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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)

NuCoal Resources Ltd v Independent Commission Against Corruption (NSWSC) - judicial review - recommendation in relation to revocation of exploration licence - Commission did not breach duty to “fully investigate” - summons dismissed

In the matter of Akierman Holdings Pty Ltd (NSWSC) - corporations - derivative action - leave granted to bring proceedings on behalf of company

Epichealth Pty Ltd v Yang (VSC) - restraint of trade - contract - injunction granted restraining defendant from providing medical clinic services within 10 kilometre radius of clinic operated by plaintiff

Jageurs v Downing (No 2) (VSC) - wills and estates - costs - unsuccessful application to admit informal document as codicil - delay - executor to remain as executor of estate - indemnity costs

Stacks Managed Investments Limited v Tolteca Pty Ltd (QSC) - contract - default on loan - no unconscionable conduct by lender - lender entitled to recovery of mortgaged property

Summaries With Link (Five Minute Read)

NuCoal Resources Ltd v Independent Commission Against Corruption [2015] NSWSC 1400

Supreme Court of New South Wales

Rothman J

Judicial review - plaintiff sought judicial review of Independent Commission against Corruption's recommendation in relation to revocation of exploration licence - plaintiff alleged recommendation performed in breach of conditions necessary for performance - plaintiff's critical challenge related to Commission's duty to "fully investigate" - s73(2) *Independent Commission Against Corruption Act 1988* (NSW) - *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014* (NSW) - held: no breach of duty to investigate - Commission did not act otherwise than in accordance with law - findings if made were not made otherwise than in accordance with law - summons dismissed.

[NuCoal](#)

In the matter of Akierman Holdings Pty Ltd [2015] NSWSC 1395

Supreme Court of New South Wales

Black J

Corporations - derivative action - plaintiff applied under s237(1) *Corporations Act 2001* (Cth) for leave to bring derivative proceedings on behalf of company against defendant alleging breach of directors' duties under ss180, 181 & 182 *Corporations Act 2001* (Cth) and at general law - whether plaintiff satisfied criteria for grant of leave specified in s237(2) - held: it was probable company would not bring proceedings - plaintiff was acting in good faith - it was in best interests of company for plaintiff to bring proceedings subject to plaintiff granting indemnity - there was serious question to be tried - leave granted for plaintiff to bring derivative proceedings.

[Akierman](#)

Epichealth Pty Ltd v Yang [2015] VSC 516

Supreme Court of Victoria

John Dixon J

Restraint of trade - plaintiff operated medical clinic - defendant was medical practitioner employed at clinic under contract - defendant gave plaintiff 6 months' notice of termination of contract which plaintiff accepted - defendant ceased to provide services under contract before 6 month period had expired - contract included restraint clause - plaintiff sought injunction restraining defendant from providing services associated with carrying on of a general medical clinic within 10 kilometre geographical radius of clinic - contractual terms - serious question to be tried - adequacy of damages - balance of convenience - held: Court satisfied course which appeared to carry lower risk of injustice if wrong was to grant plaintiff relief sought.

[Epichealth](#)

Jageurs v Downing (No 2) [2015] VSC 509

Supreme Court of Victoria

McMillan J

Wills and estates - costs - plaintiff was executor of deceased's estate - defendant successfully opposed application for informal document to be admitted as codicil to 2007 will - plaintiff had failed to administer estate of deceased in timely manner and to communicate effectively with defendant - determination of costs - whether plaintiff should remain executor of - held: plaintiff to remain as executor of estate but subject to Court being informed as to progress of estate's administration - application to propound informal document not fault of deceased nor proper or appropriate in circumstances - entitlements of defendant and sibling under 2007 will should not be affected - defendant acted reasonably in bringing related proceeding - proper basis to award indemnity costs to defendant - costs orders made.

[Jageurs](#)

Stacks Managed Investments Limited v Tolteca Pty Ltd [2015] QSC 276

Supreme Court of Queensland

Ann Lyons J

Contract - defendant borrowed \$1,000,000 from plaintiff for purpose of subdivision of land - defendant granted plaintiff mortgage over property where defendant's sole director resided with husband - plaintiff sued defendant for recovery of property on basis amount of repayment outstanding from loan - defendant counterclaimed for relief on basis of 'unconscionable conduct' by plaintiff in breach of s12CC *Australian Securities and Investments Commission Act 2001* (Cth) - held: Court not satisfied plaintiff's failures to investigate further or verify information amounted to unconscionable conduct - Court not satisfied plaintiff's conduct in relation to loan could be characterised as unconscionable - defendant had otherwise admitted loan, mortgage and default - plaintiff entitled to relief sought.

[Stacks](#)

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