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Banking

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Dallas Buyers Club, LLC v iiNet Ltd (No 1) (FCA) - preliminary discovery - third party access to evidence filed by film copyright owner refused

Landa v Perpetual Trustees Victoria Ltd (NSWCA) - contracts - loan agreements and mortgages not unjust - appeal dismissed

Ng v Filmlock Pty Ltd (NSWCA) - contract - repudiation of contract for sale of land by purchaser - erroneous calculation of damages - appeal allowed

Oxley v Oxley (NSWSC) - succession - release of rights to apply for family provision order approved

General Trade Industries Pty Ltd v AGL Energy Ltd (QCA) - stay - order restraining respondent from calling upon guarantees refused

Summaries with links (5 minute read)

Dallas Buyers Club, LLC v iiNet Ltd (No 1) [2014] FCA 1232

Federal Court of Australia

Perram J

Discovery - owner of copyright in film sought preliminary discovery of documents - internet service providers were respondents to application - copyright owner was seeking to show it had identified IP addresses of persons who had been involved in file-sharing of film - copyright owner had filed affidavits and expert report in support of application - material had not been used in open court - third parties sought access to documents on Court file - *r7.22 Federal Court Rules 2011 (Cth)* - held: no reason why access should not be granted to unrestricted documents presently on the file - in relation to restricted documents, it was Court's usual practice to release material which had been used in open court - notions of justice did not require release of material in relation to evidence which had not been utilised at time of third party application - applications for access to evidence refused, except in relation to material used in Court.

[Dallas Buyers Club, LLC](#)

Landa v Perpetual Trustees Victoria Ltd [2014] NSWCA 393

Court of Appeal of New South Wales

Macfarlan, Meagher & Emmett JJA

Contracts - appellant's loan contracts and mortgages with Perpetual were arranged by mortgage originator - mortgage originator engaged in fraudulent activity resulting in misappropriation of funds advanced by Perpetual - appellant sued Perpetual and sought that contracts and mortgages were void and should be set aside on basis that mortgage originator was acting within scope of authority of Perpetual and Perpetual was therefore responsible for fraudulent activity - primary judge concluded Perpetual was not responsible and that *Contracts Review Act 1980 (NSW)* had no application - held: no failure by primary judge to give adequate reasons - no failure to apply correct test for unjust contract - even if there were inadequacies in primary judge's reasons, there was nothing unjust about loan agreements or mortgages entered into by appellant in circumstances in which they were made - appellant had not shown any error in conclusion ultimately reached by primary judge - appeal dismissed.

[Landa](#)

Ng v Filmlock Pty Ltd [2014] NSWCA 389

Court of Appeal of New South Wales

Emmett & Gleeson JJA; Tobias AJA

Damages - contract - purchaser and guarantor challenged primary judge's quantification of damages payable by purchaser to vendor under contract for sale and purchase of land following repudiation by purchaser - underlying facts concerning contract for sale and termination by vendor

for breach not in dispute - extent to which price realised on sale of land 13 months after repudiation was relevant to assessment of loss suffered by vendor - held: primary judge erred in concluding that difference between price payable under sale contract and price realised under resale contract represented appropriate measure of damages - measure of damages could not be calculated without evidence as to market value of land - appeal allowed.

[Ng](#)

Oxley v Oxley [2014] NSWSC 1606

Supreme Court of New South Wales

Hallen J

Succession - mother sought Court's approval pursuant to s95 *Succession Act 2006* (NSW) of release by son of his rights to apply for family provision order out of her estate, or notional estate, on basis they may be the subject of a claim for such an order upon her death - held: Court acknowledged application not to be taken lightly and that son had not appeared and had not provided any evidence - Court of view that release ought to be approved - son had not suggested any objection to making order approving release - Court satisfied each party's intention was that there would be no litigation by son in regard to claim for family provision - release approved.

[Oxley](#)

General Trade Industries Pty Ltd v AGL Energy Ltd [2014] QCA 283

Court of Appeal of Queensland

Muir JA

Stay - guarantee - applicant sought order restraining respondent from enforcing two guarantees - applicant's case based on construction of release entered into between parties and also on provisions of s67J *Queensland Building and Construction Commission Act 1991* (Qld) - held: s67J could only apply where a security was being used to obtain *an amount owed under the contract*, which did not appear to relate to calling up of money to be retained as security pursuant to construction contract - applicant's argument that entitlement to any security had ceased because contract had been terminated was not supported by reliance on contract - limited evidence of any prejudice to applicant - stay refused.

[General Trade Industries Pty Ltd](#)

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