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Daily Construction

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Executive Summary (1 minute read)

Deputy Commissioner of Taxation (Superannuation) v Ryan (FCA) - superannuation - trustees of SMSF lent money to themselves – breaches of *Superannuation Industry (Supervision) Act* – pecuniary penalties

In the matter of Italian Forum Limited (subject to a deed of company arrangement) (NSWSC) - sale of land - judicial directions to administrator of vendor that he was justified in making certain payments under the contract of sale

Frankel v Paterson (NSWSC) - common property in strata scheme unilaterally appropriated by another unitholder after exchange - rule in *Flight v Booth* - no substantial misdescription of property - sale to proceed

Adhesive Pro Pty Ltd v Blackrock Supplies Pty Ltd (ACTSC) - service of unsealed copy of application to set aside statutory - service not as required by *Corporations Act* - proceedings dismissed

Summaries With Link (Five Minute Read)

Deputy Commissioner of Taxation (Superannuation) v Ryan [2015] FCA 1037
Federal Court of Australia
Edelman J
Superannuation - husband and wife were trustees and members of self-managed superannuation fund – they caused the fund to lend money to themselves - s65 *Superannuation Industry (Supervision) Act 1993* (Cth) - contravened sole purpose test - s62 *Superannuation Industry (Supervision) Act 1993* (Cth) - failed to prepare a plan to address the excess in-house assets of the fund - s84 *Superannuation Industry (Supervision) Act 1993* (Cth) - contraventions were *serious contraventions* - s196(4) *Superannuation Industry (Supervision) Act 1993* (Cth) - husband and wife each ordered to pay monetary penalties of $20,000 to the Commonwealth, in monthly instalments over three years.
Deputy

In the matter of Italian Forum Limited (subject to a deed of company arrangement) [2015] NSWSC 1386
Supreme Court of New South Wales
Rein J
Sale of land - administrator appointed to company - company owned Italian Forum property in Leichhardt - company owed debts to Leichhardt Council for unpaid rates - Council holds mortgage over company's property - company contracted to sell land to purchaser with consent of Council - administrator wanted to proceed with sale, and considered that certain payments should be made by the company under administration as vendor under the contract of sale – administrator sought directions from the Court regarding proposed course of action and construction of the contract of sale - s447D *Corporations Act 2001* (Cth) - proceedings expanded to include declarations and order for payment - held: sale was in the interests of company's creditors - the terms of the contract of sale required, as between the vendor and purchaser, that the vendor pay Building Management Committee levies for the relevant periods – administrator was justified in pursuing his proposed course of action.
Italian Forum

Frankel v Paterson [2015] NSWSC 1307
Supreme Court of New South Wales
Young AJA
Sale of land – purchasers of strata property were impressed by garden that was part of common property – after exchange, garden was fenced off by another unitholder to be a dog compound - purchaser did not complete - vendors issued notice to complete - purchaser sought declaration that notice to complete was invalid and that the purchaser did not have to complete, and for return of deposit - vendors sought specific performance - held: the fact that the vendors sought specific performance rendered anything to do with the notice to complete otiose - rule in *Flight v Booth* (1834) 1 Bing (NC) 370; (1834) 131 ER 1160 - test is , objectively, whether a reasonable

person in the position of the purchasers would take the view that the purchasers were not getting substantially the property they contracted for - the mere fact that a unitholder has unilaterally appropriated part of the common property is not of major concern as the appropriation can be reversed - this may require action either before the Strata Titles Commissioner or the Court - in the circumstances, there was no substantial misdescription of the property the purchasers were buying – vendors claimed dismissed and order for specific performance to be made.
Frankel

Adhesive Pro Pty Ltd v Blackrock Supplies Pty Ltd [2015] ACTSC 288
Supreme Court of the Australian Capital Territory
Mossop AsJ
Corporations law - statutory demand served on plaintiff - time limit to apply to set aside statutory demand is 21 days - s459G *Corporations Act 2001* (Cth) - 20 days after service, a solicitor for the plaintiff attended the Supreme Court Registry and filed an application to set aside the statutory demand - despite a request by the solicitor, the Registry would not provide sealed copies of the application straight away, but said that sealed copies would be available in a few days - the solicitor then served an unsealed copy of the application on the defendant - the solicitor served the sealed application several days later, out of time - held: there is no capacity to extend the time to commence proceedings to set aside a statutory demand - *David Grant & Co Pty Ltd v Westpac Banking Corporation* [1995] HCA 43; 184 CLR 265 - Registry processes did not reasonably accommodate the need for the Court to promptly record the filing of documents and provide sealed service copies to the plaintiff so they could be served within time - nevertheless, plaintiff had not served a *copy* of the application within the meaning of s 459G(3) - Court did not have jurisdiction - proceedings dismissed.
Adhesive Pro

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