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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)

Central Queensland Development Corporation Pty Ltd v Sunstruct Pty Ltd (FCAFC) - corporations - deed of company arrangement - costs - two related appeals - judgment against company varied - director's appeal allowed (B C)

AAI Limited, application under the Insurance Act 1973 (Cth) (FCA) - insurance - transfer of insurance business - dispensation from compliance with s17C(2)(c) *Insurance Act 1973* (NSW) (I)

Hudson v Arap 1 (NSW) Pty Ltd (NSWCA) - contract - Tribunal did not have jurisdiction to order termination of tenancy or possession of premises - orders quashed (B G)

Finlay v Tucker (NSWSC) - Wills - succession - finalisation of estate accounts with executor - reconciliation of estate account and parties' claims - parties to bring in short minutes of order (B)

Bieri v Ottoman Enterprises Pty Ltd as trustee for Yucel Family Trust (NSWSC) - contract for sale of property not terminated by vendor prior to termination by purchaser - purchaser entitled to return of deposit (B)

Australia & New Zealand Banking Group Ltd v Deqmo Pty Ltd (QSC) - real property - caveats - mortgagee granted orders for removal of caveats and order against Registrar of titles (B)

Skilled Group Limited v Anning (TASSC) - workers compensation - reference to Tribunal - no onus on worker to provide initial entitlement to compensation - appeal dismissed (I G)

Summaries With Link (Five Minute Read)

Central Queensland Development Corporation Pty Ltd v Sunstruct Pty Ltd [2015] FCAFC 63

Full Court of the Federal Court of Australia

Besanko, Gilmour & Ranghia JJ

Corporations - deed of company arrangement - costs - two related appeals - first appeal brought by appellant company concerning effect of Deed of Company Arrangement (DOCA) between it and its creditors on amount of judgment entered on counterclaim, and its effect on proper construction on costs orders made against it in relation to counterclaim - second appeal by company's sole director who was non-party - director was ordered with company to pay costs of proceedings - director complained he was denied procedural fairness - held: DOCA was a bar to bringing any claim for unsecured amount - judgment for only secured amount ought to have been entered - first respondent's costs of prosecuting counterclaim against company were not compromised by the DOCA having regard to s444D *Corporations Act 2001* nor first respondent's costs defending company's claims - discretion of primary judge miscarried in relation to costs order against director - there was denial of procedural fairness - judgment against company varied - company's appeal in relation to costs orders dismissed - director's appeal allowed.

[Central](#) (B C)

AAI Limited, application under the Insurance Act 1973 (Cth) [2015] FCA 452

Federal Court of Australia

Yates J

Insurance - AAI sought order under s17F(1) *Insurance Act 1973* (Cth) that scheme under Div 3A of Pt III be confirmed to give effect to transfer of insurance business of MTA Insurance Limited (MTAI) to AAI (scheme) - AAI applied under s17C(5) for dispensation with need for compliance with s17C(2) which required an approved summary of scheme to be given to every affected policyholder - AAI sought dispensation be granted provided certain other steps by way of notification were undertaken - held: Court satisfied that because of nature of scheme and circumstances of its preparation it was not necessary that approved summary be given to every affected policyholder as contemplated by s17C(2) - dispensation granted substantially on proposed terms.

[AAI](#) (I)

Hudson v Arap 1 Pty Ltd [2015] NSWCA 126

Court of Appeal of New South Wales

Bathurst CJ; Emmett JA & Bergin CJ in Eq

Benchmark

Contract - parties entered contract whereby appellant agreed to sell premises to respondent - at same time as entering contract, parties entered call option agreement whereby respondent granted appellant option to repurchase - on completion of purchase respondent as landlord and appellant as tenant entered residential tenancy agreement - NSW Civil and Administrative Tribunal (NCAT) ordered tenancy terminated and ordered appellant to give possession of premises to respondent - appellant sought to quash NCAT's orders - whether NCAT had jurisdiction to make order for termination of tenancy under Tenancy Agreement - whether Tenancy Agreement arose under term of mortgage - ss8(1)(f), 8(1)(g) & 84 *Residential Tenancies Act 2010* - held: property transferred as security for amount paid to pursuant to contract and additional amount to which respondent was entitled under Option Agreement and the Tenancy Agreement - Tenancy Agreement arose under terms of mortgage - Tribunal did not have jurisdiction to make orders - orders quashed.

