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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)

Australian Securities and Investments Commission v Mariner Corporation Ltd (FCA) - corporations - conduct relating to announcement of off-market take-over bid - originating application dismissed

Papantoniou v Brown (NSWCA) - contract - arrangement for purchase of share in property - finding of unjust contract outside pleadings - denial of procedural fairness - appeal allowed

Re Calder Park Promotions (In Liq) (VSC) - corporations - non-compliance by examinee with requirement to produce documents - examinee ordered to pay wasted costs incurred by liquidators

Nichols Constructions Pty Ltd v Mt Marlow Pty Ltd (QSC) - pleadings - contract - loan - statement of claim embarrassing and struck out with leave to replead

Summaries With Link (Five Minute Read)

Australian Securities and Investments Commission v Mariner Corporation Ltd [2015] FCA 589

Federal Court of Australia

Beach J

Corporations - proceeding concerning lawfulness of defendants' conduct relating to announcement of off-market takeover bid by company for all issued capital of another company at 10.5 cents per share - ASIC brought proceeding against Mariner and its three directors alleging contraventions of ss180, 631(2)(b) & 1041H *Corporations Act 2001* with respect to takeover announcement - test for 'reckless' - misleading or deceptive conduct - price representation - funding representation - held: ASIC's claims failed - originating application dismissed.

[ASIC](#)

Papantoniou v Brown [2015] NSWCA 168

Court of Appeal of New South Wales

Beazley P; Macfarlan JA & Sackville AJA

Contract - unjust contracts - procedural fairness - solicitor entered contractual arrangement with two brothers, one of which later died, to purchase sisters' share of co-owned property - brothers agreed solicitor could borrow funds for purchase and provide mortgage of property as security - brothers agreed to provide guarantees to lender - solicitor made purchase with borrowed funds secured over property - brothers provided guarantees - solicitor defaulted - lender took possession - one brother incurred expenses in unsuccessful attempt to resist lender's claim - primary Judge found original contractual arrangement unjust under *Contracts Review Act 1980* and declared it void to extent it required solicitor's liability to be borne by respondents and ordered solicitor to pay compensation to respondents - held: finding that contractual arrangement unjust was outside cross-claims pleaded by respondents - conditions in *Dare v Pulham* for conduct of case outside pleadings not satisfied - solicitor denied procedural fairness - respondents not entitled to claim expenses against solicitor of unsuccessfully resisting lender's claim for possession - appeal allowed.

[Papantoniou](#)

Re Calder Park Promotions (In Liq) [2015] VSC 285

Supreme Court of Victoria

Gardiner AsJ

Corporations - external administration - liquidators of company sought that summonses be issued for examination of certain persons in relation to examinable affairs of company summons issued to examinee to attend examination and produce documents - liquidators sought that examinee pay their costs wasted by reason of his failure to produce the documents - ss596A & 597(9) *Corporations Act 2001* - held: there was serial non-compliance with requirement to produce documents - examinee ordered to pay the costs wasted by reason of the non-



compliance with his obligations - Court declined to fix costs.

[ReCalder](#)

Nichols Constructions Pty Ltd v Mt Marlow Pty Ltd [2015] QSC 165

Supreme Court of Queensland

Martin J

Pleadings - plaintiff sought declarations orders against first and second defendants with respect to loan from plaintiff to another company - second defendant sought to strike out claim and statement of claim - rr171 & 293 *Uniform Civil Procedure Rules 1999* - held: pleading was inadequate - pleading relied on at least one allegation which was not properly pleaded and which might not be able to be pleaded - not a fruitful exercise to attempt to excise inadequate parts - pleading was embarrassing and struck out with leave to replead.

[Nichols](#)

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