



Thursday, 23 July 2015

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

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Bevic Holdings Pty Ltd v Wright (NSWCA) - statutory demand - refusal to set aside statutory demand - leave to appeal refused

Jojeni Investments Pty Ltd v Mosman Municipal Council (No 2) (NSWCA) - costs - offers of compromise - indemnity costs refused

Winky Pop v Mobil (VSC) - damages - petroleum leak - basis for measurement of damages - plaintiffs entitled to sum for costs incurred in investigating leak

Design Joinery & Doors Pty Ltd v IPower Pty Ltd (No 2) (SASC) - costs - judgment for plaintiffs reduced on defendant's appeal - mixed success - conduct - costs orders

Benchmark

Summaries With Link (Five Minute Read)

Bevic Holdings Pty Ltd v Wright [2015] NSWCA 210

Court of Appeal of New South Wales

McColl JA; Sackville AJA

Statutory demand - applicant sought leave to appeal from primary judge's decision to decline application pursuant to s459G *Corporations Act 2001* (Cth) to set aside a statutory demand served by respondent pursuant to s459E - held: application did not rise above contention advanced below that applicant wished to put respondent to proof - applicant's case did not rise above mere assertion based on "suspicion and uncertainty" insufficient to succeed on s459G application - applicant failed to identify issue of principle, question of general public importance or injustice warranting grant of leave to appeal - application dismissed.

[Bevic](#)

Jojeni Investments Pty Ltd v Mosman Municipal Council (No 2) [2015] NSWCA 208

Court of Appeal of New South Wales

Macfarlan, Gleeson & Leeming JJA

Costs - offer of compromise - Court allowed appeal in proceedings - appellant sought order for indemnity costs on basis of offers of compromise - rr20.26, 42.14 & 51.47 *Uniform Civil Procedure Rules 2005* (NSW) - held: offers complied with Rules - Council not shown to be unreasonable in refusing offers of compromise in circumstances where subject matter of proceeding was declaratory relief, point was of general importance, acceptance of offer would have deprived Court of benefit of argument and Council was only appropriate contradictor - special costs order refused.

[Jojeni](#)

Winky Pop v Mobil [2015] VSC 348

Supreme Court of Victoria

Digby J

Damages - negligence - nuisance - claim arising from petroleum leak (Mobil leak) which created plume of petroleum hydrocarbon in groundwater underneath plaintiffs' land - plaintiffs claimed against Mobil in negligence, nuisance, and for compensation under s151 *Pipelines Act 2005* (Vic) - plaintiffs also claimed against State in negligence - Mobil admitted it contaminated plaintiffs' land and conceded responsibility for leak and clean up - appropriate form of relief - held: proper basis for measurement of damages was diminution in value of plaintiffs' land - plaintiffs did not establish they had or but for Mobil leak would have had opportunity to develop plaintiffs' land residentially - plaintiffs had not lost opportunity to develop plaintiffs' land because of Mobil leak - opportunity to develop plaintiffs' land residentially had no real prospect of being successfully pursued - Mobil leak would not prevent or impair plaintiffs' ability to develop land for residential purposes - plaintiffs are entitled to be paid sum of \$104,273.93 with interest by Mobil in relation to their costs incurred in investigating the Mobil leak.

[Winky](#)



Design Joinery & Doors Pty Ltd v IPower Pty Ltd (No 2) SASC 102

Supreme Court of South Australia

Blue J

Costs - Magistrate gave judgment for plaintiffs - judgment reduced on appeal - determination of liability in contract was reversed but plaintiffs' alternative restitution cause of action successful - defendant sought order for costs of appeal except hearing on restitution, and order for costs or part thereof of action in Magistrate's Court - plaintiffs sought costs of appeal and costs of action in Magistrate's Court except for application to reopen - held: plaintiffs to pay defendant's costs thrown away on appeal due their failure to file notice of alternative contention - no order as to costs of appeal - order that plaintiffs pay the defendant's costs of application to reopen on Supreme Court Scale not disturbed - no order as to costs of action.

[Design](#)

[Click Here to access our Benchmark Search Engine](#)