

# Benchmark

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## Banking

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

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#### Executive Summary (1 minute read)

**Jingalong Pty Ltd v Todd (No 2)** (NSWCA) - real property - risk of dissipation of assets from sale of property - urgent freezing orders granted

**Visy Paper Pty Ltd v Glass Granulates Pty Ltd** (NSWSC) - equity - no breach of supply agreement - declaration and specific performance refused

**Rozenblit v Vainer** (VSC) - pleadings - permission to file and serve amended statement of claim refused

**Prettejohn v Prettejohn** (QSC) - Wills - trusts and trustees - income generated by estate assets since death not *ready monies*

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## Summaries with links (5 minute read)

### **Jingalong Pty Ltd v Todd (No 2) [2014] NSWCA 347**

Court of Appeal of New South Wales

Gleeson JA

Real property - Mareva injunction - primary judge found Jingalong held property on constructive trust for Todd - Todd sought freezing orders against Jingalong - application related to different property owned by Jingalong against which Todd had lodged caveat - caveat was bad in form - Todd sought freezing orders to preserve an amount from proceeds of sale of property pending determination of Jingalong's appeal - held: Court prepared to draw inference that Jingalong would most likely complete sale of property immediately or shortly after lapsing of caveat and that, unless restrained, any net proceeds of sale would be disbursed - Court satisfied it was appropriate to make freezing order for a limited period.

[Jingalong Pty Ltd](#)

### **Visy Paper Pty Ltd v Glass Granulates Pty Ltd [2014] NSWSC 1387**

Supreme Court of New South Wales

Sackar J

Equity - recycler supplied glass materials to glass business - recycler sought declaration that glass business had breached supply agreement - sought specific performance and damages - glass business denied breach and contended that, even if it did breach agreement, supplier would suffer no damage if Court denied order for specific performance - glass business also asserted agreement was void for illegality and that it was entitled to refuse loads containing asbestos or fibro - proper construction of supply agreement - definition of *rubbish* - *eiusdem generis* principle - held: reasonable to infer there was some asbestos more probably than not in each of the relevant loads rejected - definition of rubbish did not include asbestos contaminated material - glass business not obliged to receive any load which contained material which was other than benign or non-hazardous - glass business not obliged to take the relevant loads - judgment for glass business.

[Visy Paper Pty Ltd](#)

### **Rozenblit v Vainer [2014] VSC 510**

Supreme Court of Victoria

Lansdowne AsJ

Corporations - dispute arising out of business previously conducted by plaintiff and first defendant which was intended to develop and commercialise tyre recycling - plaintiff sought leave to file and serve amended statement of claim - proposed causes of action arose out of liquidation of company of which plaintiff was not a member at time of liquidation - held: plaintiff failed to establish he would have right to prosecute grievance about liquidation on basis he held an

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equitable interest in shares pursuant to a constructive trust - even if allegation of constructive trust made good, Court not persuaded constructive trust would necessarily confer on plaintiff equitable interest in shares - leave to amend refused.

## [Rozenblit](#)

### **Prettejohn v Prettejohn [2014] QSC 250**

Supreme Court of New South Wales

Henry J

Wills and estates - construction of Will - trustees sought declaration as to proper construction of feature of Will relating to whether income generated by estate's assets since death ought be regarded as falling within *ready monies* as used in Will, or as falling within residual capital of estate - held: Court empowered to intervene and provide judicial guidance in exercise of supervisory power conferred under s96(1) *Trusts Act 1973* (Qld) - income generated from estate agents was not *ready monies* within meaning term in clause of Will - income was not income available to be applied for purposes and to the benefit of income beneficiaries stipulated under clause of Will - income had contributed to residue of the estate within meaning of the Will.

## [Prettejohn](#)

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