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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)

Reznitsky v District Court of New South Wales & State of New South Wales (NSWCA) - judicial review - determination of party/party costs by costs assessor - summons dismissed (I G)

Burke v Burke (NSWCA) - succession - dismissal of claim for provision by estranged adult son of deceased - appeal dismissed (B)

Tabbaa v TCN Channel Nine Pty Ltd (No 2) (NSWSC) - pleadings - defamation - rulings on objections to imputations - parties to be heard of form of orders (I)

Frontlink Pty Ltd v The Commissioner of State Revenue, Victoria (VSC) - corporations - statutory demand - application to set aside statutory demand for unpaid land tax dismissed (B)

CJM Bulk Timbers Pty Ltd v Artec Australia Pty Ltd (TASSC) - pleadings - joinder - equitable set-off - joinder granted - strike-out application dismissed - permission to amend defence (I B C)

Diploma Construction (WA) Pty Ltd v Best Bar Pty Ltd [No 2] (WASC) - contract - price increase - no breach of contract for supply of steel reinforcing bar - claims dismissed - counter-claim allowed (I B C)

De Campo v Dawson (WASC) - succession - extension of time granted to bring claim under *Family Provision Act 1972 (WA)* (B)

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Summaries With Link (Five Minute Read)

Reznitsky v District Court of New South Wales & State of New South Wales [2015]

NSWCA 194

Court of Appeal of New South Wales

McCull & Ward JJA; Ball J

Judicial review - applicant sought judicial review of decision in favour of State upholding costs assessor's determination of party/party costs arising from prior proceedings - applicant sought that orders be quashed and application remitted - ss359 & 363 *Legal Profession Act 2004* (NSW) - held: applicant did not demonstrate any denial of procedural fairness, failure to consider relevant considerations or decision made contrary to evidence - summons dismissed.

[Reznitsky](#) (I G)

Burke v Burke [2015] NSWCA 195

Court of Appeal of New South Wales

Meagher, Ward & Emmett JJA

Succession - appellant, respondent and another were surviving children of deceased had no contact with appellant for about 20 years before death - deceased made no provision for appellant - appellant sought family provision order- not disputed appellant was in financial need - primary judge found deceased entitled to regard appellant as undeserving of benefit - primary judge dismissed application - held: no error in primary judge's assessment of significance of incident which appellant maintained was material cause of estrangement - primary judge's conclusion not contradicted by evidence that appellant's telephone calls to deceased's nursing home did not bespeak attempt at reconciliation and that contact was motivated by desire to ascertain whether he was going to receive inheritance - estrangement not a determinative factor against making of provision for adult child - neither was estrangement in absence of callousness or hostility a determinative factor in favour of making of provision - estrangement was a factor to be taken into account - primary judge's assessment of position not so out of kilter with community values and expectations to bespeak error - appeal dismissed.

[Burke](#) (B)

Tabbaa v TCN Channel Nine Pty Ltd (No 2) [2015] NSWSC 921

Supreme Court of New South Wales

McCallum J

Pleadings - defamation - action arising out of television broadcast of programme - defendants objected to imputations - whether imputation incapable of arising - whether imputation bad in form - whether matter complained of capable of conveying imputation - requirement that imputations differ in substance - held: rulings on imputations given - parties to be heard on form of orders.

[Tabbaa](#) (I)

Frontlink Pty Ltd v The Commissioner of State Revenue, Victoria [2015] VSC 329

Supreme Court of Victoria

Efthim AsJ

Corporations - statutory demand - taxation - plaintiff company sought to set aside statutory demand served on it by Commissioner for unpaid land tax - Commissioner required cleared funds to satisfy demand and could not accept security in satisfaction of demand - reasonable satisfaction - s117(1)(a) *Taxation Administration Act 1997* (Vic) - held: on objective test Commissioner acted reasonably in refusing to accept charge - no unconscionable conduct or abuse of process - Court declined to exercise its discretion to set aside statutory demand under s459J(1)(b) - application dismissed.

[Frontlink](#) (B)

CJM Bulk Timbers Pty Ltd v Artec Australia Pty Ltd [2015] TASSC 30

Supreme Court of Tasmania

Holt AsJ

Pleadings - joinder - equitable set-off - contract - sawlog entitlement - defendant sought order adding two companies as second and third defendants to proceedings - second and third defendants consented to joinder and if joinder occurred all three defendants would rely on single pleading of defence - defence would need to be amended if joinder occurred - plaintiff opposed joinder and amendment and sought to strike out part of existing defence which comprised claim to a set-off - equitable set-off - mutuality - rule that all persons interested in suit should be made parties - held: plaintiff's strike-out application dismissed - defendant's amendment application allowed - defendant's joinder application allowed.

[CJM](#) (I B C)

Diploma Construction (WA) Pty Ltd v Best Bar Pty Ltd [No 2] [2015] WASC 230

Supreme Court of Western Australia

Allanson J

Contract - plaintiff builder obtained steel reinforcing bar (rebar) for projects from defendant - defendant gave notice it was increasing price of rebar- plaintiff paid increased prices at least in part up to certain date - plaintiff gave notice to defendant of termination of two contracts on ground defendant breached them - plaintiff sought declarations contracts were for fixed price, that it validly terminated contracts for defendant's repudiation, and damages - whether parties contracted on terms and conditions advanced by plaintiff which precluded increase in price during term of contract - whether to extent plaintiff paid increased prices it did so under duress - held: plaintiff failed to prove it contracted in terms alleged - claims for declarations, rescission and avoidance of contract, and for refund of overpayments failed - claim for duress also failed - plaintiff's claim dismissed - counterclaim allowed.

[Diploma](#) (I B C)

De Campo v Dawson [2015] WASC 233

Supreme Court of Western Australia

Master Sanderson

Succession - family provision - plaintiff and second defendant were the only two beneficiaries of



deceased's Will - plaintiff claimed she and second defendant agreed deceased's estate would be distributed otherwise than in accordance with Will - plaintiff claimed agreement obviated need for plaintiff to bring claim under *Family Provision Act 1972* (WA) - plaintiff claimed agreement partially carried into effect - plaintiff was informed that second defendant no longer prepared to comply with agreement - plaintiff sought extension of time to bring proceedings - held: Court satisfied plaintiff's case was arguable - no suggestion by second defendant that extension of time would prejudice position - plaintiff would have issued proceedings if she had not thought dispute had been settled - extension of time granted.

[DeCampo](#) (B)

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