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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)

National Australia Bank Ltd, in the matter of Esteban (former Bankrupt) v State of New South Wales (FCA) - bankruptcy - disclaimer of onerous property - doctrine of escheat - mortgagee granted orders for sale of property

Allianz v Vitale (NSWSC) - freezing orders - bankruptcy - existing orders continued in support of claim over funds - funds to be paid into court

Perpetual Trustee Company Ltd v Bowie (NSWSC) - real property - loan agreement - possession - no unjust contract - no breach of duty by lender

Assad v Eliana Construction & Developing Group Pty Ltd (NSWSC) - contract - joint venture - inadequate reasons for conclusion that there was no agreement as to terms of settlement agreement - rehearing

Prodger v Prodger (No. 2) (NSWSC) - real property - leave to lodge further caveat refused - interlocutory injunction granted

Craig v Craig (WASC) - succession - widow of deceased refused leave to bring family provision application out of time

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Summaries With Link (Five Minute Read)

National Australia Bank Ltd, in the matter of Esteban (former Bankrupt) v State of New South Wales [2015] FCA 289

Federal Court of Australia

Flick J

Bankruptcy - bank applied pursuant to s133(9) *Bankruptcy Act 1966* (Cth) for order for sale of parcel of land in respect to which it was mortgagee - bank also sought that an account be given of proceeds of sale and any surplus money be paid into Court - bank was granted mortgage over that land in 2005 by mortgagor - in 2007 caveat lodged on property by company - mortgagor made bankrupt in 2008 and discharged from bankruptcy in 2011 pursuant - in 2014 trustee gave bank notice of its disclaimer of land as "onerous property" pursuant to s 133(1) - disclaimer of onerous property - doctrine of escheat - held: orders sought by bank made subject to minor revisions.

[National](#)

Allianz v Vitale [2015] NSWSC 352

Supreme Court of New South Wales

Slattery J

Freezing orders - Allianz sought interim preservation orders in support of proprietary claim over funds that respondent company held in bank account - Allianz sought to continue restraints against company dealing with funds or non-proprietary freezing order - judgment debtor had become bankrupt and caused funds to be transferred to company which he controlled - company submitted Court should not place any restraint on its use of funds - held: company was exercising power of disposition over assets of judgment debtor and in position of control or influence concerning those assets - r25.14(5) *Uniform Civil Procedure Rules 2005* (NSW) satisfied - Allianz entitled to freezing order - Court continued all existing orders - . respondent ordered to pay into Court balance of money which judgment debtor paid to company.

[Allianz](#)

Perpetual Trustee Company Ltd v Bowie [2015] NSWSC 328

Supreme Court of New South Wales

Ball J

Real property - mortgage - unjust contract - negligence - Perpetual sought to recover money owed by defendant under loan agreement - Perpetual also sought order for possession of land owned by defendant over which it held mortgage to secure loan - defendant sought relief under *Contracts Review Act 1980* (NSW) or damages on basis Perpetual breached duty of care in advancing loan - held: defendant exercised informed choice to enter agreements - agreements not unjust - bank did not owe defendant duty of care prudently to assess whether or not to grant loan and enter mortgage - negligence case failed - judgment for Perpetual.

[Perpetual](#)

Assad v Eliana Construction & Developing Group Pty Ltd [2015] VSCA 53

Court of Appeal of Victoria

Redlich, Redlich & McLeish JJA

Contract - joint venture - fiduciary duties - trial judge declared joint venture existed between parties for purchase and development of property - appellant did not challenge declaration but sought to appeal from orders - appellant claimed trial judge erred by failing to give adequate reasons for rejecting claim that parties made settlement agreement, by failing to find parties made settlement agreement on certain terms, and by failing to make orders with respect to counterclaim - evidence concerning settlement agreement - held: ground of appeal based on inadequacy of reasons upheld - notice of contention alleging fiduciary duties owed by appellant to respondent dismissed - matter remitted for rehearing.

[Assad](#)

Prodger v Prodger (No. 2) [2015] NSWSC 339

Supreme Court of New South Wales

Slattery J

Real property - caveat - plaintiff and sought leave under s74O *Real Property Act 1900* (NSW) to lodge further caveat over property owned by second defendant - held: second defendant had benefit of indefeasibility of title - plaintiff's caveat lodged after protection under s43A was in place - leave to lodge further caveat refused - it was possible plaintiff might have personal equities against second defendant which would allow her to set aside sale of property against him - interlocutory injunction granted against registered proprietor dealing with property if plaintiff provided undertaking as to damages.

[Prodger](#)

Craig v Craig [2015] WASC 109

Supreme Court of Western Australia

Mitchell J

Succession - plaintiff was widow of deceased - plaintiff sought leave to file application under s7(1) *Family Provision Act 1972* (WA) out of time - whether arguable case - delay - plaintiff's financial resources - contribution to estate - financial independence during marriage - held: plaintiff did not have an arguable case - Will did not fail to make adequate provision for plaintiff's proper maintenance - justice of case did not require that plaintiff have leave to file application out of time - application dismissed.

[Craig](#)

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