



Tuesday, 4 August 2015

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

 Follow @Benchmark\_Legal

### Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

### Executive Summary (1 minute read)

**Stewart v Moden** (VSC) - wills and estates - misappropriated money - deceased's mental capacity - defendant's share of deceased's estate to be retained by plaintiff for benefit of residuary beneficiaries

**Ferrari Estate Holdings Pty Ltd v Sovereign Resort Developments Pty Ltd (No 2)** (QSC) - dismissal - claim against second and third defendants dismissed for want of prosecution

# Benchmark

## Summaries With Link (Five Minute Read)

### **Stewart v Moden [2015] VSC 369**

Supreme Court of Victoria

McMillan J

Wills and estates - plaintiff beneficiary and executor of deceased's estate sought declarations as to defendant's entitlements under deceased's Will - plaintiff sought that defendant's entitlement be offset from money misappropriated by defendant during deceased's lifetime - deceased's mental capacity - rule in *Cherry v Boulton* [1839] EngR 1099 - defendant's inability to repay estate - held: even if deceased knew how her assets were being spent by defendant it was unlikely his spending was for deceased's benefit - plaintiff entitled to declaration sought that defendant's share of estate be retained by plaintiff, as executor for benefit of residuary beneficiaries other than defendant.

[Stewart](#)

### **Ferrari Estate Holdings Pty Ltd v Sovereign Resort Developments Pty Ltd (No 2) [2015]**

**QSC 220**

Supreme Court of Queensland

Henry J

Dismissal - want of prosecution - plaintiff alleged its land and building flooded and damaged as result of development works undertaken by second and third defendants at hotel for first defendant owner of hotel - Court dismissed plaintiff's claim against first defendant for want of prosecution - second and third defendants sought dismissal of claim against them for want of prosecution - held: plaintiff engaged in prolonged delays - plaintiff failed to comply with implied undertaking to proceed in expeditious way - explanation for delay inadequate - case did not have good prospects of success and was far short of being ready to be listed for trial - plaintiff had long considered defendants should wait for case to be progressed when it suited plaintiff's director to progress it - claim against second and third defendants dismissed for want of prosecution.

[Ferrari](#)

[Click Here to access our Benchmark Search Engine](#)