



Tuesday, 16 December 2014

Banking

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

ACES Sogutlu Holdings Pty Ltd (in liq) v Commonwealth Bank of Australia (No 2) (NSWCA) - reliance on fresh evidence in appeal books - fresh evidence not before primary judge - no effect on outcome - no further orders made

Saba v Moit Projects (NSWSC) - banking - real estate agent authorised to fill up cheque - condition on delivery of cheque satisfied - vendor entitled to amount of cheque

Weekes v Barlow (NSWSC) - succession - lump sum family provision order granted to de facto partner of deceased

Play Australia Pty Ltd v Papadimitriou (VSC) - trade practices - investment in development project - no misleading or deceptive conduct - claim dismissed

Murabito v Conspect Construction Pty Ltd (WASC) - oppression - oppressive conduct by company against minority shareholder - order for purchase of shares

Summaries with links (5 minute read)

ACES Sogutlu Holdings Pty Ltd (in liq) v Commonwealth Bank of Australia (No 2) [2014] NSWCA 431

Court of Appeal of New South Wales

Beazley P; Macfarlan & Leeming JJA

Court unanimously dismissed appeal - appellants contended primary judge erred in accepting one valuer's report over another's - appellants relied on curricula vitae of valuers which, although included in appeal books, had not been in evidence before primary judge - one document contained a date well after conclusion of trial - documents not before primary judge were inserted by appellants into appeal books without application being made for tender of fresh evidence - held: appellants placed express reliance on documents - serious irregularity in connection with preparation and conduct of appeal - no effect on outcome of appeal or material effect on parties - not appropriate to refer matter for further investigation - appropriate that there be a public record of Court's conclusion that solicitor had not adhered to the standards it expects of those who appear before it - no further orders made.

[ACES Sogutlu Holdings Pty Ltd \(in liq\)](#)

Saba v Moit Projects [2014] NSWSC 1759

Supreme Court of New South Wales

McDougall J

Banking - plaintiff was proprietor of property - property went to auction - purchaser signed cheque form on business account and handed form to real estate agent - real estate agent filled up cheque with plaintiff's name as payee and gave it to her - cheque not met on presentation - account closed - plaintiff sued for value of cheque - held: purchaser handed over form of cheque to real estate agent on communicated basis it was to be filled up as required for payment of deposit - condition on delivery of cheque was accepted and honoured - plaintiff made good her claim to amount of cheque - judgment for plaintiff.

[Saba](#)

Weekes v Barlow [2014] NSWSC 1776

Supreme Court of New South Wales

Hallen J

Succession - plaintiff sought family provision order pursuant to s59 *Succession Act 2006* (NSW) out of deceased's estate - plaintiff was person with whom deceased was living in a de facto relationship at the time of death - defendant was child of deceased and one of two executors of deceased's Will - competing financial claims of beneficiaries - held: no dispute plaintiff was an *eligible person* under s57(1)(b) - Court satisfied for purposes of s59(1)(c) that deceased did not make adequate provision for proper maintenance or advancement in life of plaintiff - Court

satisfied provision should be made for plaintiff out of estate - provision should be expressed in terms of lump sum.

[Weekes](#)

Play Australia Pty Ltd v Papadimitriou [2014] VSC 608

Supreme Court of Victoria

Daly AsJ

Trade practices - plaintiff claimed damages against first and second defendants arising out of investment it made in third defendant - plaintiff claimed first and second defendants engaged in misleading or deceptive conduct by making representations to its sole director to induce him to make investment of money in third defendant which in turn would invest in multiunit apartment development - development project never proceeded - third defendant went into liquidation - plaintiff lost its investment - s159 *Fair Trading Act 1999* (Vic) - Pt IV *Wrongs Act 1958* (Vic) - capabilities and financial standing of defendants - held: plaintiff failed to establish defendants liable for misleading or deceptive conduct - proceeding dismissed.

[Play Australia Pty Ltd](#)

Murabito v Conspect Construction Pty Ltd [2014] WASC 474

Supreme Court of Western Australia

Master Sanderson

Oppression - plaintiff was minority shareholder in first defendant - plaintiff sought order under s232(e) *Corporations Act 2001* (Cth) first defendant's affairs were being conducted in an oppressive fashion - plaintiff sought order under s233(e) that company purchase his shares - held: plaintiff had been victim of oppressive conduct - plaintiff's forced removal as a director of company and failure of directors to provide plaintiff with relevant financial information as to company's affairs was conduct which was unfair - orders made for purchase of plaintiff's shares.

[Murabito](#)

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