



Wednesday, 8 April 2015

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)

Ferella v The Official Trustee in Bankruptcy (NSWCA) - stay - orders appointing trustees for sale of properties - no prospects of success on appeal - stay refused

Ersh v The Greek Orthodox Parish and Community of Burwood and District Saint Nectarios Ltd (NSWSC) - contract - bankruptcy - invalid notice for recovery of loan money - proceedings dismissed

Balcomb v Brownlee (NSWSC) - succession - family provision - settlement agreement subject to Court's approval - declaration

Gabriele v Gabriele (VSC) - testator's family maintenance - testatrix had responsibility to provide for plaintiff - provision order made

Netline Pty Ltd v QAV Pty Ltd [No 2] (WASC) - contract - ineffectual termination of letting and services agreement - damages to be assessed

Benchmark

Summaries with links (5 Minute Read)

Ferella v The Official Trustee in Bankruptcy [2015] NSWCA 81

Court of Appeal of New South Wales

Meagher JA

Stay - bankruptcy - dispute between second appellant and Official Trustee concerning amounts to which Official Trustee was entitled for administration of bankruptcy - dispute subject of Federal Court application under s179 *Bankruptcy Act 1966* (Cth) - appellants sought stay of primary judge's orders appointing trustees for sale of properties jointly owned by first appellant and Official Trustee - appellants contended primary judge erred in not exercising discretion against making order under 66G, or in not deferring consideration of application, until delivery of judgment in Federal Court proceedings - held: appellants' arguments could not stand with concessions made that primary judge would be justified in making order under s66G and that material before Court provided basis for making of orders sought - appeal had no realistic prospects of success - stay refused.

[Ferella](#)

Ersh v The Greek Orthodox Parish and Community of Burwood and District Saint Nectarios Ltd [2015] NSWSC 331

Supreme Court of New South Wales

Bellew J

Contract - bankruptcy - plaintiff sought to recover money loaned by her to defendant - plaintiff appealed from Magistrate's decision in defendant's favour - plaintiff had not disclose debt to trustee in bankruptcy - whether notice plaintiff gave seeking recovery of loan money was valid - held: debt said to be owed by defendant vested in plaintiff's trustee upon bankruptcy - plaintiff's discharge from bankruptcy did not re-vest property - plaintiff not in position to give valid notice seeking repayment of loan because debt was not hers - no error in Magistrate's findings - proceedings dismissed.

[Ersh](#)

Balcomb v Brownlee [2015] NSWSC 361

Supreme Court of New South Wales

Slattery J

Contract - plaintiff child of deceased sought family provision order out of time - executors accepted offer to settle - plaintiff sought to enforce agreement to settle - estate contended any agreement was subject to Court's approval and not binding until approval obtained - contractual interpretation - meaning of *full and final settlement* in statutory context of *Succession Act 2006* (NSW) - s73(1) *Civil Procedure Act 2005* (NSW) - held: *full and final settlement* meant settlement would exhaust claim and conclude the litigation - words of agreement obliged plaintiff to approach Court and seek approval of release under s95 *Succession Act* - approval not forthcoming plaintiff was not entitled to agreed funds.

[Balcomb](#)



Gabriele v Gabriele [2015] VSC 115

Supreme Court of Victoria

Kaye JA

Testator's family maintenance - plaintiff and defendant were testatrix's sons - sole asset of estate was testatrix's interest in home as tenant in common in equal shares with defendant - testatrix left whole of estate to defendant - plaintiff claimed provision from estate pursuant to Pt IV *Administration and Probate Act 1958* (Vic) - whether wise and just testatrix would have thought it her moral duty to make appropriate disposition favour of plaintiff - amount and extent of financial contribution made by defendant to purchase property - respective contributions of parties to testatrix's welfare - plaintiff's exclusion from property in period leading to testatrix's death - held: testatrix had responsibility to make provision for proper maintenance support of plaintiff - provision order made.

[Gabriele](#)

Netline Pty Ltd v QAV Pty Ltd [No 2] [2015] WASC 113

Supreme Court of Western Australia

Beech J

Contract - plaintiffs owned apartment in complex - defendant manager provided caretaking and letting services to Ascot Village - owners and manager were parties to agreement for provision of letting services by manager in respect of apartment - manager purported to terminate agreement - owners claimed notice of termination was ineffectual and sought specific performance - held: there was no implied term entitling manager to terminate agreement on reasonable notice - manager had no right to terminate agreement - specific performance not granted - damages to be assessed.

[Netline](#)

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