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

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Executive Summary (1 minute read)

Alexander v Perpetual Trustee Company Ltd (NSWSC) - judicial advice - trusts and trustees - 'the interpretation of the trust instrument' - judicial advice granted

PCL Holdings Pty Ltd v Kassem (NSWSC) - receivers and managers' fees - fees capped by deed of appointment - judgment for plaintiff

Ward v Smart So Hoe Pty Ltd (VSC) - real property - possession - plaintiff entitled to order for possession and payment of debt based on mortgage - judgment for plaintiff

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Summaries With Link (Five Minute Read)

Alexander v Perpetual Trustee Company Ltd [2015] NSWSC 1815

Supreme Court of New South Wales

Pembroke J

Judicial advice - trusts and trustees - trustees sought advice concerning 'the interpretation of the trust instrument' question was whether the trustees 'would be justified' in acting in accordance with senior counsel's advice - principal question in proceedings involved disputed issue of construction of affecting beneficiaries' rights - held: there was utility in giving judicial advice - interests of justice would be not be served if Court refrained from giving advice because minds had differed on question of construction - Court not required to resolve question of construction - judicial advice granted.

[Alexander](#)

PCL Holdings Pty Ltd v Kassem [2015] NSWSC 1823

Supreme Court of New South Wales

Young AJA

Receivers and managers' fees - construction of deed of appointment - plaintiff company appointed defendant accountants as receivers and managers of debtor company sought declaration as to fees due to receivers and managers - accountants sought full fees and expenses both against company as appointor and two companies over which they were appointed - primary question concerned amount to which receivers and managers were entitled - held: receivers and managers' fees capped by deed of appointment - fees limited to \$20 000 - defendants' claim for equitable lien or charge failed - plaintiff succeeded.

[PCL](#)

Ward v Smart So Hoe Pty Ltd [2015] VSC 691

Supreme Court of Victoria

Ierodionou AsJ

Real property - possession - plaintiff advanced sum to first defendant under loan agreement with obligations guaranteed by second defendant - second defendant mortgaged property to to plaintiff as collateral - first defendant fell into arrears - plaintiff issued notice of default under s76 *Transfer of Land Act 1958* (Vic) - plaintiff sought possession of property and judgment for mortgage debt - second defendant counterclaimed for redemption - ss77 & 78 - held: default notice on balance invalid with result it was insufficient to accelerate payment of loan - there had not been redemption - preconditions of s78(1) met - plaintiff entitled to possession - plaintiff entitled to payment of debt based on mortgage - judgment for plaintiff.

[Ward](#)

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