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## Daily Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Rosenwald v Hogg** (VSC) - real property - restrictive covenant should not be discharged or modified - declaration refused - proceeding dismissed

**Ferrari Estate Holdings Pty Ltd v Sovereign Resort Developments Pty Ltd** (QSC) - negligence - nuisance - trespass - claim dismissed for want of prosecution



## Summaries With Link (Five Minute Read)

### **Rosenwald v Hogg [2015] VSC 199**

Supreme Court of Victoria

Macaulay J

Real property - restrictive covenant - plaintiff wished to demolish detached single dwelling on her land and replace it with apartment building with car park - plaintiff sought declaration that covenant did not prevent construction on land of single building containing a number of residential apartments and outbuildings - whether covenant limited use of land to one dwelling - whether appropriate to either discharge or modify covenant to allow for multi-dwelling use - whether modifying covenant to permit built-form of development would 'substantially injure' a covenant beneficiary - construction of restrictive covenant - held: covenant limited use of land to one dwelling - Court not satisfied covenant should be discharged or modified in terms proposed by plaintiff - declaration refused - proceeding dismissed.

[Rosenwald](#)

### **Ferrari Estate Holdings Pty Ltd v Sovereign Resort Developments Pty Ltd [2015] QSC 126**

Supreme Court of Queensland

Henry J

Negligence - nuisance - trespass - want of prosecution - parties were adjoining lot owners of properties - first defendant engaged second and third defendants to carry out development works - plaintiff alleged works carried out in 2004 were negligently done and transgressed property boundary onto its land - plaintiff did not file claim until 2010 - further delays followed - first defendant sought dismissal of claim for want of prosecution - plaintiff's director orally applied to take further step without notice at the hearing of application - held: plaintiff engaged in prolonged delays - plaintiff failed to comply with implied undertaking under r5 *Uniform Civil Procedure Rules 1999* to proceed in expeditious way - no good prospects of success - unsatisfactory explanation for delay - plaintiff exhibited no material regard to prejudice to first defendant - claim dismissed for want of prosecution.

[Ferrari](#)



# Benchmark

## Serenity

By Edward Rowland Sill

Brook,  
Be still,—be still!  
Midnight's arch is broken  
In thy ceaseless ripples.  
Dark and cold below them  
Runs the troubled water,—  
Only on its bosom,  
Shimmering and trembling,  
Doth the glinted star-shine  
Sparkle and cease.

Life,  
Be still,—be still!  
Boundless truth is shattered  
On thy hurrying current.  
Rest, with face uplifted,  
Calm, serenely quiet;  
Drink the deathless beauty—  
Thrills of love and wonder  
Sinking, shining, star-like;  
Till the mirrored heaven  
Hollow down within thee  
Holy deeps unfathomed,  
Where far thoughts go floating,  
And low voices wander  
Whispering peace.

[Edward Roland Sill](#)

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