

Monday, 20 April 2015

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

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Executive Summary (1 minute read)

Commissioner for Consumer Protection v Unleash Solar (in liq) Pty Ltd (FCA) - corporations - Commissioner granted leave to commence proceedings against company in liquidation

Golden Mile Property Investments Pty Ltd (in liq) v Cudgegong Australia Pty Ltd (NSWCA) - real property - equity - mortgages - entitlement to compensation for resumed land - appeal allowed - matter remitted to Land and Environment Court

Kissane Family Pty Ltd as Trustee for the Kissane Family Trust v Burns (NSWSC) - contract - funding of promotional tour by soccer team - funder entitled to return of funds it lent to promotor

Veall v Veall (VSCA) - Wills and estates - refusal to grant probate - testator lacked testamentary capacity when making Will - appeal dismissed

Gekko Developments Pty Ltd v Centa Company Pty Ltd (QSC) - contract - no agreement for conditional or unconditional payment of amount to plaintiff

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Summaries With Link (Five Minute Read)

Commissioner for Consumer Protection v Unleash Solar (in liq) Pty Ltd [2015] FCA 348

Federal Court of Australia

McKerracher J

Corporations - Commissioner sought leave to commence proceedings against company in liquidation pursuant to s471B *Corporations Act 2001* (Cth) - in substantive proceedings Commissioner sought relief including injunction pursuant to s232 *Australian Consumer Law* (Cth) - purpose of application to ensure assets dealt with such that no person derived advantage inconsistent with legislative scheme - standing - service out of jurisdiction - delay - complexity of factual and legal issues - held: there was serious question in dispute and appropriate explanation for delay - liquidator had notice and had not raised objection - leave granted.

[Commissioner](#)

Golden Mile Property Investments Pty Ltd (in liq) v Cudgegong Australia Pty Ltd [2015] NSWCA 100

Court of Appeal of New South Wales

Macfarlan, Emmett & Gleeson JJA

Real property - equity - corporations - mortgages - applicant was registered proprietor of land resumed by second respondent (Transport NSW) - proceeding concerned entitlement to compensation under *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (JTA) - at time of acquisition applicant had been deregistered under s601AB(2) *Corporations Act 2001* (Cth) - prior to acquisition first respondent contracted to buy resumed land from company (Stacks) which was exercising power of sale under registered mortgage over resumed land granted by applicant (first mortgage) - dispute between applicant and first respondent concerned which of them was entitled to compensation under JTA - part of compensation had been paid by Transport NSW to Stacks and to another company (RTS), which was mortgagee under a second registered mortgage over resumed land granted by applicant - held: trial judge erred in dealing with question whether Stacks breached duty to applicant in exercising power of sale under first mortgage - leave to appeal granted - appeal allowed - matter remitted to Land and Environment Court to determine respective interests that applicant and first respondent had in resumed land.

[Golden](#)

Kissane Family Pty Ltd as Trustee for the Kissane Family Trust v Burns [2015] NSWSC 423

Supreme Court of New South Wales

Lindsay J

Contract - questions concerning construction and operation of contract relating to funding of promotional tour of Australia by soccer team - plaintiff provided money to promotor but suffered shortfall in financial return - meaning of clause of principal contract between plaintiff, promotor

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and guarantors which provided that funds provided by plaintiff to cover costs of tour would be repaid to plaintiff "from the distribution of ticket sales" - admissibility of extrinsic evidence - contractual context - competing contentions - *indebitatus assumpsit* - held: amount repaid to plaintiff fell short of "the funds advanced" - plaintiff entitled against promotor to be repaid balance on promoter's default in repaying outstanding balance of "the funds advanced" - entitlement enforceable in debt or under law of restitution - plaintiff entitled to return of funds lent by it to promotor and not repaid but "retained" by promotor - guarantors accepted guarantee obliged them to make good promotor's default - judgment for plaintiff.

[Kissane](#)

Veall v Veall [2015] VSCA 60

Court of Appeal of Victoria

Santamaria, Beach & Kyrou JJA

Wills and estates - testamentary capacity - appellants were executors of 10 December 2010 will and sought its admission to probate - respondent was deceased's daughter - respondent objected to grant of probate on grounds deceased lacked testamentary capacity and did not know and approve of contents of will - primary judge upheld objection on grounds that although testator had testamentary capacity it was not persuaded testator knew of and approved of contents of Will - appellants appealed - suspicious circumstances - capacity of testator to evaluate claims on bounty - held: deceased lacked testamentary capacity at time of making December Will - notice of contention upheld - Court not persuaded trial judge erred in holding he could not be affirmatively satisfied testator knew and approved the contents of the December will - appeal dismissed.

[Veall](#)

Gekko Developments Pty Ltd v Centa Company Pty Ltd [2015] QSC 87

Supreme Court of Queensland

P McMurdo J

Contract - defendant owner of shopping centre signed option to purchase granted to plaintiff company - dealings between parties to end of shopping centre being sold - plaintiff claimed parties agreed that in consideration of plaintiff giving up claim to contractual entitlement to property, defendant would pay amount to plaintiff - defendant denied contract made - whether amount was promised to be paid - whether consideration for a promise to pay - held: defendant did not contractually promise to pay amount to plaintiff, conditionally or unconditionally - option agreement had been terminated - plaintiff failed to prove alleged agreement - judgment for defendant.

[Gekko](#)

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