



Monday, 28 September 2015

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

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### Executive Summary (1 minute read)

**Hudson v Sigalla** (FCAFC) - bankruptcy - leave not required under s58(3)(b) *Bankruptcy Act 1966* (Cth) for creditor to sue person who was previously the bankrupt, after creditors had accepted proposal for composition in satisfaction of bankrupt's debts thereby bringing about annulment of bankruptcy - appeal dismissed

**Burge v Burge** (NSWCA) - Wills and estates - informal testamentary document - deceased did not intend later document to form his Will - appeal dismissed

**Isacson v Riad Tayeh & David Solomons as liquidators of Isacson Pty Ltd (In Liq)** (NSWSC) - corporations - deed of settlement - winding up of company terminated

**Rodda Pty Ltd v Rodda** (SASC) - stay - stay of orders pending appeal refused

# Benchmark

## Summaries With Link (Five Minute Read)

### **Hudson v Sigalla [2015] FCAFC 140**

Full Court of the Federal Court of Australia

Allsop CJ; Jagot & Katzmann JJ

Bankruptcy - effect of bankruptcy on property and proceedings - appeal concerning proper construction and reach of s58(3) *Bankruptcy Act 1966* (Cth) - whether leave was required under s 58(3)(b) for creditor to sue person who was previously the bankrupt, after creditors had accepted by special resolution proposal for composition in satisfaction of bankrupt's debts thereby bringing about annulment of bankruptcy - ss5, 43, 57A, 58, 73, 74, 75, 82 & 149 *Bankruptcy Act 1966* (Cth) - ss471B & 500(2) *Corporations Act 2000* (Cth) - held: primary judge correct to conclude leave under s58(3) unnecessary - leave was not required under s58(3) - appeal dismissed.

[Hudson](#)

### **Burge v Burge [2015] NSWCA 289**

Court of Appeal of New South Wales

Macfarlan, Meagher & Leeming JJA

Wills and estates - informal testamentary document - respondent was widow of deceased - respondent sought order that probate in solemn form be granted in respect of Will made by deceased in 1983 - Will named respondent sole executrix and respondent was sole beneficiary - appellant was son of respondent and deceased - appellant asserted his late father prepared an informal will in 2007 that purported to state his testamentary intentions and was intended to form his Will - document purported to revoke all former testamentary dispositions and named appellant as sole beneficiary - appellant sought order that letters of administration with Will annexed be granted in respect of 2007 document in reliance on s8 *Succession Act 2006* (NSW) - primary judge not persuaded deceased intended 2007 document would form his Will and operate as his Will revoking any previous Will - probate of 1983 Will was granted to respondent in solemn form - held: primary judge did not err in failing to be satisfied deceased intended the later document to form his Will in accordance with s8(2)(a) - it was a borderline case - Court concluded no error in primary judge failing to be satisfied that deceased had requisite intention - appeal dismissed.

[Burge](#)

### **Isacson v Riad Tayeh & David Solomons as liquidators of Isacson Pty Ltd (In Liq) [2015] NSWSC 1394**

Supreme Court of New South Wales

Robb J

Corporations - winding up - applicant shareholder in company, who was not party to proceedings, sought order under s482 *Corporations Act 2001* (Cth) that winding up of company be terminated - applicant was party to deed of settlement that related to proceedings - settlement contingent on Court making orders sought - held: informality of applicant excused -



application relatively uncontentious - no issue of 'commercial morality' - no breach of statutory or general law duties concerning company's management - liquidators content for order to be made - interests of creditors not an impediment to order - public interest weighed in favour of termination of winding up - no reason Court should thwart parties' aspirations to deed of settlement or applicant's capacity to enjoy the fruits of settlement - winding up of company terminated.

[Isacson](#)

## **Rodda Pty Ltd v Rodda [2015] SASC 149**

Supreme Court of South Australia

Kelly J

Stay - appellants sought stay of execution of orders pending appeal - orders required appellants to pay equitable compensation and pre-judgment interest to respondents and to transfer estate and interest in farming land to them - serious issue for determination - risk of prejudice - balance of convenience - held: grounds of appeal not completely without merit - appellants failed to establish they were at real risk of suffering prejudice of damage that could not be redressed if successful on appeal - balance of convenience did not favour stay - stay refused.

[Rodda](#)

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