



Wednesday, 6 May 2015

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

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### Executive Summary (1 minute read)

**Philip v JPM Developments Pty Ltd** (NSWSC) - judgments and orders - declaratory and injunctive orders - costs order against non-party

**Yuan v Xie** (NSWSC) - loans and mortgages - lender had equitable charge over funds paid into Court by mortgagee - plaintiff entitled to payment of funds out of Court

**Haritos v Commissioner of Taxation** (VSCA) - declaratory relief - pleadings - beneficial ownership of shares in company - appeal dismissed

**Allsop v Henderson** (QSC) - succession - family provision order in favour of son of deceased

## Summaries With Link (Five Minute Read)

### **Philip v JPM Developments Pty Ltd [2015] NSWSC 495**

Supreme Court of New South Wales

Sackar J

Judgments and orders - costs against non-party - Court gave judgment in proceedings - parties submitted proposed declaratory and injunctive orders - plaintiff also claimed sole director and shareholder of defendant be responsible for costs of litigation in event defendant was unable to pay - defendant accepted that as unsuccessful party it should pay costs on ordinary basis - s98(1) *Civil Procedure Act 2005* - held: proposed orders too broad and did not reflect way in which case conducted and decided - form of orders restricted - Court satisfied in circumstances that director should be responsible for costs of proceedings if defendant unable to pay

[Philip](#)

### **Yuan v Xie [2015] NSWSC 492**

Supreme Court of New South Wales

Stevenson J

Loans and mortgages - equitable charge - payment out of Court - plaintiff claimed to have equitable charge over property owned by first defendant - claim arose from document called 'Loan Agreement' pursuant to which plaintiff agreed to lend amount to second defendant - first defendant signed document as 'guarantor' - there was amount outstanding - mortgagee took possession of property and exercised power of sale - net proceeds paid into court - plaintiff sought order pursuant to r55.11 *Uniform Civil Procedure Rules 2005* that money be paid out to her on basis she held equitable charge at value of outstanding debt - held: Court satisfied document bespoke intention by first defendant to charge property as security - plaintiff had established primary entitlement and its basis to money paid into Court - Court also satisfied plaintiff had interest in very funds paid into Court - unregistered security interest over property retained force after sale of property and converted to equitable charge - money to be paid out to plaintiff.

[Yuan](#)

### **Haritos v Commissioner of Taxation [2015] VSCA 79**

Court of Appeal of Victoria

Osborn, Ferguson & Kaye JJA

Declaratory relief - pleadings - primary judge granted Commissioner declaration that fourth defendant was beneficial owner of shares in company - primary judge also made further declaration that purported declarations of trust made by appellants with respect to the shares were void, invalid and of no effect - appellants contended trial judge failed to properly take into account evidence of an accountant in respect of first declaration - held: Court not persuaded primary judge relevantly disregarded evidence in issue, nor that it established error in conclusions - primary judge did not err in refusing leave to further amend defence - appeal dismissed.



[Haritos](#)

**Allsop v Henderson [2015] QSC 105**

Supreme Court of Queensland

Atkinson J

Succession - family provision - deceased died in 20102 - deceased survived by wife of second marriage and two sons, one of which was applicant only child of first marriage - other son was only child of second marriage - provision made for applicant in Will but majority of estate left to wife and other son - applicant sought further provision under s 41(1) *Succession Act 1981* - held: Court satisfied adequate provision had not been made for applicant - provision order made.

[Allsop](#)

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