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Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Ekes v Commonwealth Bank of Australia (NSWCA) - estoppel - earlier Federal Court proceedings - guarantor permitted to file defence and cross-claim (I B C)

Petronijevic v Milojkovic (NSWSC) - contract - trusts - estoppel - detrimental reliance on promise of ownership of property - equitable compensation (B)

Kino v Prestige Philately (VSC) - conversion - sale of goods - misappropriated stamps on-sold to innocent purchaser - estoppel not established (I B)

Bill Express Ltd v Pitcher Partners (a Firm) (VSC) - corporations - negligence - no order referring questions to expert accountant as special referee (I B)

Ecosse Property Holdings Pty Ltd v Gee Dee Nominees Pty Ltd (VSC) - construction of long-term farm lease - tenant's liability to taxes, outgoings, assessments and rates (B)

Re Arthur Brady Family Trust; Re Trekmore Trading Trust (QSC) - equity - vesting dates of discretionary trusts amended (B)

Summaries with links (5 minute read)

Ekcs v Commonwealth Bank of Australia [2014] NSWCA 336

Court of Appeal of New South Wales

Bathurst CJ, Beazley P & Emmett JA

Estoppel - bank sued guarantor for company's debt - primary judge struck out guarantor's defence, refused leave to file amended defence, and entered judgment for Bank - earlier Federal Court proceedings were set down for hearing but dismissed by agreement - held: primary judge erred in striking out defence and refusing leave to file proposed defence and cross-claim - not so obviously untenable that it could not possibly succeed - issue estoppel, Anshun estoppel, and abuse of process did not apply - loss from loan advances a separate and distinct loss from loss suffered by company - guarantor demonstrated extraordinary dilatory conduct and flagrant disregard for Court's directions - however, because defence should not have been struck out, relative prejudice in allowing additional claims in cross-claim would be limited.

[Ekcs](#) (I B C)

Petronijevic v Milojkovic [2014] NSWSC 1337

Supreme Court of New South Wales

White J

Contract - trusts - estoppel - parties were father and daughter - plaintiff claimed she had conversation with father in which he promised she would have ownership of property if she renovated it at her own cost - father sold house - plaintiff sought a declaration that father held proceeds of sale on trust for her, damages for breach of contract, or equitable compensation - conceded that claim in contract could not succeed - held: plaintiff induced by father's representation to act to her detriment on assumption she would receive property after her father's death - acts of detrimental reliance were expenditure of savings on renovations to property, payment of statutory outgoings, and labouring work in which plaintiff engaged with her father - plaintiff awarded equitable compensation.

[Petronijevic](#) (B)

Kino v Prestige Philately [2014] VSC 469

Supreme Court of Victoria

Vickery J

Conversion - Kino was sole beneficiary of deceased's residual estate - Will provided for stamp collection to form part of residual estate - stamp collection distributed to Kino - Kino claimed art dealer misappropriated stamps and certificates - art dealer had sold stamps and certificates to collector - stamps were to be offered for sale through auctioneer - Kino claimed ownership and sought delivery up of stamps - collector claimed that, because plaintiff did not report stamps were missing to Australian Philatelic Traders Association, she was estopped from denying art dealer's

authority to sell stamps - s27 *Goods Act 1958* (Vic) and/or s26 *Sale of Goods Act 1923* (NSW) - held: art dealer misappropriated stamps and purported to on-sell them - nemo dat rule would apply unless estoppel established - estoppel not established - collector's and auctioneer's cross-claims against art dealer succeeded - Court to hear parties on appropriate orders including delivery up of stamps, and quantum of damages to be paid to Kino, auctioneer and collector.

[Kino](#) (I B)

Bill Express Ltd v Pitcher Partners (a Firm) [2014] VSC 482

Supreme Court of Victoria

Macaulay J

Corporations - negligence - auditors - company in liquidation sued former auditors who audited company's financial statements in different financial years - company in liquidation claimed damages from each firm due to their allegedly defective audits - company sought order referring questions to a special referee for determination concerning correct application of the Australian Accounting Standards made pursuant to s334 *Corporations Act 2001* (Cth) to accounting treatment of particular computer terminals in company's financial statement - held: Court not persuaded it was appropriate to refer questions to special referee - real risk that process would cause more delay and cost than it would avoid - issue which company sought to have decided by expert accountant involved question of law of proper construction of Accounting Standards - more appropriate that a judge determine question rather than a special referee.

[Bill Express Ltd](#) (I B)

Ecosse Property Holdings Pty Ltd v Gee Dee Nominees Pty Ltd [2014] VSC 479

Supreme Court of Victoria

Croft J

Leases and tenancies - long-term farm lease - proceedings concerning tenant's liability to pay rates, taxes, assessments and outgoings, including land tax - judgment confined to construction of provisions of lease - ambiguity - held: landlord entitled to declaration that lease, on its proper construction, provided that tenant pay all rates, taxes, assessments and outgoings in respect of the leased land, including land tax - landlord's monetary claim reserved for further hearing.

[Ecosse Property Holdings Pty Ltd](#) (B)

Re Arthur Brady Family Trust; Re Trekmore Trading Trust [2014] QSC 244

Supreme Court of Queensland

P McMurdo J

Equity - trusts - discretionary trusts - applicants were trustees of discretionary trusts - each trust had a vesting date of 16/2/17 - substantial tax consequences if vesting date remained and trust property were distributed - applicants sought orders amending vesting dates - all primary and contingent beneficiaries consented to amendment - held: amendment of trust deed to change vesting date could be fairly characterised as a transaction under s94 *Trusts Act 1973* (Qld) -

proposed transaction would be in best interests of potential beneficiaries - alternative would be a substantial depletion of assets held by each trustee - Court satisfied there was a discretion to make order sought - vesting dates amended.

[Re Arthur Brady Family Trust \(B\)](#)

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