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

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### Executive Summary (1 minute read)

**Gold & Copper Resources Pty Ltd v The Hon Chris Hartcher, Minister for Resources & Energy, Special Minister** (NSWCA) - administrative law - renewal of exploration licence not void - appeal dismissed

**Secure Funding Pty Ltd v Stark;; Secure Funding Pty Ltd v Conway** (NSWSC) - possession - appeals against setting aside of default judgments dismissed

**Meriton Apartments Pty Ltd v The Owners Strata Plan No. 72381** (NSWSC) - contract - repudiation of caretaker agreement - promoter's fiduciary duty of disclosure

**Thompson v MacDonald** (VSC) - testator's family maintenance - trustees to pay balance of amount owing pursuant to family provision order

**Re The Bell Group Ltd (in liq); ex parte Woodings as liquidator of The Bell Group Ltd (In Liq) ACN 008 666 993** (WASC) - corporations - winding up - appointment of Committee of Inspection not invalid - declaration granted to liquidator

## Summaries with links (5 Minute Read)

### **Gold & Copper Resources Pty Ltd v The Hon Chris Hartcher, Minister for Resources & Energy, Special Minister [2015] NSWCA 57**

Court of Appeal of New South Wales

Beazley P; Macfarlan & Gleeson JJA

Administrative law - company held exploration prospecting licence granted under *Mining Act 1992* (NSW) - company sought renewal of licence for two years - company sent new first page of application to Department outside time prescribed by Act - new first page specified term of requested renewal was five years - Minister renewed licence for five years - appellant challenged validity of renewal pursuant to s293(1)(q)(ii) - appellant sought declaration renewal of licence void and of no effect - appellant contended that in sending new first page company withdrew or abandoned initial application and made new application out of time, which could not enliven Minister's power to renew licence under s114 - held: application not *finally disposed of* when Minister renewed licence - application renewal could not be withdrawn except by lodging notice with Director-General in accordance with s130 - not open for appellants to raise question of company's intention to submit new application on appeal - appellant's argument that company submitted new application inconsistent with s16 - appeal dismissed.

[Gold](#)

### **Secure Funding Pty Ltd v Stark;; Secure Funding Pty Ltd v Conway [2015] NSWSC 223**

Supreme Court of New South Wales

McCallum J

Default judgment - appeals against primary judge's decision to set aside default judgments for possession of properties in separate proceedings - defendants also sought leave to amend defence - whether arguable defence on grounds of unconscionable conduct - ss12CB, 12CC, 12GM *Australian Securities and Investments Commission Act 2001* (Cth) - s237 *Australian Consumer Law* - held: defences raised were reasonably arguable - no error in concluding default judgments should be set aside despite the procedural history - proposed amendments allowed - appeals dismissed.

[Secure](#)

### **Meriton Apartments Pty Ltd v The Owners Strata Plan No. 72381 [2015] NSWSC 202**

Supreme Court of New South Wales

Slattery J

Contract - plaintiff developer provided caretaker services to owners corporation of strata scheme under caretaker agreement made under *Strata Schemes Management Act 1996* (NSW) - plaintiff alleged owners corporation repudiated agreement by ineffectively attempting to terminate it- owners corporation alleged "serious, persistent and continuing" breaches of agreement by plaintiff and claimed to have validly terminated agreement - owners corporation also cross-claimed plaintiff breached fiduciary duties as promoter to the owners corporation - held: owners corporation bound to agreement by its conduct in reliance on it, even though it had

not formally executed agreement - plaintiff had not committed any breach to entitle owners corporation to terminate - owners corporation repudiated agreement - specific performance not possible without owners' corporations' cooperation - plaintiff limited to claim for damages - assessment of damages reserved for further consideration - plaintiff owed fiduciary duty as promoter to owners corporation - question whether plaintiff breach duty reserved for further consideration.

[Meriton](#)

## **Thompson v MacDonald [2015] VSC 93**

Supreme Court of Victoria

McMillan J

Testator's family maintenance - plaintiff sought payment of balance of amount owing pursuant to orders made as result of family provision claim - trustees submitted they had properly administered Will and estate of deceased and there were no moneys owing to the plaintiff - plaintiff contended estate expenses seemed excessive and that award was made to her out of 'net estate' - s97(4)(a) *Administration and Probate Act 1958* (Vic) - held: effect of orders was that provision for plaintiff should not be taken into account by trustees in determining apportionment of liabilities of estate and plaintiff's claim should be paid in full - balance of amount owing to plaintiff to be paid by trustees.

[Thompson](#)

## **Re The Bell Group Ltd (in liq); ex parte Woodings as liquidator of The Bell Group Ltd (In Liq) ACN 008 666 993 [2015] WASC 88**

Supreme Court of Western Australia

Pritchard J

Corporations - winding up - liquidator of company sought order pursuant to s1322(4) *Corporations Act 2001* (Cth) (the Act) declaring that appointment of Committee of Inspection for company which occurred at general meeting of creditors was not invalid and that Committee's acts, decisions and resolutions were not invalid by contravention of s548 - liquidator also sought direction he was justified in proceeding on that basis - statutory construction - held: there was contravention of s548 because no meeting of contributories held in relation to establishment of Committee, however Court satisfied declaration should be made that appointment not invalid and that acts, decisions and resolutions of Committee not invalid due to contravention - Court also persuaded direction should be made pursuant to s479(3) that liquidator justified and acting properly in proceeding on basis appointment not invalid.

[Bell](#)



# Benchmark

**From: A Dream of the Unknown**

by P. B. Shelley

I DREAM'D that as I wander'd by the way  
Bare winter suddenly was changed to spring,  
And gentle odours led my steps astray,  
Mix'd with a sound of waters murmuring  
Along a shelving bank of turf, which lay  
Under a copse, and hardly dared to fling  
Its green arms round the bosom of the stream,  
But kiss'd it and then fled, as thou mightest in dream.

There grew pied wind-flowers and violets,  
Daisies, those pearl'd Arcturi of the earth,  
The constellated flower that never sets;  
Faint oxlips; tender bluebells, at whose birth  
The sod scarce heaved; and that tall flower that wets—  
Like a child, half in tenderness and mirth—  
Its mother's face with heaven-collected tears,  
When the low wind, its playmate's voice, it hears.

And in the warm hedge grew lush eglantine,  
Green cow-bind and the moonlight-colour'd may,  
And cherry-blossoms, and white cups, whose wine  
Was the bright dew yet drain'd not by the day;  
And wild roses, and ivy serpentine  
With its dark buds and leaves, wandering astray;  
And flowers azure, black, and streak'd with gold,  
Fairer than any waken'd eyes behold.

[P. B. Shelley](#)

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