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Banking

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Executive Summary (1 minute read)

Yi Cheng Jiang v Wan Ze Property Development (Aust) Pty Ltd (in Liq) (NSWCA) - stay - outstanding costs rule - security for costs - motion dismissed

Feehan v Toomey (VSC) - testator's family maintenance - granddaughter not entitled to provision from deceased's estate

Kasimoglu v Embleton Motor Co Pty Ltd (WASCA) - default judgment - no arguable defence - permission to adduce further evidence refused

Kasimoglu v Embleton Motor Co Pty Ltd v St Kilda Beach Taxi School and Staffing Pty Ltd (WASCA) - contract - sub-lessee of taxi plate required to deliver up plate to lessor and pay account of profits

Kupang Resources Ltd v International Litigation Partners Pte Ltd (WASC) - corporations - appointment of receivers under General Security Agreement valid

Summaries with links (5 minute read)

Yi Cheng Jiang v Wan Ze Property Development (Aust) Pty Ltd (in Liq) [2014] NSWCA 350

Court of Appeal of New South Wales

Leeming JA

Stay - second and third respondents to application for leave to appeal sought orders that proceeding be stayed until applicant paid various outstanding costs obligations and provided amount of security - *outstanding costs rule* - held: in circumstances where there was a natural person present in jurisdiction with assets, and against whom normal mechanisms of enforcement were available, there was no occasion for requiring payment of costs before granting leave to appeal - Court not persuaded case was a rare case where security might be ordered in exercise of Court's inherent jurisdiction for costs of a leave application - motion dismissed.

[Yi Cheng Jiang](#)

Feehan v Toomey [2014] VSC 488

Supreme Court of Victoria

McMillan J

Testator's family maintenance - plaintiff sought provision for maintenance and support from estate of late grandmother pursuant to s91 *Administration and Probate Act 1958* (Vic) - plaintiff was daughter of deceased's daughter - deceased's daughter had predeceased deceased - extent of grandparent's moral obligation to provide for grandchild in her Will - held: plaintiff had next to no relationship with deceased - deceased was not receptive to plaintiff and did not want relationship with her - deceased did not have any responsibilities or obligations towards plaintiff - deceased's decision to exclude children of her deceased daughter was not 'callous and cruel' but was simply the exercise of her freedom of testation - plaintiff failed to establish to requisite standard that deceased had a responsibility at date of her death to make provision for her - family provision refused.

[Feehan](#)

Kasimoglu v Embleton Motor Co Pty Ltd [2014] WASCA 182

Court of Appeal of Western Australia

Newnes & Murphy JJA; Edelman J

Default judgment - respondent alleged appellants breached agreements for lease of taxi plates - no defence filed - default judgment - appellants applied to set aside default judgment - Master concluded that, in the absence of an adequate explanation as to circumstances in which default judgment came to be entered, and some evidence that appellants had an arguable defence to the claim, application should be dismissed - appellants contended Master erred in declining to admit two affidavits and in exercise of discretion to dismiss application - appellants also sought to adduce additional evidence on appeal to establish they had an arguable defence - held: open to



Master to decline to admit affidavits - additional evidence did not assist appellants - not in interests of justice to admit additional evidence - appeal dismissed

[Kasimoglu](#)

Kasimoglu v Embleton Motor Co Pty Ltd v St Kilda Beach Taxi School and Staffing Pty Ltd [2014] WASCA 183

Court of Appeal of Western Australia

Newnes & Murphy JJA; Edelman J

Contract - lease of taxi plates - St Kilda owned of plate which it leased to second CTM - director of CTM provided plate to Embleton - at end of lease, CTM unable to return plate to St Kilda as Embleton had it - Embleton contended it had entered into 5 year lease of plate from St Kilda, through CTM or its director as St Kilda's agent, and that it was entitled to possession of the plate - primary judge ordered Embleton to deliver up plate to St Kilda and to pay an account of profits - primary judge found neither CTM nor director was the agent of St Kilda, that CTM had sub-leased the plate to Embleton, that sub-lease was for indefinite term, and that CTM had lawfully terminated the sub-lease - held: Court not persuaded primary judge erred in finding Embleton did not lease plate for a 5 year term - no basis to interfere with that finding - no basis for finding CTM or its director was St Kilda's agent - no error in finding St Kilda was entitled to account of profits - appeal dismissed.

[Kasimoglu](#)

Kupang Resources Ltd v International Litigation Partners Pte Ltd [2014] WASC 371

Supreme Court of Western Australia

Allanson J

Corporations - International Litigation Partners (ILP) appointed second defendants as receivers of Kupang - Kupang sought order under s418A *Corporations Act 2001* (Cth) declaring appointment invalid - Kupang and ILP had entered Deed of Settlement and Release under which Kupang was to pay amount to ILP - ILP appointed receivers under clause of General Security Agreement - Kupang claimed that, by reason of service of notices under s260-5 *Taxation Administration Act 1953* (Cth), ILP was not able to demand payment or specify time and manner of payment of money - held: notices served by Commissioner did not have legal effect of making security held by ILP unenforceable - notices did not prevent ILP and Kupang from making an agreement within terms of existing transaction documents as to when amount of remaining debt was to be repaid - Kupang failed to comply with obligations under a transaction document - bankruptcy of Kupang's director was a default under the General Security Deed - appointment of receiver was valid - application dismissed.

[Kupang Resources Ltd](#)

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