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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)

Bronkhorst v Lloyd (NSWSC) - pleadings - equity - defence struck out - defendant to provide written account of dealings as attorney or agent for plaintiff - orders and directions

Whyte v LM Investment Management Ltd (in liq)(rcvrs & mgrs apptd) (QSC) - legal costs - corporations - applicant not a "non-associated third party payer" in respect of legal costs payable by company to law practice - applicant not entitled to notice of costs assessment or to make submissions

Digby v The Compass Institute Inc (QSC) - negligence - employer liable for injuries to employee suffered during course of presentation by police officer - State not liable - damages limited by extent of injuries established by plaintiff

JW v John Siganto as Litigation Guardian for AW and CW (QSC) - Wills and estates - succession - testamentary capacity - order granted authorising making of Will on behalf of applicant's son

Ross & Anor as Joint & Several Administrators Of GNC Homes P/L (Admin Apptd) v GNC Homes P/L (Admin Apptd) (SASC) - corporations - confirmation of validity of appointment of administrators of company - declaration

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Summaries With Link (Five Minute Read)

Bronkhorst v Lloyd [2015] NSWSC 1618

Supreme Court of New South Wales

Slattery J

Pleadings - equity - plaintiff mother sought orders that defendant daughter provide written accounts of her dealings as attorney or agent for plaintiff; opportunity to examine daughter in respect of written accounts and that daughter pay mother sum and interest as may seem just - plaintiff sought that daughter's defence be struck out and part of final relief be granted - defendant sought another adjournment of hearing - s61 *Civil Procedure Act 2005* (NSW) - held: no justification for adjournment - no rational basis to allow matter to be adjourned - defendant had failed without adequate explanation to comply with Court's orders her to answer request for particulars - defence only pleaded general issue - defence did not identify true matters defendant proposed to put in issue - defence struck out - Court satisfied defendant should provide verified detailed written account of dealings as attorney or agent for plaintiff during questioned period - orders and directions made.

[Bronkhorst](#)

Whyte v LM Investment Management Ltd (in liq)(rcvrs & mgrs apptd) [2015] QSC 303

Supreme Court of Queensland

Jackson J

Legal costs - corporations - respondent company in liquidation was responsible entity and trustee of managed investment scheme - respondent or liquidators was client of law firm - Court directed respondent to wind up scheme - respondent then ordered to be wound up in insolvency - applicant appointed as person to take responsibility for ensuring scheme wound up in accordance with constitution and appointed receiver of property of scheme - Court ordered invoices for legal costs alleged to be payable under *Legal Profession Act 2007* (Qld) as between client law practice to be assessed - client was respondent or liquidators of respondent - applicant sought directions whether he was entitled to notice of application, to be served with copy of application for costs assessment, and entitled to notice of costs assessment - whether applicant was a "non-associated third party payer" within meaning of s301(3) - whether costs assessment subject to r720 *Uniform Civil Procedure Rules 1999* (Qld) - whether "the costs are payable out of a fund and applicant was "the person having charge of the fund" - held: applicant was not a "non-associated third party payer" in respect of legal costs payable by respondent to the law practice - r720 did not entitle applicant to notice of costs assessment or to make submissions in relation to it - application dismissed.

[Whyte](#)

Digby v The Compass Institute Inc [2015] QSC 308

Supreme Court of Queensland

Atkinson J

Negligence - first defendant provided disability services to young people - plaintiff employed by

first defendant - second defendant State employed police officer who attended first defendant's premises - police officer gave presentation and turned on siren as part of it - client with disabilities became startled and fell - plaintiff injured trying to arrest client's fall - extent of respective liabilities of employer and State for plaintiff's injuries - extent of plaintiff's injuries - held: no breach of duty by police officer - first defendant breached duty in tort and contract to take reasonable care to avoid exposing plaintiff to risk of injury - first defendant was liable for plaintiff's injuries - plaintiff failed to persuade Court she suffered more than mild shoulder injury, minor somatic symptom disorder in injury's immediate aftermath and consequent addiction to painkillers - damages limited to \$158,045 - judgment for plaintiff against first defendant.

[Digby](#)

JW v John Siganto as Litigation Guardian for AW and CW [2015] QSC 300

Supreme Court of Queensland

McMeekin J

Wills and estates - succession - testamentary capacity - applicant sought leave under s22 *Succession Act 1981* (Qld) to bring further application under s21 for order authorising Will to be made on behalf of his son - son had no testamentary capacity, no current Will and no prospect of regaining capacity - whether applicant the Appropriate Person - whether all persons who may have interest were represented - approval "that the person would make" - held: Court satisfied that requirement in s24 were satisfied - it was appropriate to grant leave and to grant order sought.

[JW](#)

Ross & Anor as Joint & Several Administrators Of GNC Homes P/L (Admin Apptd) v GNC Homes P/L (Admin Apptd) [2015] SASC 168

Supreme Court of South Australia

Dart J

Corporations - plaintiffs appointed as administrators of defendant company following passing of resolution by sole director of company (Burrows) - four days after appointment solicitors of defendant shareholders advised administrators that shareholders had resolved to remove Burrows and that he had no authority to appoint administrators - plaintiffs sought declaration or order confirming validity of appointment - ss128, 129, 447A & 447C *Corporations Act 2001* (Cth) - indoor management rule - whether Burrows removed as director of company - held: in circumstances the appointment of the administrators was valid because company not entitled to dispute Burrows was sole director validly exercising powers - plaintiffs entitled to declaration.

[Ross](#)

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