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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)

Stealth Enterprises Pty Limited trading as The Gentleman's Club v Calliden Insurance Limited (NSWSC) - insurance - fire and business interruption policy - fire at brothel premises - non-disclosure - insurer entitled to reduce liability to nil under policy

Young v Smith (No 2) (NSWSC) - costs - proceedings conducted on false basis - defendant awarded indemnity costs

APX Projects Pty Limited v The Owners – Strata Plan No. 64025 (NSWSC) - strata titles - application by owner of lots to bring action on behalf of owners corporations - exceptions to proper plaintiff rule in *Foss v Harbottle* - summons dismissed

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Summaries With Link (Five Minute Read)

Stealth Enterprises Pty Limited trading as The Gentleman's Club v Calliden Insurance Limited [2015] NSWSC 1270

Supreme Court of New South Wales

Schmidt J

Insurance - plaintiff company owned and operated brothel - brothel's premises insured for fire and business interruption under policy renewed by defendant insurer - fire damaged premises and resulted in brothel ceasing to trade - insurer denied liability under policy on basis plaintiff Calliden failed to comply with disclosure obligations under *Insurance Contracts Act 1984* (Cth) - insurer contended failure to comply with disclosure obligations entitled it to reduce its liability under the policy to nil - non-disclosure of association with bkie gang - non-disclosure of lapse of business registration - held: no issue that under s 28(3) insurer could reduce its liability under a policy to nil in appropriate - Court satisfied it was such an appropriate case and that if necessary disclosures had been made, policy would not have been issued in 2010 or renewed in 2011 - judgment for insurer.

[Stealth](#)

Young v Smith (No 2) [2015] NSWSC 1267

Supreme Court of New South Wales

Sackar J

Costs - proceedings related to transfer of an interest in property - Court found transfer void because it was undertaken by plaintiff to defraud his creditors - primary judge made adverse credit findings against parties - following delivery of judgment it became evident that proceedings were conducted on false premise and defendant had mortgaged property prior to proceedings to fund purchase of hotel - plaintiff sought indemnity costs - held: defendant gave evidence in knowledge she had used subject matter of proceedings as security for loan to purchase new hotel - defendant must have been aware injunction in place - proceedings conducted on false basis because of failure to disclose mortgage - surreptitious behaviour - it must have been clear to defendant the impact the behaviour would have upon proceedings - plaintiff entitled to costs on indemnity basis for both primary proceedings and mortgage proceedings - parties to prepare short minutes.

[Young](#)

APX Projects Pty Limited v The Owners – Strata Plan No. 64025 [2015] NSWSC 1250

Supreme Court of New South Wales

Slattery J

Strata titles - owner of lots in a strata scheme sought to bring action on behalf scheme's owners' corporation against treasurer - plaintiff required to show it was a person with standing to bring proceedings - plaintiff claimed to bring itself within recognised exceptions to proper plaintiff rule in *Foss v Harbottle* - ultra vires exception - interests of justice exception - whether underlying claims had merit- whether plaintiff brought itself within either claimed exception - Pt

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2F.1A *Corporations Act 2001* (Cth) - ss11(2), 23, 24, 25, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 75A, 76, 123, 125, 138, 181, 184 & 207 *Strata Schemes Management Act 1996* (NSW) - held: plaintiff's first complaint that treasurer breached duties under Management Act by failure to pay settlement sum alleged to be sinking fund moneys into owners corporation's sinking fund bank account action failed because plaintiff failed to show settlement moneys were sinking fund moneys - plaintiff's second complaint that treasurer and executive committee breached duties by paying cheques out of sinking fund on account of legal fees also failed because plaintiff could not establish it came within recognised *Foss v Harbottle* exception - summons dismissed.

[APX](#)



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The Road Not Taken

By Robert Frost

Two roads diverged in a yellow wood,
And sorry I could not travel both
And be one traveler, long I stood
And looked down one as far as I could
To where it bent in the undergrowth;

Then took the other, as just as fair,
And having perhaps the better claim,
Because it was grassy and wanted wear;
Though as for that the passing there
Had worn them really about the same,

And both that morning equally lay
In leaves no step had trodden black.
Oh, I kept the first for another day!
Yet knowing how way leads on to way,
I doubted if I should ever come back.

I shall be telling this with a sigh
Somewhere ages and ages hence:
Two roads diverged in a wood, and I—
I took the one less traveled by,
And that has made all the difference.

[RobertFrost](#)

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