



Friday, 6 March 2015

Banking A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Korda v Australian Executor Trustees (SA) Ltd (HCA) - trusts and trustees - investment scheme - investors did not hold beneficial interest in companies' sale proceeds on receipt by companies - appeal allowed

Chapman v Colson (NSWSC) – loan agreement – self-represented litigant – limitation defence – procedural fairness – appeal dismissed

In the matter of Anglican Development Fund Diocese of Bathurst Board (recs and mgrs apptd) (NSWSC) – costs – receivers to have costs of application to make interim distribution to creditors as costs in receivership of company

Broadhead v Prescott (SASC) – succession – family provision – wise and just testator - family provision order in favour of children of deceased

Summaries with links (5 Minute Read)

Korda v Australian Executor Trustees (SA) Ltd [2015] HCA 6

High Court of Australia

French CJ; Hayne, Kiefel, Gageler & Keane JJ

Korda v Australian Executor Trustees (SA) Ltd [2014] VSCA 65

Court of Appeal of Victoria

Maxwell P, Osborn JA & Robson AJA

Trusts - equity - investment scheme - investors funded commercial enterprise of timber growing and harvesting carried on by companies - companies went into administration before sale proceeds paid to trustee to hold for investors - receivers of companies sought leave to appeal from decision that investors held beneficial interest in balance of proceeds before they were handed to trustee - Court of Appeal of Victoria held by majority that parties intended proceeds from harvesting of timber or from sale of plantation lands to be held on trust for investors on receipt by companies - held: scheme documentation did not support existence of trust or trusts over proceeds in hands of companies - proceeds were not subject to an express trust in favour of the scheme investors - appeal allowed.

[Korda](#)

Chapman v Colson [2015] NSWSC 120

Supreme Court of New South Wales

Harrison AsJ

Loan agreement – unrepresented litigant – plaintiff was defendant in Local Court proceedings concerning dispute over loan agreement – plaintiff sought to appeal from decision of Magistrate – plaintiff contended Magistrate erred by failing to give reasons for rejecting his reliance on s14(1) *Limitation Act 1969* (NSW) as a defence, by failing to identify the limitation ground as an issue to be determined, by failing to dismiss proceedings as result of limitation ground – plaintiff also claimed denial of procedural fairness – held: plaintiff abandoned limitation issue – not incumbent on Magistrate to identify it in reasons as issue to be determined – no obligation to dismiss proceeding on basis of limitation issue – no denial of procedural fairness – plaintiff could not now rely on limitation defence – appeal dismissed.

[Chapman](#)

In the matter of Anglican Development Fund Diocese of Bathurst Board (recs and mgrs apptd) [2015] NSWSC 59

Supreme Court of New South Wales

Black J

Costs – Court granted leave to receivers to make interim distribution to creditors – receivers sought order that Anglican Property Trust Diocese of Bathurst (APT) pay their costs incurred from date on which APT informed receivers they were opposing distribution application – held: APT’s submissions had raised matters relevant to Court’s decision and which were reflected in Court’s form of orders – APT was at least a proper party to the application - APT had a degree of success in application - there was proper basis for APT to identify concern as to issue of

independence - no order as to APT's costs of application - receivers to have costs of the application as costs in the receivership of Anglican Development Fund Diocese of Bathurst Board (ADF).

[In the matter of Anglican Development Fund Diocese of Bathurst Board](#)

Broadhead v Prescott [2015] SASC 34

Supreme Court of South Australia

Dart J

Succession – family provision – plaintiffs were deceased's children – plaintiff made claim under *Inheritance (Family Provision) Act 1972 (SA)* – deceased had left whole estate to two other children – ss7, 8 & 14 – wise and just testator – words in the will - held: Court satisfied that each of the plaintiffs left without adequate provision for proper maintenance, education or advancement in life – Court satisfied wise and just testator would have made provision for plaintiffs – provision order made.

[Broadhead](#)



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Sunday Evening in the Common

By John Hall Wheelock

LOOK—on the topmost branches of the world
The blossoms of the myriad stars are thick;
Over the huddled rows of stone and brick,
A few, sad wisps of empty smoke are curled
Like ghosts, languid and sick.

One breathless moment now the city's moaning
Fades, and the endless streets seem vague and
dim;
There is no sound around the whole world's rim,
Save in the distance a small band is droning
Some desolate old hymn.

Van Wyck, how often have we been together
When this same moment made all mysteries clear;
—The infinite stars that brood above us here,
And the gray city in the soft June weather,
So tawdry and so dear!

[John Hall Wheelock](#)

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