



Tuesday, 15 September 2015

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

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Access Solutions International Pty Ltd v Taglieri (VSC) - corporations - statutory demand - genuine dispute in respect of one of three debts

Bowesco Pty Ltd v Westpoint Management Ltd (WASCA) - third party lent funds to complete development - no subrogation to rights of primary lender - appeal dismissed



Summaries With Link (Five Minute Read)

Access Solutions International Pty Ltd v Taglieri [2015] VSC 494

Supreme Court of Victoria

Randall AsJ

Corporations - statutory demand - plaintiff sought to set aside statutory demand claiming three alleged debts owed by plaintiff to defendant pursuant to ss459G & 459J *Corporations Act 2001* (Cth) - plaintiff contended there was a genuine dispute in relation to alleged debts, an offsetting claim and/or abuse of process by the defendant - held: there was genuine dispute in relation to employee remuneration debt - no genuine dispute in relation to motor vehicle allowance or directors' remuneration - no off-setting claim or abuse of process - orders made as to amount of admitted debt - extension of time for compliance.

[Access](#)

Bowesco Pty Ltd v Westpoint Management Ltd [2015] WASCA 184

Court of Appeal of Western Australia

McLure P; Buss & Newnes JJA

Mortgage - guarantee - Suncorp lent funds to Lanepoint to purchase and develop land - loan secured by mortgage and guaranteed by Bowesco - Westpoint lent additional funds to Lanepoint secured by second ranking charge - ASIC interim stop order prevented Westpoint from providing further funds - Bowesco lent Lanepoint \$550,000 to enable it to complete development - Suncorp appointed receivers to Lanepoint - development completed and units sold - Lanepoint's debt to Suncorp paid - surplus funds from sale of units paid to Westpoint - Bowesco claimed Westpoint held \$550,000 of excess funds on constructive trust for it because it was subrogated to Suncorp's rights, which required Suncorp to account to it from surplus funds - Bowesco alleged Westpoint had accepted surplus funds with knowledge of Bowesco's rights - trial judge held Bowesco paid \$550,000 to Lanepoint to enable it to pay off unsecured creditors - money was used for that purpose - payment did not reduce Lanepoint's debt to Suncorp - no basis on which Bowesco could be subrogated to Suncorp's rights - Westpoint did not receive surplus funds with knowledge of failure by Suncorp to account in breach of fiduciary duty - trial judge dismissed claim - construction of guarantee - right to complete development - construction of Suncorp letter - subrogation - held: certain grounds of appeal upheld - Bowesco failed to identify any error capable of altering outcome - appeal dismissed.

[Bowesco](#)

[Click Here to access our Benchmark Search Engine](#)