); [BC201102833](#)

Cited

*Flight Centre Ltd v Louw*

2/3/2011

NSWSC

[\(2010\) 78 NSWLR 656](#) at [\[31\]](#);

[\[2011\] NSWSC 132](#) at [\[31\]](#);

[BC201103260](#) at [\[31\]](#)

Disapproved

*Insight Vacations Pty Ltd v Young*

11/6/2010

NSWCA

[\(2010\) 78 NSWLR 641](#) at [\[78\]](#), [\[129\]](#), [\[164\]](#), [\[173\]](#);

[\(2010\) 268 ALR 570](#) at [\[78\]](#), [\[129\]](#), [\[164\]](#), [\[173\]](#);

(2010) 241 FLR 125 at [\[78\]](#), [\[129\]](#), [\[164\]](#), [\[173\]](#);

[\[2010\] NSWCA 137](#) at [\[78\]](#), [\[129\]](#), [\[164\]](#), [\[173\]](#);

[BC201003933](#) at [\[78\]](#), [\[129\]](#), [\[164\]](#), [\[173\]](#)

Distinguished

Milner v Carnival plc (t/as as Cunard)

United Kingdom

20/4/2010

EWCACiv

[2010] All ER (D) 119 (Apr) at [\[47\]](#);

[\[2010\] 3 All ER 701](#) at [\[47\]](#);

[2010] 2 All ER (Comm) 397 at [47];

[2010] EWCA Civ 389 at [47]

Considered



[New South Wales v Corby](#)

3/3/2010

NSWCA

[\(2010\) 76 NSWLR 439](#) at [\[24\]](#), [\[47\]](#);

[\[2010\] NSWCA 27](#) at [\[24\]](#), [\[47\]](#);

[BC201000982](#) at [\[24\]](#), [\[47\]](#)

Distinguished

[Transfield Shipping Inc v Mercator Shipping Inc](#)



United Kingdom

9/7/2008

UKHL

[2008] All ER (D) 117 (Jul); [2008] NLJR 1040; [2008] UKHL 48; [\[2009\] 1 AC 61](#)

[\[2008\] 4 All ER 159](#); [\[2008\] 3 WLR 345](#); [2008] 2 All ER (Comm) 753

Cited



[New South Wales v Ibbett](#)

13/12/2005

NSWCA

[\(2005\) 65 NSWLR 168](#) at [\[21\]-\[22\]](#), [\[21\]](#), [\[124\]](#), [\[125\]](#);

[\[2005\] NSWCA 445](#) at [\[21\]-\[22\]](#), [\[21\]](#), [\[124\]](#), [\[125\]](#);

[BC200510884](#) at [\[21\]-\[22\]](#), [\[21\]](#), [\[124\]](#), [\[125\]](#)

Distinguished



[Tame v State of New South Wales; Annetts v Australian Stations Pty Ltd](#)

5/9/2002

HCA

(2002) 211 CLR 317 at [186];

(2002) 24 NSWCCR 385 at [186];

[\(2002\) 191 ALR 449](#) at [\[186\]](#);

(2002) 76 ALJR 1348 at [186];

(2002) 23(15) Leg Rep 2 at [186];

(2002) 36 MVR 1 at [186];

(2002) Aust Torts Reports 81-672 at [186];

[\[2002\] HCA 35](#) at [\[186\]](#);

[BC200205111](#) at [\[186\]](#)

Considered



[Marks v GIO Australia Holdings Ltd](#)

11/11/1998

HCA

(1998) 196 CLR 494 at [12];

[\(1998\) 158 ALR 333](#) at [\[12\]](#);

(1998) 73 ALJR 12 at [12];

(1999) ASAL 55-014 at [12];

(1998) ATPR 41-665 at [12];

[\[1998\] HCA 69](#) at [\[12\]](#);

[BC9805922](#) at [\[12\]](#)

Cited

[Wallis v Downard-Pickford \(North Queensland\) Pty Ltd](#)

13/4/1994

HCA

Moore v Scenic Tours Pty Ltd

(1994) 179 CLR 388; [\(1994\) 120 ALR 440](#); (1994) 68 ALJR 395; (1994) ATPR 41-300; (1994) Aust Contract R 90-043; (1994) Aust Torts Reports 81-269; [1994] HCA 17; [BC9404868](#)

Considered

[*Baltic Shipping Co v Dillon \(The Ship Mikhail Lermontov\)*](#)

