

Wednesday, 16 September 2015

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

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### Executive Summary (1 minute read)

**Australian Competition and Consumer Commission v Hillside (Australia New Media) Pty Ltd trading as Bet365** (FCA) - consumer law - sports betting services - contraventions of Australian Consumer Law concerning "\$200 FREE BETS" promotion

**Australian Vintage Limited v Belvino Investments No 2 Pty Ltd** (NSWCA) - contract - expert's determination not made in accordance with contract - determination reviewable - appeal allowed

**The Estate of Arthur Michael Falco; Falco v Lambert (No 3)** (NSWSC) - Wills and estates - equity - two notices of motion - review of Registrar's decision moderating estate's accounts - claim against second defendant not dismissed

**Sedgwick v Varzonek** (NSWSC) - succession - contract - family provision claim and contract claim failed - plaintiff succeeded in equitable estoppel

**SC Projects Australia Pty Ltd v Field Deployment Solutions Pty Ltd** (WASC) - construction contract - payment dispute - separate issue - adjudicator's determination not invalid - judicial review refused - leave to enforce determination

# Benchmark

## Summaries With Link (Five Minute Read)

### **Australian Competition and Consumer Commission v Hillside (Australia New Media) Pty Ltd trading as Bet365 [2015] FCA 1007**

Federal Court of Australia

Beach J

Consumer law - ACCC brought proceedings against ultimate holding company (Bet365GL), chief operating entity of group (Hillside UK), and Australian subsidiary (Hillside Australia) alleging they engaged in misleading or deceptive conduct and made false representations concerning internet sports betting services in contravention of ss18 & 29 *Australian Consumer Law (ACL)* - ss6A(1)(b) & 62C *Authorised Betting Operations Act 2000 (SA)* - ss84(2), Sch 2, ss18, 29, 224(1) & 232(1) *Competition and Consumer Act 2010 (Cth)* - s140(2)(c) *Evidence Act 1995 (Cth)* - s4.7.10 *Gambling Regulation Act 2003 (Vic)* - reg 43 *Gaming and Wagering Commission Regulations 1988 (WA)* - held: ACCC established contraventions of ss18 & 29 ACL concerning "\$200 FREE BETS" promotion against Hillside Australia and Hillside UK- ACCC did not make good its case against Bet365GL that it was "involved in" conduct of and representations made by Hillside Australia and Hillside UK on basis the conduct and representations were engaged in or made "on behalf of and as agent for" Bet365GL- proceeding against Bet365GL dismissed.

[ACCC](#)

### **Australian Vintage Limited v Belvino Investments No 2 Pty Ltd [2015] NSWCA 275**

Court of Appeal of New South Wales

Bathurst CJ, Beazley P & McColl JA

Contract - appellant lessee challenged expert determination by second respondent expert as agent for third respondent - expert determination was made pursuant to clause of lease between first respondent lessor and lessee in respect of vineyard (premises) - clause provided for circumstances in which productivity of premises affected by natural disaster and contained formula to be applied by expert - trial judge dismissed summons - primary judge held expert determination not reviewable and determination correct although primary judge reached conclusion in different manner from expert - lessee appealed - correct construction of clause - whether expert's determination reviewable - held: expert and primary judge erred in construction of clause of lease - expert's determination not made in accordance with contract and was reviewable - appeal allowed - matter remitted to expert for determination.

[AustralianVintage](#)

### **The Estate of Arthur Michael Falco; Falco v Lambert (No 3) [2015] NSWSC 1343**

Supreme Court of New South Wales

Kunc J

Wills and estates - equity - deceased died leaving two page handwritten Will - plaintiffs were deceased's adult children - plaintiffs were principal beneficiaries - probate granted to first defendant - second defendant was solicitor retained by first defendant concerning

administration of estate - operative provisions of Will were dispositive clauses and appointment of first defendant as executor - Will did not contain a "charging clause" - plaintiffs sought to have first defendant removed as executor - two notices of motion - plaintiffs sought review of Registrar's decision moderating estate's accounts - second defendant sought that proceedings against him be dismissed or struck out - held: in relation to plaintiffs' notice of motion Court varied amount which Registrar ordered first defendant to refund to estate - Court declined to vary Registrar's order to make second defendant also liable to refund estate - in relation to second defendant's notice of motion, there was arguable *Barnes v Addy* claim - proceedings against second defendant not dismissed summarily - claim against second defendant inadequately pleaded - pleading struck out with leave to replead.

[Falco](#)

## **Sedgwick v Varzonek [2015] NSWSC 1275**

Supreme Court of New South Wales

Slattery J

Succession - contract - equitable estoppel - plaintiff pursuant to s57 *Succession Act 2006* (NSW) sought order for financial provision out of deceased's estate - plaintiff claimed he was de facto partner of deceased at time of her death or in a close personal relationship with her - alternatively plaintiff sought to make either claim in contract or equitable estoppel based on statements he contended deceased made to him that he acted upon - held: plaintiff failed to establish he was an eligible person entitled to bring claim against estate - plaintiff was neither in a de facto relationship or living in a close personal relationship with deceased at time of death - contract claim unsuccessful but one part of estoppel claim succeeded.

[Sedgewick](#)

## **SC Projects Australia Pty Ltd v Field Deployment Solutions Pty Ltd [2015] WASC 339**

Supreme Court of Western Australia

Mitchell J

Construction contract - payment dispute - agreement for supply, maintenance and operation of vehicles to haul material from stockpile to designated works - separate issue for determination - defendant counterclaimed for declaration that determination purportedly made under *Construction Contracts Act 2004* (WA) that defendant was to pay plaintiff amount for costs of demobilisation of equipment was invalid - operation of implied term - whether irrelevant considerations - held: allegation that adjudicator misconstrued agreement did not establish jurisdictional error - adjudicator's receipt of further submissions was within power and not an irrelevant consideration - adjudicator made determination within prescribed time extended with parties' consent - defendant's challenge to validity of determination failed - leave to enforce determination granted.

[SCProjects](#)

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