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Banking

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Ho v Fordyce (ex parte) (NSWSC) - solicitors' costs - contention of false creation of costs agreements - Anton Pillar order granted

In the Matter of the Will and Estate of Peers (VSC) - wills and estates - executor entitled to reimbursement for repair property costs - taxation not justified

Weipa Hire Pty Ltd v Commonwealth of Australia (QSC) - pleadings - failure to disclose reasonable cause of action - statement of claim struck out - leave to replead

Sims v Jooste [No 2] (WASC) - defamation - failure to prove publication of words in internet chat room to third party - action dismissed



Summaries with links (5 minute read)

Ho v Fordyce (ex parte) [2014] NSWSC 1404

Supreme Court of New South Wales

Rein J

Equity - solicitor commenced proceedings for assessment of costs - clients asserted there were no costs agreements between them and the solicitor - clients sought order similar to Anton Pillar order to obtain access to and make of copies of material on solicitor's computer - clients were concerned that if they sought discovery in the normal manner solicitor may be able to alter or destroy evidence as to date of creation of various costs agreements - held: Court not satisfied there had been false creation of documents but there was some evidence to support the contention - for client to have to present normal application for discovery could act to clients' disadvantage forensically - ambit of information sought was narrow - proposed orders specifically detailed what was required of recipients - consequences of orders would cause little or no prejudice to solicitor if there had been no recent creation - Anton Pillar order made.

[Ho](#)

In the Matter of the Will and Estate of Peers [2014] VSC 500

Supreme Court of Victoria

Daly AsJ

Wills and estates - executor sought determination whether she was entitled to be indemnified from estate for costs of repair to property, and whether she was justified in issuing Summons for Taxation - whether co-executor entitled to act unilaterally - benefit to estate of expenses incurred - prospects of success of proposed proceeding - potential for litigation to deplete estate's assets - held: Court not satisfied issue of Summons for Taxation was justified - repair costs had benefited estate - executor entitled to be reimbursed for repair costs to extent she had not already been indemnified by others.

[In the Matter of the Will and Estate of Peers](#)

Weipa Hire Pty Ltd v Commonwealth of Australia [2014] QSC 254

Supreme Court of Queensland

Henry J

Pleadings - contract - plaintiff was lessee of hospital which it used to operate barracks - plaintiff entered written agreement for defendant to use part of premises for payment - plaintiff claimed it was not paid fees by defendant for continued use of premises beyond conclusion of agreement - plaintiff made claims in contract, quantum meruit and for mesne profits - defendant contended plaintiff's statement of claim disclosed no reasonable cause of action and should be struck out pursuant to r171 *Uniform Civil Procedure Rules 1999* (Qld) - held: pleading failed to disclose

reasonable cause of action in respect of any of its three claims - statement of claim struck out with leave to replead.

[Weipa Hire Pty Ltd](#)

Sims v Jooste [No 2] [2014] WASC 373

Supreme Court of Western Australia

K Martin J

Defamation - self-represented plaintiff claimed he was defamed by defendant by words appearing in internet chat forum - plaintiff had previously been executive director of company - words complained of concerned reckless disregard for shareholders' interests - publication - justification defence - s184(2) *Corporations Act 2001* (Cth) - held: plaintiff did not establish that words complained had been read and understood by at least one other person - establishing publication was essential ingredient of a cause of action in defamation against defendant - need for plaintiff to show publication of words to third person other than himself was clearly explained to plaintiff - plaintiff did not establish publication of the words - action dismissed.

[Sims](#)

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