10/2/1993

HCA

(1993) 176 CLR 344; [\(1993\) 111 ALR 289](#); (1993) 67 ALJR 228; (1993) ASC 56-206; (1993) Aust Contract R 90-022; [1993] HCA 4; [BC9303547](#)

Considered



[*Commonwealth v Amann Aviation Pty Ltd*](#)

12/12/1991

HCA

(1991) 174 CLR 64; [\(1991\) 104 ALR 1](#); (1991) 66 ALJR 123; (1992) Aust Contract R 90-007; [1991] HCA 54; [BC9102617](#)

Considered



[*Watts v Morrow*](#)



United Kingdom

30/7/1991

EWCA Civ

[\[1991\] 4 All ER 937](#); [1991] 43 EG 121; [1991] 2 EGLR 152; [\[1991\] 1 WLR 1421](#)

; (1991) 34 HLR 608

Considered



[*Gates v City Mutual Life Assurance Society Ltd*](#)

20/2/1986

HCA

(1986) 160 CLR 1; [\(1986\) 63 ALR 600](#); (1986) 60 ALJR 239; [\(1986\) 6 IPR 462](#); (1986) 4 ANZ Ins Cas 60-691; (1986) ASC 55-462; (1986) ATPR 40-666; [1986] HCA 3; [BC8601405](#)

Considered



[*Perry v Sidney Phillips & Son*](#)




United Kingdom

14/7/1982

EWCA Civ

Moore v Scenic Tours Pty Ltd

[1983-84] ANZ ConvR 72; [\[1982\] 3 All ER 705](#); [1982] 2 EGLR 135; [\[1982\] 1 WLR 1297](#) ; (1982) 22 BLR 120

Cited



Sharman v Evans

25/2/1977

HCA

(1977) 138 CLR 563; [\(1977\) 13 ALR 57](#); [BC7700021](#)

Considered



Jarvis v Swans Tours Ltd



United Kingdom

18/10/1972

EWCA Civ

[\[1973\] QB 233](#) ; [\[1973\] 1 All ER 71](#); [\[1972\] 3 WLR 954](#) 

Cited



Wenham v Ella

4/8/1972

HCA

(1972) 127 CLR 454; [1972-73] ALR 353; (1972) 46 ALJR 498; [BC7200650](#)

Cited

Papanayiotou v Heath

10/10/1969

HCA

[1970] ALR 105; (1969) 43 ALJR 433

Cited

Stanners v Stanners

13/6/1968

NSWCA

[1968] 2 NSW 90

Cited



Skelton v Collins

7/3/1966

HCA

(1966) 115 CLR 94; [1966] ALR 449; (1966) 39 ALJR 480; [BC6600410](#)

Considered

Shepherd v McGivern

4/3/1966

NSWCA

[1966] 1 NSW 55; (1966) 83 WN (Pt 1) (NSW) 387

Cited

*Teubner v Humble*

10/4/1963

HCA

(1963) 108 CLR 491; [1963] ALR 417; (1963) 36 ALJR 362; [BC6300040](#)

Cited

*Hobbs v London & South Western Railway Co*

United Kingdom

15/1/1875

EWHCQB

[\(1875\) LR10QB 111](#) ; [1874-80] All ER Rep 458

Cited

*Ichard v Frangoulis*

United Kingdom

-

[\[1977\] 2 All ER 461](#); [\[1977\] 1 WLR 556](#)

Cited

*Robinson v Harman*

United Kingdom

-

[1843-60] All ER Rep 383; (1848) 1 Exch 850; (1848) 154 ER 363

Considered

Legislation considered by this case

Legislation Name & Jurisdiction	Provisions
Administration of Justice Act 1982 (UK)	s 1(1)(a)

Moore v Scenic Tours Pty Ltd

Legislation Name & Jurisdiction	Provisions
<i>Civil Liability Act 2002 (NSW)</i>	Pt 2, Pt 2 s 16, Pt 3, s 11, s 11A, s 11A(2), s 16, s 16(1), s 27, s 3, s 30, s 31
<i>Civil Procedure Act 2005 (NSW)</i>	s 101
Commonwealth Constitution Act 1902	s 109
<i>Competition and Consumer Act 2010 (Cth)</i>	Pt 5-3, s 267, s 275, s 5(1), s 60, s 61, Sch 2
Competition and Consumer Act 2010 Sch 2	s 267, s 267(1), s 267(3), s 267(4), s 267(5), s 275, s 281, s 285, s 60, s 61(1), s 61(2)
<i>Interpretation Act 1987 (NSW)</i>	s 12(1)(b)
Trade Practices Act 1974 (Cth)	s 74(1), s 74(2A)

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