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

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Executive Summary (1 minute read)

Woodside Energy Ltd v Zaghloul (No 2) (FCAFC) - costs - unsuccessful appellant granted special costs order to compensate for considering respondent's arguments which were without merit and abandoned (I C)

Scandinavian Tobacco Group Eersel BV v Trojan Trading Company Pty Ltd (FCA) - consumer law - trade marks - parallel importing of tobacco products - claims of infringement of trade mark, misleading and deceptive conduct and passing off not made out - application dismissed (I B)

Kessly v Hasapaki (NSWCA) - contempt - not open to trial judge to make declaration of contempt in appellant's absence when he had previously indicated intention to make practical orders - appeal allowed (I B C)

National Australia Bank v Sayed (No. 3) (NSWSC) - real property - possession - equity - set-off - stay of orders for possession in mortgagee's favour until hearing of mortgagor's cross-claim refused (B)

In the matter of St Gregory's Armenian School Inc (NSWSC) - corporations - winding up - application to set aside liquidator's refusal of proofs of debt substantially failed (B)

Re Estate Beeby; Beeby v Eggers (NSWSC) - Wills and estates - succession - Will was last Will of free and capable testatrix - probate granted (B)

Alagiah v Crouch as administrator of the estate of Alagiah (deceased) (QSC) - succession - application for extension of time to make claim for family provision from estate of deceased former husband - applicant not a dependent former spouse under *Succession Act 1981* (Qld) - application refused (B)

Summaries With Link (Five Minute Read)

Woodside Energy Ltd v Zaghloul (No 2) [2015] FCAFC 143

Full Court of the Federal Court of Australia

Siopis, Rares & McKerracher JJ

Costs - Court dismissed appeal and ordered appellant to pay respondent's costs - appellant sought special costs order for costs thrown away due to have to address, consider and respond to notices and arguments raised by respondent - held: respondent's arguments manifestly without merit and almost entirely abandoned before or at hearing - it should have been obvious to respondent there was nothing in raised points - appellant entitled to some compensation for considering arguments - special costs order.

[Woodside](#) (I C)

Scandinavian Tobacco Group Eersel BV v Trojan Trading Company Pty Ltd [2015] FCA 1086

Federal Court of Australia

Allsop CJ

Consumer law - trade marks - passing off - applicants (STG) claimed respondent infringed registered Australian trade marks of STG Eersel for certain word marks under *Trade Marks Act 1995* (Cth) in respect of cigars, engaged in misleading or deceptive conduct in breach of the Australian Consumer Law and engaged in tort of passing off - STG sought injunctive and other relief - operation of ss120 & 123 in context of parallel importing of tobacco products - standing - held: STG Australia had standing under s26 to bring trade mark suit - uses by respondent of mark constituted infringing use as trade mark under s120 - prima facie infringement had occurred subject to s123 & 122 - s123 engaged as defence and was answer to case under Act - defence under s122(1)(b) not made out - claims for passing off and under ss18 or 29 ACL not made out - application dismissed.

[Scandinavian Tobacco](#) (I B)

Kessly v Hasapaki [2015] NSWCA 316

Court of Appeal of New South Wales

Basten & Macfarlan JJA; Sackville AJA

Contempt - appellant sued respondent neighbour in Land and Environment Court after realising respondent's home encroached on her land - consent orders made pursuant to which appellant agreed to grant easement to respondent in return for payment of amount - respondent sought to have appellant committed for contempt of court for not complying with the orders - appellant

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sought adjournment application on basis she could not attend hearing of motion due to a recent operation - trial judge refused application and found appellant guilty of contempt - appellant appealed - s94 Civil Procedure Act 2005 (NSW) - s57 *Land and Environment Court Act 1979* (NSW), held: no error in the refusal of adjournment application but not open to trial judge to make declaration of contempt in appellant's absence, after he had previously indicated an intention to make practical orders which did not involve such a declaration - appeal allowed - declaration of contempt and costs orders set aside.

[Kessly](#) (I B C)

National Australia Bank v Sayed (No. 3) [2015] NSWSC 1473

Supreme Court of New South Wales

Davies J

Real property - possession - equity - set-off - first defendant mortgagor sought stay of orders for writ of possession of land in favour of plaintiff until his cross-claim was heard concerning sale of other land at under value - *Conveyancing Act 1919* (NSW) - held: complaint about sale of a property at an under value did not impeach plaintiff's title to land in question - plaintiff had judgment which first defendant had been given time to satisfy but had not satisfied - any award of damages in first defendant's favour would merely provide source of funds to reduce judgment but not to satisfy it - no basis for grant of stay - notice of motion dismissed.

[National Australia Bank](#) (B)

In the matter of St Gregory's Armenian School Inc [2015] NSWSC 1465

Supreme Court of New South Wales

Black J

Corporations - winding up - equity - unjust enrichment - plaintiffs brought application under s1321 *Corporations Act 2001* (Cth) in respect of decisions of school's liquidator to reject all or parts of plaintiffs' proofs of debt - plaintiffs sought to set aside liquidator's decisions to reject proofs of debt and sought declaration directed at estoppel claim - no conflict and no profit rules - rule in *Cherry v Boulton* - Anshun estoppel - s21 *Civil Procedure Act 2005* (NSW) - ss553C, 554, 554(1) & 1321 *Corporations Act 2001* (Cth) - ss135 & 136 *Evidence Act 1995* (NSW) - held: appeals substantially failed - cross-claim by liquidator and company also failed - parties to bring in short minutes of order.

[St Gregory](#) (B)

Re Estate Beeby; Beeby v Eggers [2015] NSWSC 1466

Supreme Court of New South Wales

Lindsay J

Wills and estates - succession - suspicious circumstances - deceased died in 2012 leaving three Wills - plaintiffs were two of deceased's children - plaintiffs sought probate of 2008 Will or alternatively 1999 Will - defendants were also children of deceased - defendants contended preparation and execution of 2008 Will attended by "suspicious circumstances" - first defendant also contended preparation and execution of 1999 Will attended by "suspicious circumstances" - *Succession Act 2006* (NSW) - held: 2008 Will was last Will of free and capable testatrix and



should be admitted to probate - if Court had not found 2008 Will valid it would have found 1999 Will valid - grant of probate in solemn form of deceased's 2008 Will to be made.

[Beeby](#) (B)

Alagiah v Crouch as administrator of the estate of Alagiah (deceased) [2015] QSC 281

Supreme Court of Queensland

A Lyons J

Succession - family provision - applicant was divorced from deceased in 2012 - deceased died before negotiations in relation to property settlement finalised or property proceedings were filed - applicant applied under s41(8) *Succession Act 1981* (Qld) (Succession Act) for extension of time to make claim for family provision from deceased's estate - adequacy of explanation for delay - futility - ss72, 75 & 79 *Family Law Act 1975* (Cth) - held: applicant was not a dependent former spouse pursuant to s5AA(4) Succession Act - applicant not entitled to bring application - application refused.

[Alagiah](#) (B)

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