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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)

Queensland North Australia Pty Ltd v Takeovers Panel (FCAFC) - judicial review - corporations - declaration of unacceptable circumstances by Takeover Panel - appeal allowed - matter remitted

Smart v AAI Ltd; JRK Realty Pty Ltd v AAI Ltd (NSWSC) - insurance - deregistered company's liability to plaintiffs not covered by insurance policy - proceedings dismissed

Southage Pty Ltd v Vescovi (VSCA) - restitution - borrower's signature on loan and mortgage documents forged by husband - change of position defence established

Equity-One Mortgage Fund Ltd v Pepe (VSC) - contempt - warrant of possession - re-entry of property - contempt proved beyond reasonable doubt - directions

Donald v Guillester (QCA) - succession - gift of residue of estate in clause of Will did not fail - appeal dismissed

Modular Forms Pty Ltd v Cecich (WASC) - caveats - serious question to be tried - caveats extended on temporary basis

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Summaries With Link (Five Minute Read)

Queensland North Australia Pty Ltd v Takeovers Panel [2015] FCAFC 68

Full Court of the Federal Court of Australia

Dowsett, Middleton & Gilmour JJ

Judicial review - corporations - primary judge dismissed application for judicial review of Takeover Panel's declaration of unacceptable circumstances in relation to affairs of company made pursuant to s657A *Corporations Act 2001* (Cth) - appellants contended primary judge erred in failing to find application to Panel and its declaration of unacceptable circumstances were out of time, or that primary judge erred in failing to find acquisition of shares was not a breach of s606 *Corporations Act 2001* (Cth) - ss9, 601QA(a), 602, 606, 608, 610, 631, 657A, 657B, 657C & 657D - held: primary judge erred in failing to find application to Panel and its declaration of unacceptable circumstances were each made out of time - it was necessary for time to be extended in each case - appeal allowed - matter remitted - Panel should consider whether extension of time to bring application should be granted.

[Queensland](#)

Smart v AAI Ltd; JRK Realty Pty Ltd v AAI Ltd [2015] NSWSC 392

Supreme Court of New South Wales

Beech-Jones J

Insurance - corporations - two proceedings brought against insurer under s601AG *Corporations Act 2001* (Cth) - in one proceeding plaintiff transferred amount to bank account of company which was finance broker - in other proceedings plaintiff transferred amount to company's account - plaintiffs were persuaded to transfer funds by company's general manager - general manager misappropriated funds - plaintiffs did not recover funds - company wound up and deregistered but was party to claims made insurance policy underwritten by defendant insurer - plaintiffs sued insurer under s601AG - whether company liable to plaintiffs immediately before deregistration - whether policy "covered" liability - held: company liable to plaintiffs for breach of contract - insurer could not invoke contributory negligence or proportionate liability provisions of *Trade Practices Act 1974* (Cth) (TPA) or *Civil Liability Act 2002* to diminish quantum of liability - plaintiffs also established liability on company's part for engaging in false and misleading conduct contrary to former s52 TPA - however Court upheld certain of insurer's reasons for contending company's liability - liability of deregistered company to plaintiffs not "covered" - proceedings dismissed

[Smart](#)

Southage Pty Ltd v Vescovi [2015] VSCA 117

Court of Appeal of Victoria

Warren CJ, Santamaria JA & Ginnane AJA

Restitution - respondent's signature on loan and mortgage documents forged by husband - lender sought restitution of money advanced on basis it was paid by mistake of fact - trial judge held respondent had changed position on faith of receipt of money such that it would be

inequitable to require her to pay it back - held: trial judge correct to find that were it not for respondent's belief deposit paid by husband, she would not have entered transaction - by time of lender's claim, respondent had suffered irreversible detriment such that she would be in worse position if ordered to repay money than had she not received loan at all - change of position defence established - trial judge correct to hold it would be inequitable to require respondent to repay money - appeal dismissed.

[Southage](#)

Equity-One Mortgage Fund Ltd v Pepe [2015] VSC 161

Supreme Court of Victoria

Ginnane J

Contempt - possession - plaintiff sought order that defendant be punished for contempt under rr75.05 & 75.11(1) *Supreme Court (General Civil Procedure) Rules 2005* on basis he breached judge's order - whether plaintiff proved contempt charge beyond reasonable doubt - held: elements of statement of charge proved beyond reasonable doubt that defendant remained on property after service of judge's order - Court satisfied charge of contempt proved beyond reasonable doubt - further warrant of possession issued - further directions given for hearing of application.

[Equity](#)

Donald v Guillester [2015] QCA 92

Court of Appeal of Queensland

Gotterson, Morrison & Philippides JJA

Succession - husband and wife killed in an aeroplane crash - it could not be established which of them died first - husband left will - in clause of Will husband gifted everything to wife but if she died first, everything to be split 50 per cent to respondent sister-in-law, 25 per cent to brother and 25 per cent split between three others - sister in law sought grant of letters of administration - appellant was husband's mother - appellant claimed entitlement to estate on basis that ss33B & 65 *Succession Act 1981* (Qld) had effect that gifts failed and estate fell for distribution as on intestacy" - primary judge found estate should be administered by sister-in-law on basis of the gifts - appellant appealed - construction of s33B - application of s33B to Will - proper construction of clause of Will - held: gift of residue was enlivened because of s33B and did not fail - appeal dismissed.

[Donald](#)

Modular Forms Pty Ltd v Cecich [2015] WASC 177

Supreme Court of Western Australia

Pritchard J

Caveats - plaintiff sought extension of two caveats under s138C(1) *Transfer of Land Act 1893* - dispute concerning status of contracts between parties for development of land - whether caveator's claim had or may have substance - onus on caveator to show there was a serious question to be tried - balance of convenience - held: Court satisfied interests claimed had or may have substance - there was serious question to be tried - caveats extended on temporary

basis.
[Modular](#)

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