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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)

Kanakaridis v Westpac Banking Corporation (FCA) - summary dismissal - loans and mortgages - estoppel - bank entitled to dismissal of applicants' whole claim - proceeding dismissed

Sharp v Attorney General of NSW (NSWSC) - trusts and trustees - judicial advice - gift in Will effective to create valid charitable trust - declarations and orders

CBX2 Pty Ltd v National Australia Bank Ltd (No 3) (NSWSC) - security for costs - threshold issue - plaintiff discharged onus that it ought not provide security for costs - security for costs declined

Wandel v Halloran (SASCFC) - contract - primary judge's findings as to contract supported by evidence - disconformity between pleaded cases and accepted evidence did not lead to procedural fairness or miscarriage of justice - appeal dismissed

Summaries With Link (Five Minute Read)

Kanakaridis v Westpac Banking Corporation [2015] FCA 1146

Federal Court of Australia

Beach J

Summary dismissal - loans and mortgages - estoppel - res judicata - applicants sought to set aside or prevent enforcement of loan agreements and mortgages entered into with respondent bank - issues applicants sought to litigate had already been litigated to finality in Supreme Court of Victoria - summary judgments had been given in favour of bank - bank sought summary dismissal on grounds of res judicata, issue estoppel, Anshun estoppel and that proceeding was abuse of process - bank also contended that claims untenable with no reasonable prospects of success - held: bank entitled to judgment dismissing whole of applicants' claims pursuant to s31A (2) *Federal Court of Australia Act 1976* (Cth) or r26.01 *Federal Court Rules 2011* (Cth) - certain claims subject of issues estoppel, Anshun estoppel and were abuse of process - other claims had no prospects of success - proceeding dismissed.

[Kanakaridis](#)

Sharp v Attorney General of NSW [2015] NSWSC 1580

Supreme Court of New South Wales

Stevenson J

Trusts and trustees - judicial advice - wills and estates - by testator's Will whole of estate after payment of debts and expenses was to be held in trust known as "Street of Dreams Martin Sharp Trust" - executors sought judicial advice and declarations - whether Will created valid charitable trust - ambit of clause allowing "my trustees to deal with my assets" - whether corporate trustee of trust could be appointed in lieu of the executors and literary executors - whether trustees had power to sell property - held: gift in Will effective to create valid charitable trust - declarations and orders proposed by parties made.

[Sharp](#)

CBX2 Pty Ltd v National Australia Bank Ltd (No 3) [2015] NSWSC 1555

Supreme Court of New South Wales

Harrison AsJ

Security for costs - threshold issue - defendant sought security for costs of proceeding pursuant to r42.21 *Uniform Civil Procedure Rules 2005* (NSW) and/or s1335 *Corporations Act 2001* (Cth) - whether it appeared to Court by credible testimony that there was reason to believe plaintiff would be unable to pay defendant's costs if successful in its defence - bona fides of claim/prospects of success - impecuniosity of plaintiff - stultification - whether impecuniosity/financial position caused by defendant's actions - held: exercise of discretion a finely balanced task having taken matters into account - plaintiff discharged onus that it ought not provide security for costs - security for costs declined.

[CBX2](#)

Wandel v Halloran [2015] SASCFC 155

Full Court of the Supreme Court of South Australia

Nicholson J; Bampton & Parker JJ

Contract - primary judge found respondents entitled to amounts due under contracts for repair to river crossing and water supply made orally between parties - appellant contended contract claims as found by primary judge were not pleaded and evidence insufficient to establish them - held: primary judge's findings as to contracts were supported by evidence - disconformity between respondents' pleaded cases and evidence accepted by primary judge did not give rise to procedural unfairness or miscarriage of justice - appeal dismissed.

[Wandel](#)

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