

Thursday 20 November 2014

## Banking

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

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#### Executive Summary (1 minute read)

**Chapple v Wilcox** (NSWCA) - succession - community standards and expectations did not require provision for grandson out of grandfather's estate

**Ghan v Ghan** (SASC) - Wills - Will was valid - subsequent letter not a testamentary document

**Great Southern Finance Pty Ltd (in liq) v Rhodes** (WASC) - pleadings - directors' duties - statutory business rule - paragraphs of defence struck out - leave to replead

#### Summaries with links (5 minute read)

**Chapple v Wilcox [2014] NSWCA 392**

Court of Appeal of New South Wales

Basten, Barrett & Gleeson JJA

Succession - respondent made claim for family provision order in respect of grandfather's estate pursuant to Ch 3 *Succession Act 2006* (NSW) - under Will, whole estate left to respondent's mother who was deceased's only child - primary judge found that community standards and expectations required that provision be made for respondent out of the estate and ordered provision - mother submitted that primary judge failed to give adequate reasons and erred in his statutory discretion in making the family provision order - held: in light of factual circumstances there was no basis for primary judge's view that community standards and expectations required

any provision for grandson out of estate so that Court could be justified in interfering with testator's clearly stated testamentary wishes - decision was unreasonable and plainly unjust - failure to properly exercise judicial discretion - appeal allowed.

[Chapple](#)

**Ghan v Ghan [2014] SASC 176**

Supreme Court of South Australia

Gray J

Wills - deceased made Will in 1985 - validity of 1985 Will not in dispute - deceased also authored letters in 2004 and 2005 - parties reached compromise and agreed 1985 will should be admitted in solemn form - parties further sought order pronouncing against validity of most recent of letters - held: Will duly executed in 1985 was valid Will and should be admitted in solemn form - letter did not satisfy requirements of s8 *Wills Act 1936* (SA) as it was only witnessed by one person - letter did not satisfy the requirements of s12(2) as evidence did not establish that it was intended to be a testamentary document.

[Ghan](#)

**Great Southern Finance Pty Ltd (in liq) v Rhodes [2014] WASC 431**

Supreme Court of Western Australia

Beech J

Pleadings - directors' duties - GSF claimed defendant directors breached their duties in approving certain uncreditworthy loans by GSF - GSF sought to strike out three paragraphs of defence on grounds they were vague, embarrassing, and disclosed no reasonable defence, that they may prejudice, embarrass or delay fair trial, or were otherwise an abuse of process - statutory business judgment rule - ss1317S & 1318 *Corporations Act 2001* (Cth) - held: defendant required to identify in his pleading any decision he made in reliance on business judgment rule - greater specificity required in identifying case to ensure fairness to GSF - paragraphs of defence struck out - leave to replead.

[Great Southern Finance Pty Ltd](#)

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