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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)

**Samadi Developments Pty Ltd v SX Projects Pty Ltd** (NSWSC) - stay - security of payments - proceedings challenging underlying contractual issues - stay of proceedings pending payment of judgment debt refused - security for costs granted

**Lawrence & Hanson Group Pty Ltd v Young** (VSCA) - caveat - removal of caveat - prospects of success - balance of convenience - leave to appeal granted

**Regreen Asset Holdings Pty Ltd v Castricum Brothers Australia Pty Ltd** (VSCA) - contract - implied term - dismissal of claim for damages for conversion - appeal dismissed

**Mould v Commissioner of State Revenue** (VSCA) - land tax - exemption of primary production - assessment in relation to land owned by appellant as trustee of estate - primary production not sole business - land not exempt - appeal dismissed

**Schultz v Bank of Queensland Ltd** (QCA) - equity - guarantee - wife not relieved of obligations on basis of *Yerkey v Jones* - appeal dismissed

## Summaries With Link (Five Minute Read)

### **Samadi Developments Pty Ltd v SX Projects Pty Ltd [2015] NSWSC 1576**

Supreme Court of New South Wales

Ball J

Stay - security of payments - defendant obtained judgment against plaintiff in sum for progress claims under contract based on adjudication determination - plaintiff sought to litigate underlying contractual issues - defendant sought stay of proceeding until plaintiff paid judgment sum to it - alternatively defendant sought security for its costs of proceeding and stay if security not provided - whether contrary to policy of *Building and Construction Industry Security of Payment Act 1999* (NSW) to fail to grant stay of proceedings - held: defendant failed on application for stay but succeeded on application for security for costs - orders made.

[Samadi](#)

### **Lawrence & Hanson Group Pty Ltd v Young [2015] VSCA 284**

Court of Appeal of Victoria

Kyrou JA & Ginnane AJA

Caveat - applicant sought to appeal against trial judge's order that caveat be removed pursuant to s103(1) *Transfer of Land Act 1958* (Vic) - whether applicant had real prospect of succeeding on appeal - whether error established in exercise of discretion of class stated in *House v The King* - ss89(1) & 990(3) - balance of convenience - held: applicant had real prospects of success - question whether trial judge sufficiently balanced effect of losing priority of security interest in property if caveat removed was ground for granting leave to appeal - if applicant succeeded on appeal its ability to lodge new caveat and derive real benefit could not be described as fanciful - leave to appeal granted.

[Lawrence](#)

### **Regreen Asset Holdings Pty Ltd v Castricum Brothers Australia Pty Ltd [2015] VSCA 286**

Court of Appeal of Victoria

Warren CJ, Kyrou & McLeish JJA

Contract - implied term - applicant sought leave to appeal from trial judge's dismissal of its claim for damages for conversion of rendering equipment it purchased from respondent - trial judge held there was implied term of agreement for sale that 'completion was subject to settlement' of separate agreement for sale of land on which equipment situated (implied term), that implied term was contingent condition not fulfilled, and respondent was obliged to refund entire purchase price to applicant - whether trial judge erred in making finding about implied term - held: ground of appeal rejected that trial judge erred by finding there was implied term and thereby misapplied principles in *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977) 180 CLR 266 - applicant did not specify evidence of pre-contractual conduct allegedly wrongly taken into account by trial judge or principle in *Codelfa* allegedly infringed - trial judge correct in concluding that even if evidence of parties' post-contractual conduct was admissible, conditions in 'BP Test' would still be satisfied - appeal dismissed.

## [Regreen](#)

### **Mould v Commissioner of State Revenue [2015] VSCA 287; [2014] VSC 268 [2015] VSCA 285**

Court of Appeal of Victoria

Warren CJ, Tate JA & Digby AJA

Land tax - Commissioner issued land tax assessment in relation to land owned by appellant in capacity as trustee of estate - appellant unsuccessful in appeal before single judge pursuant to s106 *Taxation Administration Act 1997* (Vic) - whether appellant satisfied requirements of s67(2)(c)(i) *Land Tax Act 2005* (Vic) - common ground that if appellant was 'a trustee of a trust of which ... the sole business [was] primary production of the type carried on the land', then land would have been exempt from land tax pursuant to s67 - whether judge erred in finding estate conducted separate business of renting residential properties such that primary production was not its sole business - held: no error in finding estate conducted rental business - appeal dismissed.

## [Mould](#)

### **Schultz v Bank of Queensland Ltd [2015] QCA 208**

Court of Appeal of Queensland

Holmes CJ, Philippides JA & Boddice J

Equity - guarantee - appellant wife claimed she should be relieved of obligation to pay bank under guarantee she gave for loan made to family trust controlled by former husband - claim made in reliance on *Yerkey v Jones* - primary judge found there was no special disadvantage and that appellant did not have any of the alleged material misunderstandings relied upon - primary judge found no basis for alternative claim of unconscionable conduct by bank and dismissed claim - bank succeeded on counterclaim for possession - appellant appealed - held: ample evidence for finding no material misunderstanding or special disadvantage - failure to make express findings on question of volunteer or onus of proof did not affect correctness of ultimate conclusions - appeal dismissed.

## [Schultz](#)



# Benchmark

## **Sonnet 7: How soon hath Time, the subtle thief of youth**

By John Milton

How soon hath Time, the subtle thief of youth,  
Stol'n on his wing my three-and-twentieth year!  
My hasting days fly on with full career,  
But my late spring no bud or blossom shew'th.  
Perhaps my semblance might deceive the truth  
That I to manhood am arriv'd so near;  
And inward ripeness doth much less appear,  
That some more timely-happy spirits endu'th.  
Yet be it less or more, or soon or slow,  
It shall be still in strictest measure ev'n  
To that same lot, however mean or high,  
Toward which Time leads me, and the will of Heav'n:  
All is, if I have grace to use it so  
As ever in my great Task-Master's eye.

[John Milton](#)

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