

## Moore v Scenic Tours Pty Ltd [2020] HCA 17

<https://lawcasesummaries.com/knowledge-base/moore-v-scenic-tours-pty-ltd-2020-hca-17/>

### Facts

- These were representative proceedings - Mr Moore was the representative for approximately 1,500 people.
- Mr Moore booked a European river cruise for himself and his wife, supplied by Scenic Tours Pty Ltd ("**Scenic**").
- Adverse weather conditions unfortunately severely impacted the trip.
- Proceedings were commenced in the Supreme Court of New South Wales.
- The primary judge held that Scenic had failed to comply with the consumer guarantees in s 60 and s 61(1) and (2) of the *Australian Consumer Law* ("**ACL**"). Mr Moore claimed damages in respect of loss suffered by him due to Scenic's breaches. The alleged loss included disappointment and distress for breach of a contract to provide a "*pleasant and relaxed*" holiday. No physical injury or psychiatric illness was alleged to have resulted from Scenic's breach.

### Issues

- Section 275 of the ACL stipulates that where there is a failure to comply with a consumer guarantee that applies to a supply of services and the law of a State or Territory is the proper law of the contract, "*that law applies to limit or preclude liability for the failure, and recovery of that liability (if any), in the same way as it applies to limit or preclude liability, and recovery of any liability, for a breach of a term of the contract for the supply of the services*".
- The law of the contract between Mr Moore and Scenic was NSW, which included the *Civil Liability Act 2002* (NSW). If applicable, section 16(1) of the CLA precluded the awarding of damages for non-economic loss, unless that non-economic loss is at least 15% of a most extreme case. Mr Moore's claim did not meet that threshold.

### Held

- The Court held that section 275 of the ACL applies section 16 of the CLA.

- The Court further held that loss consisting of disappointment and distress for breach of a contract to provide a pleasurable and relaxing experience, where not consequential upon physical or psychiatric injury, does not relate to personal injury.
- Section 16 of the CLA did not apply to preclude Mr Moore from recovering damages for loss of that kind. It was therefore unnecessary for the Court to decide whether section 16 applied to loss suffered outside of NSW.
- A term of a contract is void to the extent that it purports to exclude, restrict or modify liability for the failure of goods and services of a kind ordinarily acquired for personal, domestic or household use or consumption to comply with consumer guarantees.

### **Full Text**

The full text is available here: <http://eresources.hcourt.gov.au/showCase/2020/HCA/17>

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