



Thursday, 20 August 2015

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

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Executive Summary (1 minute read)

NSW Trustee and Guardian v State of New South Wales (NSWSC) - succession - intestacy - determination of sequences of deaths of mother and son - declarations and orders

SAB Closed 1 Pty Ltd v Bees & Honey Pty Ltd; Bees & Honey Pty Ltd v SAB Closed 1 Pty Ltd (NSWSC) - costs - summons and cross-summons dismissed in proceedings - plaintiff to pay 80% of defendant's costs

Permanent Custodians Ltd v Bertola (WASC) - caveat - order restricting lodging of further caveat in respect of property

Summaries With Link (Five Minute Read)

NSW Trustee and Guardian v State of New South Wales [2015] NSWSC 1121

Supreme Court of New South Wales

Hallen J

Succession - intestacy - rights of succession - plaintiff administrator of deceased's estate sought determination as to order of deaths of deceased son and deceased mother, declarations and costs orders - principal question was sequence of deaths of mother and son, relevant to destination of their estates and person or persons entitled on intestacy - held: Court satisfied plaintiff established on balance of probabilities that son died before mother - it was not "uncertain" which of mother and son survived - Court able to determine who did survive the other without resort to statutory presumption referred to in s35 *Conveyancing Act 1919* (NSW) - declarations and orders made.

[NSW](#)

SAB Closed 1 Pty Ltd v Bees & Honey Pty Ltd; Bees & Honey Pty Ltd v SAB Closed 1 Pty Ltd [2015] NSWSC 1162

Supreme Court of New South Wales

Stevenson J

Costs - Court found defendant purchaser entitled to terminate agreement and plaintiff vendor not entitled to damages sought - Court found defendant not entitled to return of deposit - held: neither party achieved success sought - however overall defendant had been successful - it would produce undue cost and expense in assessment process were Court made costs orders for each issue won or lost by parties - plaintiff to pay 80% of defendant's costs - Court not prepared to make gross sums costs order under s98(4)(c) *Civil Procedure Act 2005* (NSW) - defendant to pay costs thrown away of arranging for witness to travel from France who was not ultimately required for cross-examination.

[SAB](#)

Permanent Custodians Ltd v Bertola [2015] WASC 301

Supreme Court of Western Australia

Master Sanderson

Caveat - plaintiff sought order against first defendant for removal of caveat over property - there was no serious question to be tried as interest of prior registered mortgagee was paramount and indefeasible against alleged subsequent interest - caveat lapsed by time matter came for hearing - plaintiff sought order that no further caveat be lodged by first defendant in relation property without leave of Court - held: first defendant was serial caveator - caveats entirely without merit in relation to matters involving plaintiff - orders made restricting first defendant from lodging any further caveats.

[Permanent](#)

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