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Banking

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Allwood v Peter Vivian Benjafield t/as Benjafield & Associates Lawyers (NSWCA) - judicial review - solicitors' fees - costs assessments not impugned on basis of beneficiaries' lack of standing

V8 Supercars Holdings Pty Ltd v Lucas Dumbrell Investments Pty Ltd (NSWSC) - commercial contract - separate questions - clause did not compel sale of rights by tender

ICM Investments Pty Ltd v San Miguel Corporation and Berri Ltd (VSCA) - contract - corporations - illegality - breach of put and call option agreement - damages

Summaries with links (5 minute read)

Allwood v Peter Vivian Benjafield t/as Benjafield & Associates Lawyers [2014] NSWCA 355

Court of Appeal of New South Wales

McColl, Ward & Emmett JJA

Judicial review - succession - solicitors' costs - legal fees rendered by solicitor to deceased - invoices paid by deceased before death - solicitor was deceased's executor - costs assessments made under *Legal Profession Act 2004* (NSW) - District Court set aside assessments on basis beneficiaries had no standing in relation to assessment applications - beneficiaries sought to set aside District Court's decision - held: determinations could not be impugned by beneficiaries' lack of standing - parties both at fault but solicitor, as executor, owed clear duty to estate and to beneficiaries to ensure its proper administration - despite clear conflict existed between solicitor's personal interests and duties to estate, stance he adopted did not assist in proper resolution of issues - District Court appeal dismissed - determination of review panel confirmed - solicitor to pay costs of proceedings.

[Allwood](#)

V8 Supercars Holdings Pty Ltd v Lucas Dumbrell Investments Pty Ltd [2014] NSWSC 1391

Supreme Court of New South Wales

Pembroke J

Contract - separate questions relating to proper construction of two racing entitlement contracts (REC) in same form - parties to first contract included V8 Holdings, V8 Supercars Australia Pty Ltd (V8SCA) and first defendant - parties to second contract included V8 Holdings, V8SCA and second defendant - defendants operated motor racing team that entered V8 Supercars in motor racing events - relationship between each team and V8 Holdings and V8SCA governed by terms of respective REC - meaning of clause of contract enlivened when a team failed to submit an entry registration form by certain date - defendants contended that *sale* of rights under clause must be by tender and by no other means - plaintiffs contended clause did not state expressly or by necessary implication that contemplated sale must be by tender - held: plaintiffs' construction favoured - clause did not compel a sale by tender - plaintiffs succeeded on separate questions.

[V8 Supercars Holdings Pty Ltd](#)

ICM Investments Pty Ltd v San Miguel Corporation and Berri Ltd [2014] VSCA 246

Court of Appeal of Victoria

Nettle, Santamaria & Beach JJ

Contract - corporations - illegality - Berri manufactured and marketed beverages - San Miguel was beverage and packaging company - ICM was company with interests in food and beverage manufacturing - majority of Berri's shares owned by companies associated with ICM - balance owned by institutional investors - ICM and San Miguel entered transaction documents whereby

San Miguel acquired institutional investors' shares in Berri and agreed to sell their shares in Berri in tranches - following exercise of a put option, San Miguel acquired remaining 49 per cent of Berri from ICM - ICM claimed damages from San Miguel and Berri - ICM contended Berri was required to declare and pay, and San Miguel was required to procure declaration and payment of, a fully franked dividend to ICM immediately prior to completion of transfer of ICM's shares to San Miguel - primary judge found San Miguel and Berri breached obligations under transaction documents, but ultimately concluded ICM had not proved it had suffered any loss and damage - held: appeal allowed - judgment for ICM against San Miguel for damages for breach of put and call option deed in amount of dividend together with amount of franking credits - Berri's cross-appeal allowed - San Miguel's cross appeal dismissed.

[ICM Investments Pty Ltd](#)

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