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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)

**Segelov v Ernst & Young Services Pty Ltd** (NSWCA) - equity - trusts and trustees - trustee did not owe duty to inform beneficiaries of entitlement - no breaches of trust - appeal dismissed

**Chong & Neale v CC Containers Pty Ltd** (VSCA) - conspiracy to injure corporations - fraud - appeal allowed in part in relation to award of interest - appeal otherwise dismissed

**C.A.R.S. Pty Ltd v Brent** (TASSC) - guarantee and indemnity - claim by creditor against two guarantors - one guarantor failed to sign and signature forged - other guarantor not relieved of liability

# Benchmark

## Summaries With Link (Five Minute Read)

### **Segelov v Ernst & Young Services Pty Ltd [2015] NSWCA 156**

Court of Appeal of New South Wales

Meagher, Gleeson & Leeming JJA

Equity - trusts and trustees - respondent was trustee of service trust associated with accountants' firm - trust provided services to firm for payment - trust was discretionary trust - "beneficiaries" included spouses of and persons nominated by firm's partners - appellant nominated as "beneficiary" shortly before husband became a partner of firm - distributions paid into bank account in joint names of appellant and husband appellant unaware of her entitlement of payment of amounts into joint accounts - appellant became aware of entitlement after separating from husband - appellant sought equitable compensation for breach of trust by respondent - appellant claimed trust deed did not authorise interim distributions of 'income' and that respondent failed to perform duty to inform beneficiaries of entitlement - s85 *Trustee Act 1925* - held: primary judge did not err in finding respondent did not owe a duty to notify a beneficiary of their entitlement - alleged breaches of trust not made out - appeal dismissed.

[Segelov](#)

### **Chong & Neale v CC Containers Pty Ltd [2015] VSCA 137**

Court of Appeal of Victoria

Redlich, Santamaria & Kyrou JJA

Conspiracy to injure corporations - fraud - company (CCC) owned and controlled by appellant (Chong) and son stored and repaired shipping containers owned by respondent shipping company - appellant (Neale) was director of shipping company - appellants found to have conspired to injure respondents by fraud perpetrated in respect of repair by CCC of shipping containers of shipping company - appellants also found to have engaged in fraudulent misrepresentation and misleading and deceptive conduct - Neale found to have breached his fiduciary and statutory duties as director of shipping company and CCC and to have received secret commissions as result of his participation in repair fraud and involvement in sale of CCC's business - held: grounds of appeal failed - Chong's appeal allowed in part in relation to amount of interest awarded - Neale's appeal dismissed.

[Chong](#)

### **C.A.R.S. Pty Ltd v Brent [2015] TASSC 23**

Supreme Court of Tasmania

Blow CJ

Guarantee and indemnity - creditor sued two company directors claiming they were liable to pay sums pursuant to deed of guarantee and indemnity - first defendant contended he was not liable because signature on deed forged - second defendant admitted signing deed but contended other defendant's signature was forged which must result in him not being liable - held: Court not satisfied first defendant executed deed or authorised anyone else to do so in his name - plaintiff's claim against first defendant failed - deed contained express term that liability

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of each guarantor was not contingent upon execution of guarantee by any other guarantor - second defendant not relieved from liability under guarantee - claim against second defendant succeeded.

[C.A.R.S.](#)

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