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## Daily Banking A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Fogg v Kane Constructions (NSW) Pty Ltd; Fogg v Les Quatre Musketeers Pty Ltd (t/as Plastamasta South Coast) (No. 5)** (NSWSC) - negligence - plaintiff injured while delivering building materials to worksite - subcontractor liable - contributory negligence 15%

**Nom De Plume Nominees Pty Ltd v Fingal Developments Pty Ltd** (VSCA) - stay - no good reason advanced for granting stay in pending appeal - application dismissed

**Carbon Black Lab Pty Ltd v Launer** (VSCA) - real property - caveat - no error in granting of application for removal of caveat - appeal dismissed

### Summaries With Link (Five Minute Read)

**Fogg v Kane Constructions (NSW) Pty Ltd; Fogg v Les Quatre Musketeers Pty Ltd (t/as Plastamasta South Coast) (No. 5) [2015] NSWSC 648**

Supreme Court of New South Wales

Johnson J

Negligence - limitations - plaintiff injured in fall while delivering building materials to worksite - plaintiff sued head contractor at site (Kane), subcontractor contracted by Kane and employer with whom Hutchison contracted, for damages in negligence - held: plaintiff's claim not statute-barred - Hutchison breached duty of care to take reasonable care to ensure deliveries made at location and in manner that did not carry unreasonable risk of injury - breach caused plaintiff's injuries - Hutchison liable - liability not established against Kane or employer - plaintiff failed to

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take reasonable care for his own safety - contributory negligence assessed at 15% - damages assessed - parties to bring in short minutes of order.

[Fogg](#)

## **Nom De Plume Nominees Pty Ltd v Fingal Developments Pty Ltd [2015] VSCA 129**

Court of Appeal of Victoria

Mandie & Kyrou JJA

Stay - applicant sought stay of orders pending hearing and determination of proposed appeal - whether arguable grounds of appeal - justice - balance of convenience - held: there appeared to be arguable grounds of appeal - however Court not satisfied that if no stay granted there would be a real risk of appeal being rendered nugatory - successful plaintiff entitled to the fruits of its judgment - no good reason advanced for granting stay - application dismissed.

[NomDePlume](#)

## **Carbon Black Lab Pty Ltd v Launer [2015] VSCA 126**

Court of Appeal of Victoria

Santamaria, Ferguson & McLeish JJA

Real property - caveat - contract - applicant sought to appeal from decision granting application under s90 *Transfer of Land Act 1958* (Vic) for removal of caveat - whether trial judge erred in finding contract for sale of land validly terminated following issuing of notice of default and rescission - whether trial judge erred in holding balance of convenience favoured removal of caveat - whether trial judge erred in approach under s90 - held: applicant failed to show primary judge erred either in finding no prima facie case for maintaining caveat or in finding balance of convenience favoured its removal - appeal dismissed.

[Carbon](#)

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