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## Banking A Daily Bulletin listing Decisions of Superior Courts of Australia

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### 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](#)

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