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Banking

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Austructures Pty Ltd v Makin (VSC) - corporations - pleadings - leave to amend certain paragraphs of statement of claim

Ristic v Maroti (No 2) (VSC) - funds in court - proceeds of sale of property - failure to prove contribution to relationship - payment out less admitted sum owing

Summaries with links (5 minute read)

Austructures Pty Ltd v Makin [2014] VSC 544

Supreme Court of Victoria

Almond J

Corporations - pleadings - limitations - plaintiffs alleged contraventions by first defendant of duties under ss180(1), 181(1), 182(1) & 183(1) *Corporations Act 2001* (Cth) - statement of claim also set out limited claims against second defendant - plaintiffs sought to amend statement of claim - plaintiffs submitted proposed amendments expanded existing claims based on breaches of the Act to include claims against second defendant - plaintiff also submitted amendments would allow plaintiffs to seek extension of time, if necessary, for commencing proceeding for breach of statutory obligations, and that they claimed from second defendant any benefit it received from first defendant's breaches of fiduciary obligations - addition of statute-barred causes of action -

discretion to extend time - ss1317K & 1322(4) - *no later than* - held: Court did not have discretion to extend time for commencing claim for compensation order under s1317H - leave to amend pleadings in respect of new claims of knowledge of contravening conduct refused - leave to amend concerning claims of advantage obtained by second defendant allowed so that question of first defendant's legal capacity between himself and second defendant at relevant times could be determined at trial.

[Astructures Pty Ltd](#)

Ristic v Maroti (No 2) [2014] VSC 540

Supreme Court of Victoria

Lansdowne AsJ

Funds in court - trusts - entitlement to sum of money deposited into the Court - sum was balance proceeds of sale of property registered in plaintiff's name - plaintiff claimed whole of funds that remained - defendant sought payment out to her of half of sum paid in on basis she and plaintiff were in de facto relationship - financial and non-financial contributions she had made to relationship - defendant claimed plaintiff should be found to hold one half of balance of proceeds of sale on constructive trust for her - held: defendant bore onus of proof on issue of contribution and failed to discharge it - Court not satisfied defendant made financial or non-financial contributions such that the plaintiff should be held to hold balance of the funds after sale of his home on constructive trust for her, with exception of sum of \$3000 he admitted that he owed her early in dispute - defendant's claim for alteration of property interests remained - first issue to be determined in respect of that claim, if it were pursued, was whether leave should be granted to allow it to be brought out of time - payment out to plaintiff of the remaining funds in Court, less \$3000.

[Ristic](#)

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