

Friday 14 November 2014

Banking

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

R v Qian Lin (NSWCCA) - money laundering - sentence manifestly inadequate - Crown's appeal upheld

Bank of Queensland v Fitzgerald (NSWSC) - possession - loan facilities - unjust contract - subrogation - summary judgment in favour of bank refused

J & J Computing Services Pty Ltd v AKT Evolution Pty Ltd (NSWSC) - shareholders agreement - injunction restraining parties from selling shares to third party refused

Spoehr v Health Services Charitable Gifts Board (SASC) - Wills - testamentary capacity - orders against validity of Will - approval of compromise

Summaries with links (5 minute read)

R v Qian Lin [2014] NSWCCA 254

Court of Criminal Appeal of New South Wales

Leeming JA; Fullerton & Bellew JJ

Money laundering respondent convicted of offence under s400.4(1) *Criminal Code 1995* (Cth) - sentenced to a non-parole period of 10 months imprisonment, and an additional term of 6 months - Crown appealed against sentence on ground it was manifestly inadequate - Crown submitted sentence was one of *extreme and impermissible leniency* - maximum penalty - objective seriousness of offending - general deterrence - hardship to respondent's family - held (by majority): sentence imposed by primary judge for respondent's money laundering conviction was erroneously lenient - manifest inadequacy of sentence was such that Court's intervention was required - appeal allowed - sentence quashed - appropriate sentence was imprisonment for 1 year and 3 months.

[R](#)

Bank of Queensland v Fitzgerald [2014] NSWSC 1599

Supreme Court of New South Wales

Campbell J

Possession - bank sought summary judgment under r13.1 *Uniform Civil Procedure Rules 2005* (NSW) for possession and for portion of loan amount - two facilities made available to defendant - home loan and line of credit - defendant challenged bank's title to possession under provisions of *Contracts Review Act 1980* (NSW) - defendant claimed financial arrangements were both unjust contracts liable to be set aside - bank accepted there was a triable issue under *Contracts Review Act*, but argued that it could rely on doctrine of subrogation as alternative basis of obtaining summary judgment - held: Court not satisfied to requisite standard that, even if bank's registered mortgage was set aside under *Contracts Review Act*, it was beyond argument that bank could upon principle of subrogation - summary judgment refused.

[Bank of Queensland](#)

J & J Computing Services Pty Ltd v AKT Evolution Pty Ltd [2014] NSWSC 1597

Supreme Court of New South Wales

Stevenson J

Contract - plaintiff held 3 of 100 issued shares in first defendant company - other 97 shares held by second, fourth and fifth defendants - plaintiff claimed it was entitled to six shares in company - plaintiff sought interlocutory relief to restrain fourth and fifth defendants from selling their shares in company to a third party - proper construction of shareholders agreement made between parties - held: fourth and fifth defendants had followed procedure contemplated by clause of shareholder's agreement - fourth and fifth defendants had given plaintiff a right of first refusal to purchase their

shares in company - plaintiff had not taken up that right - fourth and fifth defendants free to sell their shares provided they complied with remaining requirements of agreement - injunctive relief refused.

[J](#)

Spoehr v Health Services Charitable Gifts Board [2014] SASC 171

Supreme Court of South Australia

Gray J

Wills - testamentary capacity - application for judgment by consent that Court pronounce against force and validity of alleged 2001 Will of deceased and grant letters of administration of deceased's estate to plaintiff - sole surviving beneficiary under deceased's Will was hospital research fund - alleged deceased lacked testamentary capacity at time of making Will - evidence before Court that deceased suffered delusions regarding paternity of his children- parties agreed to settle action - further application made for approval of compromise of proposed family provision action on behalf of the granddaughter of deceased - held: circumstances existed to excite suspicion that deceased lacked testamentary capacity at time of execution of Will - no party had come forward to tender any evidence or make any submission that deceased did in fact have capacity at relevant time - appropriate to make an order pronouncing against validity of Will - granddaughter's interests adequately protected by the terms of agreed settlement.

[Spoehr](#)

Autumn

By John Clare

1

I love the fitfull gusts that shakes
 The casement all the day
 And from the mossy elm tree takes
 The faded leaf away
 Twirling it by the window-pane
 With thousand others down the lane

2

I love to see the shaking twig
 Dance till the shut of eve
 The sparrow on the cottage rig
 Whose chirp would make believe



That spring was just now flirting by
In summers lap with flowers to lie

3

I love to see the cottage smoke
Curl upwards through the naked trees
The pigeons nestled round the coat
On dull November days like these
The cock upon the dung-hill crowing
The mill sails on the heath agoing

4

The feather from the ravens breast
Falls on the stubble lea
The acorns near the old crows nest
Fall pattering down the tree
The grunting pigs that wait for all
Scramble and hurry where they fall

[John Clare](#)

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