

User Name: Lingchong Pan

Date and Time: Monday, 28 February 2022 2:35:00 AM AEDT

Job Number: 165312560

Document (1)

1. Moore v Scenic Tours Pty Ltd

Client/Matter: -None-

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

Search Type: Natural Language

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AU Cases Publications: CaseBase Cases

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

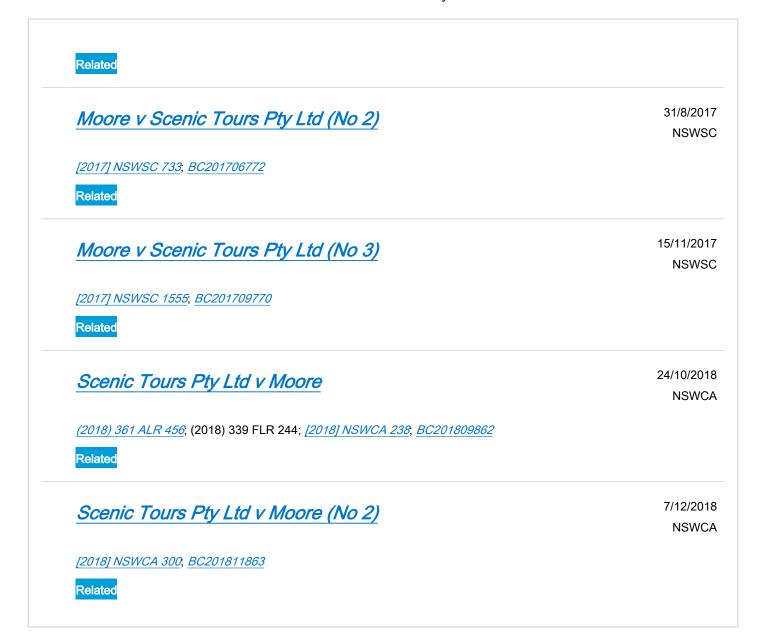
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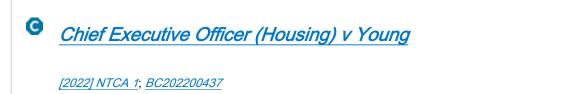
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20/3/2015 NSWSC

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4/2/2022 NTCA

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9	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
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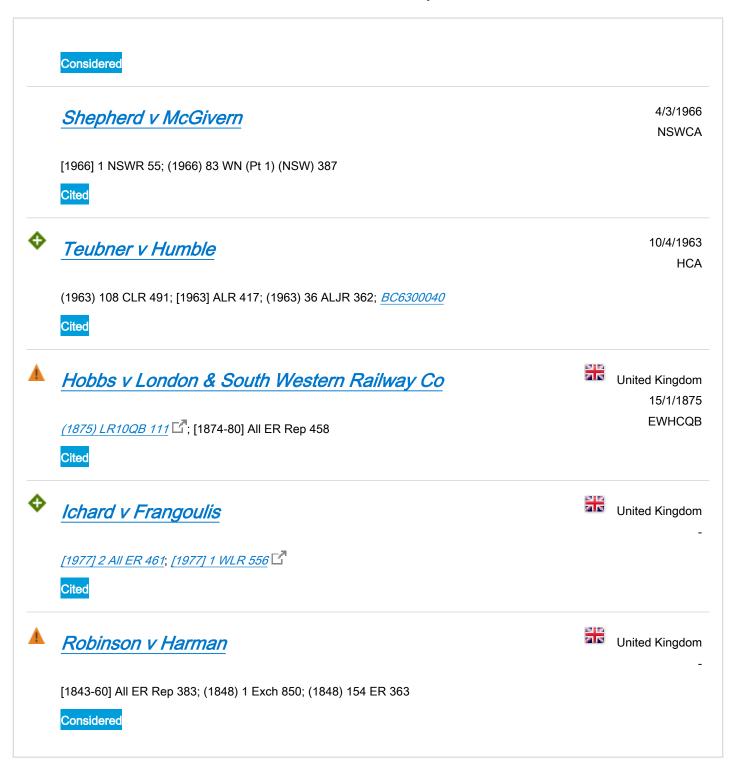




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Legislation Name & Jurisdiction	Provisions
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