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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)

Coffey Information Pty Ltd v Cullen (FCA) - preliminary discovery on basis of alleged use of confidential information refused (I B)

Steiner v Strang (NSWSC) - wills - interim distribution of pecuniary legacy to beneficiary of estate refused (B)

Greenhills Securities Pty Ltd v Loire Consultants Pty Ltd (NSWSC) - corporations - statutory demands - genuine disputes - defects causing substantial injustice - demands set aside (B)

Swindells v Victoria (VSC) - employment contract - misleading and deceptive conduct - no unlawful appointment and removal of mining warden - claim dismissed (I B G)

COFP Pty Ltd v Dhanush Infotech Pty Ltd (QCA) - summary judgment - no evidence of existence of contract between parties - appeal dismissed (B)

Baldwin v Icon Energy Ltd (QSC) - pleadings - contract - claim for breach of memorandum of understanding struck out (I B C)

Australia and New Zealand Banking Group Ltd v Manasseh (WASC) - bank's claim for amount owing under guarantee dismissed (I B C)

Summaries with links (5 minute read)

Coffey Information Pty Ltd v Cullen [2015] FCA 28

Federal Court of Australia

Farrell J

Preliminary discovery - prospective applicant sought order for discovery against prospective respondents on basis of alleged use of confidential information by departing employees - r7.23 *Federal Court Rules 2011* (Cth) - reasonable belief of right to obtain relief - reasonableness of enquiries - conduct relied upon - sufficiency of information to start proceedings - held: necessary for Court to consider position of each individual respondent - applicant had used proceedings as an alternative to enquiries which were necessary to satisfy requirements of r7.23 - applicant did not satisfy requirements of r7.23 - application dismissed.

[Coffey Information Pty Ltd](#) (I B)

Steiner v Strang [2015] NSWSC 14

Supreme Court of New South Wales

Ball J

Wills - plaintiff beneficiary of deceased mother's estate sought pursuant to s84 *Probate and Administration Act 1898* (NSW) that defendant executors make further distributions of plaintiff's pecuniary legacy - effect of unresolved Court proceedings on potential size of estate - unquantified liabilities of estate - held: prudent for executors to retain balance of pecuniary legacy payable to plaintiff until remaining court proceedings resolved and precise liabilities of estate could be determined - interim distribution refused.

[Steiner](#) (B)

Greenhills Securities Pty Ltd v Loire Consultants Pty Ltd [2015] NSWSC 13

Supreme Court of New South Wales

Ball J

Corporations - winding up - plaintiff sought orders setting aside three statutory demands - defendants conceded that one statutory demand should be set aside - ss459G & 459H *Corporations Act 2001* (Cth) - plaintiff sought to set aside remaining demands on basis there was genuine dispute as to existence of debt - single application in respect of multiple demands - service - defects in originating process - held: there was genuine dispute in relation to one demand - other demand was defective causing substantial injustice and there was also a genuine dispute in relation to it - both demands set aside.

[Greenhills Securities Pty Ltd](#) (B)

Swindells v Victoria [2015] VSC 19

Supreme Court of Victoria

Macaulay J

Employment contract - misleading and deceptive conduct - plaintiff alleged he was unlawfully appointed to and removed from office of mining warden by State and Minister - plaintiff claimed damages for loss of salary and entitlements under employment contract, loss of earning capacity, reputational harm and emotional distress - s13 *Fair Trading Act 1999* (Vic) - held: State and Minister did not contravene s13 when appointing plaintiff - in removing plaintiff State and Minister did not repudiate or breach any term of employment contract, deny him procedural fairness, act for an improper purpose or with apprehended bias - claim dismissed.

[Swindells](#) (I B G)

COFP Pty Ltd v Dhanush Infotech Pty Ltd [2015] QCA 1

Court of Appeal of Queensland

Holmes. Fraser & Morrison JJ

Summary judgment - contract - appellant sued respondent for money owed for services and damages for breach of contract - respondent contended agreement was made with another company - respondent obtained summary judgment - held: complete absence of evidence on which Court could objectively conclude agreement existed between appellant and respondent - further evidence which appellant's director sought to adduce did not advance matters for appellant - leave to adduce evidence refused - appellant had no prospect of succeeding in action against respondent - trial would have been fruitless - primary judge did not err in giving summary judgment for respondent under r293(2) *Uniform Civil Procedure Rules 1999* (Qld) - appeal dismissed.

[COFP Pty Ltd](#) (B)

Baldwin v Icon Energy Ltd [2015] QSC 12

Supreme Court of Queensland

P McMurdo J

Pleadings - contract - parties entered memorandum of understanding (MOU) to the end of entering into gas supply agreement - no gas supply agreement concluded - plaintiff sued defendants, claiming they did not negotiate as they promised in MOU - defendants sought to strike out statement of claim on basis it disclosed no reasonable cause of action or was otherwise an abuse of process - rr171(1)(a) & 171(1)(e) *Uniform Civil Procedure Rules 1999* (Qld) - held: promises within clauses of MOU were uncertain and unenforceable - promises within one clause taken alone were enforceable - open to plaintiff to make claim for damages for breach of terms in that clause but plaintiff had made no distinct claim - claim for loss and damage deficiently pleaded - statement of claim struck out.

[Baldwin](#) (I B C)

Australia and New Zealand Banking Group Ltd v Manasseh [2015] WASC 34

Supreme Court of Western Australia



McKechnie J

Contract - guarantee - defendant's husband borrowed money on behalf of company from bank - defendant provided guarantee secured by mortgage - bank contended guarantee continued for subsequent credit contracts offered or made to company - bank sued on one of the subsequent contracts (November 2009 credit contract) - defendant claimed liability came to an end on termination date of extension to guarantee to which she had agreed - defendant did not agree to guarantee November 2009 credit contract - held: no misleading or deceptive conduct by bank - defendant's obligation could only end when company had performed all of its obligations to bank and discharged its liability in full - however November 2009 credit contract was in substance a replacement agreement which adversely affected defendant's liability under guarantee - defendant would only become liable if she consented or entered into new guarantee - bank's claims under guarantee and mortgage dismissed.

[Australia and New Zealand Banking Group Ltd](#) (I B C)

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