

Tuesday 7 October 2014

## Banking

# A Daily Bulletin listing Decisions of Superior Courts of Australia

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## Executive Summary (1 minute read)

**Roskott v Commonwealth Bank of Australia** (NSWCA) - possession - adjournment and extension of time to appeal from strike-out of defence refused

**Oakes v Oakes** (NSWSC) - succession - family provision order in favour of divorced former daughter-in-law of deceased

**Fitzgerald v CBL Insurance Ltd** (VSC) - insurance contract - claim by trustees under financial insurance policy - insolvency - rectification - proof of loss - damages

**HSBC Bank Australia Ltd v V** (WASC) - possession - caveat over properties removed - cross-vesting of action to Family Court refused - joinder refused

## Summaries with links (5 minute read)

### **Roskott v Commonwealth Bank of Australia [2014] NSWCA 341**

Court of Appeal of New South Wales

Basten & Meagher JJA

Possession - bank loaned money secured by mortgage over applicants' property - applicants defaulted - primary judge struck out defence that bank had accepted a bill of exchange for sum of

one dollar - bank obtained judgment and order for possession - applicants sought leave out of time to appeal from strike-out of defence - held: primary judge correct to strike out defence as filed - no substantial defence raised on application - extension of time to appeal refused - application for adjournment by email to Registrar at short notice refused - desirability of disposing of proceedings when listed for hearing and where they appeared to have no merit was consequence of need to protect Bank from wasted costs - summons dismissed.

[Roskott](#)

## **Oakes v Oakes [2014] NSWSC 1312**

Supreme Court of New South Wales

Pembroke J

Succession - statutory construction - divorced former daughter-in-law of deceased sought family provision from deceased's Will - unusual claim - *member of household* - s57(1)(e) *Succession Act 2006* (NSW) - held: Court satisfied plaintiff was a member of the household of which the deceased was a member - plaintiff was effectively dependent on deceased until he died - plaintiff had spent most of her adult life living and working in tripartite relationship with deceased and ex-husband - plaintiff's financial circumstances were penurious - Court satisfied wise and just testator with knowledge of facts would have been prepared to make at least some modest provision for plaintiff - provision order made.

[Oakes](#)

## **Fitzgerald v CBL Insurance Ltd [2014] VSC 493**

Supreme Court of Victoria

Sloss J

Insurance contract - insolvency - rectification - company procured insurer to issue financial insurance policy in favour of 'transferring employees' of businesses - under policy, insurer agreed to provide indemnity in respect of shortfall in 'employee entitlements' in event of insolvency of company - company placed in liquidation following administration - insolvency deemed to have taken place as at date of administration - trustees made claims and demands under policy - construction of policy - employee entitlements *owed* as at deemed date for purposes of insurance policy - whether provisions of certified agreements enlivened - whether employee's jobs were made *redundant* - whether rectification sought by insurer required continuing common intention - interest under s57 *Insurance Contracts Act 1984* (Cth) - claim for damages to recover time and cost in managing claims - proof of loss - held: trustees proved fact of loss to which policy responded - primary claim made for insured loss represented shortfall for 336 transferring employees identified - Court not satisfied trustees made out claim for time and costs involved in preparing and managing the claim.

[Fitzgerald](#)

**HSBC Bank Australia Ltd v V [2014] WASC 359**

Supreme Court of Western Australia

Chaney J

Caveat - joinder - cross-vesting - bank sought order that caveat lodged by first defendant over two properties be removed - bank held mortgages over properties and obtained judgment in possession action - settlement of bank's contract of sale of properties delayed due to caveat - first defendant claimed to have caveatable interest pursuant to Family Court orders - first defendant sought extension of caveat and transfer of proceedings to Family Court pursuant to ss5(4)(b)(i) & 5(4)(b)(iii) *Jurisdiction of Courts (Cross-vesting) Act 1987 (WA)* - first defendant also sought to be joined as a third defendant to possession action - held: no foundation to set aside orders for possession or remit the now completed possession action to Family Court - joinder refused - caveat removed pursuant to s138(2) *Transfer of Land Act 1893 (WA)*.

[HSBC Bank Australia Ltd](#)

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