[Hudson](#) (B G)

Finlay v Tucker [2015] NSWSC 560

Supreme Court of New South Wales

Slattery J

Wills - succession - six grandchildren of testator sought to finalise estate accounts with defendant executor in relation to executor's administration of the estate during lifetime of testator's widow - testator died more than 30 years ago - s86 *Probate and Administration Act 1898* - proper construction of Will - application of particular amounts of money in estate administration - whether widow received life estate or right of residence in estate property - whether amount paid to widow from sale of property was estate capital paid contrary to terms of Will - whether executor had work performed at unit purchased by estate - failure to earn income from unit - executor's occupation of unit - whether executor entitled to commission - reconciliation of estate account and parties' claims - held: parties successful on different issues in proceedings - parties to bring in short minutes of order to give effect to reasons.

[Finlay](#) (B)

Bieri v Ottoman Enterprises Pty Ltd as trustee for Yucel Family Trust [2015] NSWSC 563

Supreme Court of New South Wales

Stevenson J

Contract - plaintiff registered proprietor of property agreed to sell property to first defendant for amount - contracts exchanged - second defendant was sole director of first defendant and executed contract on its behalf - clause of contract provided that if first defendant released deposit to plaintiff prior to completion, deposit was charge over property in favour of first defendant until either termination or completion of contract by plaintiff - first defendant released deposit prior to completion - first defendant entered possession of property - first defendant failed to complete by date specified in contract - plaintiff issued notice to complete and further notice to complete - first defendant contended notice not valid because plaintiff not ready willing and able to complete on date for completion given in notice - settlement did not take place - no notice of termination served - whether plaintiff terminated contract prior to first defendant's purported termination - held: plaintiff did not terminate contract - right to retain deposit or to sue

for damages did not arise under clause of contract - first defendant entitled to return of deposit.

[Bieri](#) (B)

Australia & New Zealand Banking Group Ltd v Deqmo Pty Ltd [2015] QSC 128

Supreme Court of Queensland

P McMurdo J

Caveats - bank was first registered mortgagee of properties - bank sought removal of caveats lodged by registered owners of properties in order that bank might complete contracts with arm's length purchaser for sale of the properties - further order sought against Registrar of titles to preclude any other caveat from taking effect, at least one which would prohibit relevant dealing - whether there ought to be restraint on dealings with land by bank as a result of caveats - held: order made for removal of caveats and further order against Registrar - application granted.

[ANZ](#) (B)

Skilled Group Limited v Anning [2015] TASSC 18

Supreme Court of Tasmania

Estcourt J

Workers compensation - appeal concerning question whether it was employer or worker who bore onus of proof on a reference to Workers Rehabilitation and Compensation Tribunal made by employer pursuant to s81A(5) *Workers Rehabilitation and Compensation Act 1988* (Tas) - employer contended that a s81A(5) reference 'that puts initial entitlement in issue' required worker to prove initial entitlement to compensation within meaning of s49(2), or alternatively placed onus of proof on worker because relevant common law principle was that 'he or she who asserts must prove' - held: Court did not accept that worker who was subject of reference to tribunal by employer pursuant to s 81A(5) had to provide initial entitlement to payment of compensation within the meaning of s49(2) with consequence that s49(2) operated to place onus of proof in reference on worker - Court did not accept validity of propositions underpinning alternative submission concerning common law position - employer bore onus of proof - appeal dismissed.

[Skilled](#) (I G)

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