

Wednesday, 22 April 2015

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

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Executive Summary (1 minute read)

Caltex Australia Petroleum Pty Ltd v Troost (No 2) (NSWCA) - costs - guarantee and indemnity - appellant not entitled to indemnity costs in proceedings

In the Estate of the late Ronald Robert Irvine; Evans v Gibbs (NSWSC) - Wills and estates - deceased intended informal document to form his Will - declaration

Blue Concept Pty Ltd v Farnan (VSC) - real property - covenant precluded construction of multi-apartment development

Ralph Lauren 57 Pty Ltd v Conley (QSC) - corporations - winding up - statutory demands set aside

Hayes v Hayes (QSC) - succession - deceased did not have interest in property at time of death - declaratory relief

Summaries With Link (Five Minute Read)

Caltex Australia Petroleum Pty Ltd v Troost (No 2) [2015] NSWCA 103

Court of Appeal of New South Wales

Meagher, Barrett & Emmett JJA

Costs - indemnity costs - guarantee and indemnity - Court allowed appeal in proceedings giving verdict and judgment for Caltex - Court concluded respondent should pay Caltex's costs of

proceedings in District Court and on appeal - Caltex sought indemnity costs on basis of respondent's failure to accept offer of compromise - alternatively Caltex sought to rely on indemnity as entitling it to indemnity costs - respondent contended there should be no order as to costs of District Court proceedings because Caltex was unsuccessful on issue whether it was entitled to recover under guarantee as distinct from indemnity - s160 *Evidence Act 1995* (NSW) - r51.9 *Uniform Civil Procedure Rules 2005* (NSW) - held: failure to accept offer and terms of indemnity were not bases for indemnity costs order - ultimately Caltex completely successful against respondent - no basis to depart from usual rule that costs should follow event in District Court.

[Caltex](#)

In the Estate of the late Ronald Robert Irvine; Evans v Gibbs [2015] NSWSC 432

Supreme Court of New South Wales

Stevenson J

Wills and estates - deceased died in 2013 - deceased made Will in 1994 - in 2012 deceased wrote over five pages in red covered notebook (Informal Will) - whether for purposes of s8 *Succession Act 2006* (NSW) deceased intended informal Will to be his Will thus revoking 1994 Will - held: Court comfortably satisfied deceased intended Informal Will would operate *without more* as his Will - declaration made.

[Irvine](#)

Blue Concept Pty Ltd v Farnan [2015] VSC 125

Supreme Court of Victoria

McDonald J

Real property - restrictive covenant - plaintiff property developer was registered proprietor of land - plaintiff wished to erect multi-apartment development on land - defendants opposed development - plaintiff sought declaration that obligations created by covenant expired prior to it becoming registered proprietor - s84 *Property Law Act 1958* (Vic) - held: obligations created by covenant continued to bind plaintiff - amendments to covenant were in lieu of those created by original covenant - amended covenant precluded construction of multi-apartment development - application dismissed.

[Blue](#)

Ralph Lauren 57 Pty Ltd v Conley [2015] QSC 90

Supreme Court of Queensland

Douglas J

Corporations - winding up - applicant sought to set aside 14 statutory demands pursuant to s459G *Corporations Act 2001* (Cth) - applicant contended there was genuine dispute as to each "debt", that there was "some other reason" to set aside demands and that demands not effectively served - statutory demand procedure - effect of parallel proceedings in Family Court of Australia - held: Court satisfied there was genuine dispute about nature of debt claimed and whether it was payable immediately - not appropriate to deal with matter when Family Court of Australia likely to be required to deal with factual issues sought to be debated - statutory



demands set aside.

[Ralph Lauren](#)

Hayes v Hayes [2015] QSC 88

Supreme Court of Queensland

Boddice J

Succession - plaintiff claimed provision from estate of deceased father pursuant to s41 of *Succession Act 1981* (Qld) - plaintiff also sought declaration that at date of death father had interest in real property - separate determination of claim for declaratory relief - plaintiff submitted that money paid by parents for construction of house on the second defendant sister's property were advanced by way of loan and consequently, father had equitable interest in the property - equitable considerations arising from advancing of funds by parent to child - characterisation of parents' payments - held: Court satisfied funds advanced to second defendant for construction of house and its ongoing costs were gift subject to common endeavour - property owned by the second defendant, legally and beneficially, in its entirety - conclusion consistent with terms of the deceased's Wills - declaratory relief refused.

[Hayes](#)

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