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Banking

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Pace v Calabro Real Estate Pty Ltd (NSWSC) - possession - competing orders of possession of same land - procedural fairness - stay of writ of execution

Wade v Frost (SASC) - Wills - deceased had testamentary capacity when making Will - probate granted - terms of compromise approved

Siam Steel International PLC v Compass Group (Australia) Pty Ltd (WASC) - international arbitration - dispute arising under building supply contract referred to arbitration

Summaries with links (5 minute read)

Pace v Calabro Real Estate Pty Ltd [2014] NSWSC 1166

Supreme Court of New South Wales

McCallum J

Possession - stay - competing orders for possession - land subject of possession claim registered in plaintiffs' name - land subject of contract for sale with defendant - stalling of completion of contract - defendant in occupation of premises as licensee - licensee sought stay of execution of writ - at time contract entered, plaintiffs in default of loan agreement secured by mortgage over the property and mortgagee had commenced proceedings against plaintiffs for possession - terms of agreement for sale with defendant enabled plaintiffs to make sufficient payment to mortgagee to

forestall execution of an order for possession - plaintiffs entered into licence agreement with defendant pursuant to which regular payments were made by defendant to mortgagee - held: there ought to be opportunity to address Court as to potential conflict between there being an order for possession in favour of mortgagee against plaintiffs and a later writ of possession in favour of plaintiffs against licensee - not possible for two competing orders for possession to co-exist in respect of same property - in order to afford procedural fairness to mortgagee in what appeared to be a potential legal act which could be to its detriment, it was appropriate to grant stay.

[Pace](#)

Wade v Frost [2014] SASC 162

Supreme Court of South Australia

Gray J

Wills - probate - testamentary capacity - plaintiffs appointed executors under Will made in November 2005 - first defendant was appointed executor under Will made in 1990 - second, third and fourth defendants were deceased's grandchildren - defendants alleged deceased did not have testamentary capacity at the time of making 2005 Will - parties reached compromise - allegation withdrawn - held: notwithstanding parties had reached compromise, Court must be satisfied deceased had testamentary capacity at time of making 2005 Will and of formal validity of 2005 Will itself before making a grant of probate - held: Court satisfied Will valid and that deceased had testamentary capacity when making her 2005 Will - Court satisfied 2005 Will was last Will and testament of deceased - terms of compromise approved.

[Wade](#)

Siam Steel International PLC v Compass Group (Australia) Pty Ltd [2014] WASC 415

Supreme Court of Western Australia

Le Miere J

International arbitration - dispute arising under contract between parties for supply of accommodation building - defendant sought order that matter be stayed and referred to arbitration pursuant to s7(2) *International Arbitration Act 1974* (Cth) held: contract contained an arbitration agreement which was not inoperative - at time arbitration agreement made, plaintiff was domiciled or ordinarily resident in a Convention country - s7 applied to the agreement - open to either party to give to other party a notice of dispute and, if dispute is not otherwise resolved, to refer dispute to arbitration in accordance with clause of contract - proceeding pending in Court involved determination of a matter capable of settlement by arbitration - proceeding stayed - parties referred to arbitration.

[Siam Steel International PLC](#)

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