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

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### Executive Summary (1 minute read)

**Luo v Zhai (FCA)** - contract - breach of share acquisition agreement - damages

**State of New South Wales v Shaw (NSWCA)** - contract - no term of mutual trust and confidence or duty of good faith implied in employment contracts - appeal allowed

**Morel v Bank of Queensland (QCA)** - loans and mortgages - extension of time within which to appeal from default judgment in bank's favour refused

**BGC Australia Pty Ltd v Minspec Pty Ltd (WASC)** - freezing orders - orders ancillary to prospective freezing orders made

## Summaries With Link (Five Minute Read)

### **Luo v Zhai [2015] FCA 350**

Federal Court of Australia

Perram J

Contract - restitution - consumer law - proceedings arising from share acquisition agreement - first respondent's company imported office chairs and sold them wholesale - applicant agreed to buy a 40% stake in company from first respondent for amount - agreement also contemplated stake would be lifted to 55% - applicant paid amount but did not receive any shares - applicant paid further amount to company to assist with its expenses - first respondent obliged to transfer shares to applicant by 30/6/12 but did not do so - applicant sued for return of money - held: first respondent breached contract - there was total failure of consideration but there could not be double recovery - first respondent did not engage in misleading or deceptive conduct - judgment for applicant.

[Luo](#)

### **State of New South Wales v Shaw [2015] NSWCA 97**

Court of Appeal of New South Wales

Beazley P; Ward & Gleeson JJA

Contract - respondents appointed as probationary teachers assigned to school - NSW deemed to be employer under s42 *Teaching Services Act 1980* (NSW) - respondents' probationary appointments annulled pursuant to s48(2) - determination made pursuant to s48(4) that they ceased to be employed by NSW Education Teaching Service - respondents claimed damages against NSW for breach of employment contracts - primary judge found NSW breached term of mutual trust and confidence implied into the contracts of employment but awarded no damages - primary judge rejected appellants' claim contracts were repudiated and found that even if they were repudiated, respondents' conduct was inconsistent with acceptance of repudiation - primary judge awarded costs in respondents' favour - parties appealed and cross-appealed - held: no term of mutual trust and confidence or duty of good faith implied into contracts - primary judge erred in finding provisions of Teacher's Handbook incorporated into contracts - appeal allowed - cross-appeal dismissed.

[Shaw](#)

### **Morel v Bank of Queensland [2015] QCA 58**

Court of Appeal of Queensland

Holmes, Fraser & Morrison JJA

Default judgment - loans and mortgages - applicant borrowed money from bank with six loans secured over properties held in applicant's other name - applicant defaulted - bank sought to recover outstanding amount - Registrar entered default judgment in favour of bank - applicant's application to set aside default judgment dismissed - applicant sought extension of time to appeal - delay - merits of proposed appeal - held: no adequate explanation for delay in bringing application - no good reason to relieve applicant from consequences of not filing in time -



default judgment regularly entered - no arguable defence to resist bank's claim - application for extension of time refused.

[Morel](#)

**BGC Australia Pty Ltd v Minspec Pty Ltd [2015] WASC 134**

Supreme Court of Western Australia

Mitchell J

Freezing orders - plaintiff sought orders under O52A r3 *Rules of the Supreme Court 1971 (WA)* requiring defendants and third defendant's wife to swear affidavits providing information about assets they allegedly controlled - order sought to enable plaintiff to obtain information relevant to prospective freezing order for which it anticipated it would apply - confidentiality - held: there was proper basis for apprehending there might be grounds for making application for freezing orders in future - sufficient concern to justify ancillary order - Court also satisfied that prospect of potential claim under s89 *Property Law Act 1969 (WA)* in relation to property held by wife sufficient to justify requiring her to swear affidavit - orders ancillary to prospective freezing orders made - defendants and non-party required to file affidavits

[BGC](#)

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