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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)

Big Country Developments Pty Ltd v Peter Griffiths (No 3) (NSWSC) - landlord and tenant - repudiation of lease - reasonable steps to mitigate damages - guarantors liable to lessor

Jageurs v Downing (VSC) - Wills and estates - application for probate of Will and informal codicil refused

A v C (SASCFC) - contract - judicial review - 'A' was a 'public officer' within meaning of term in *Independent Commissioner Against Corruption Act 2012* (SA) - appeal dismissed

Acquista Investments Pty Ltd v The Urban Renewal Authority (No 2) (SASCFC) - costs - commonality of interests - need for separate representation - successful respondents to have costs of appeal and trial

Summaries With Link (Five Minute Read)

Big Country Developments Pty Ltd v Peter Griffiths (No 3) [2015] NSWSC 1182

Supreme Court of New South Wales

Kunc J

Landlord and tenant - plaintiff sued third and fourth defendants as guarantors of lease made between plaintiff as lessor and company as lessee over premises - claims and cross-claims between plaintiff and others resolved by settlement or default judgment - issues for determination were whether lessee abandoned premises or otherwise parted with possession of them constituting repudiation of lease, or plaintiff wrongfully retook possession of premises, and whether plaintiff took reasonable steps to mitigate its damages arising from repudiation of lease - held: lessee abandoned premises and thereby repudiated lease - plaintiff did not wrongfully retake possession of premises even if conclusion as to repudiation wrong - plaintiff took reasonable steps to mitigate damages - guarantors liable to plaintiff.

[BigCountry](#)

Jageurs v Downing [2015] VSC 432

Supreme Court of Victoria

McMillan J

Wills and estates - probate - informal codicil - plaintiff sought grant of probate of 2007 Will and informal document pursuant to s9 *Wills Act 1997* (Vic) - plaintiff contended deceased left informal document intended to be codicil to 2007 Will - held: Court not satisfied deceased knew and approved of contents of the informal codicil or intended it to be testamentary document - Court not satisfied deceased had testamentary capacity on date informal codicil created - Court not satisfied deceased intended informal codicil to be a codicil to 2007 Will - application for probate dismissed.

[Jageurs](#)

A v C [2015] SASCFC 105

Full Court of the Supreme Court of South Australia

Kourakis CJ; Kelly & Peek JJ

Contract - judicial review - A appointed as member of Government Board by letter from Premier attaching document entitled "Terms of Appointment for Members of the South Australian Economic Development Board" and Board's Charter - Independent Commissioner Against Corruption commenced investigation into conduct of A - Commissioner issued warrants authorising investigators to enter and search certain places occupied by A - A challenged lawfulness of the Commissioner's decision to issue warrants and validity of warrants - parties agreed it was appropriate to determine whether A was a 'public officer' under *Independent Commissioner Against Corruption Act 2012* (SA) - 'public officer' defined by s4 and Sch 1 to include person who performed work as contractor for the Crown, or as employee or other agent of a contractor for the Crown - primary judge found that A was a public officer - A appealed - 'as a contractor' - 'personally performs' - held: no error in primary judge's finding A was a

contractor - A was contractor because he performed work for Crown pursuant to contractual obligation - appeal dismissed.

[AvC](#)

Acquista Investments Pty Ltd v The Urban Renewal Authority (No 2) [2015] SASCFC 117

Full Court of the Supreme Court of South Australia

Vanstone & Lovell JJ; Debelle J

Costs - successful respondents sought costs of appeal and trial - appellants accepted they should pay first and second respondents' costs of appeal but opposed order in third respondent's favour in respect of appeal - appellants submitted only one set of costs should be awarded for appeal given commonality of interests between third respondent and first and second respondents - appellants submitted costs order of trial judge should not be disturbed or only minimally - r269 *Supreme Court Civil Rules 2006 (SA)* - held (by majority): appellants' argument that respondents should receive only one set of costs not made good - respondents were ultimately successful - despite commonality of interests, there were compelling reasons why respondents' separate representation was necessary - appellants to pay respondents' costs of appeal and trial.

[Acquista](#)

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