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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)

**Distinctive FX v Van Der Slot** (VSCA) - interlocutory injunction - freezing order - trial judge's order as to payments being permitted to be made out of life insurance proceeds set aside - appeal allowed

**Malec Holdings Pty Ltd v Scotts Agencies Pty Ltd (in liq)** (VSCA) - corporations - statutory demand varied on basis of off-setting claim but not set aside - leave to appeal refused

**Jackson v Abram** (SASCFC) - negligence - accounting and taxation services - erroneous failure to find liability for losses - appeal allowed - appeal in relation to costs also allowed

# Benchmark

## Summaries With Link (Five Minute Read)

### **Distinctive FX v Van Der Slot [2015] VSCA 328**

Court of Appeal of Victoria

Beach & McLeish JJA; Ginnane AJA

Interlocutory injunction - freezing order - applicants sought to recover sums allegedly misappropriated by deceased - dispute concerned respondent's ability to deal with proceeds of life insurance policy taken out on deceased's life pending trial of applicants' proceeding - applicants sought that balance of proceeds be preserved in separate trust account opened for that purpose - principle in *Foskett v McKeown* [2000] UKHL 29 - held: applicants had established prima facie entitlement to whole of proceeds of policy - judge erred by approaching interlocutory application on basis that extent to which premiums might be from legitimate sources remained uncertain - judge's order as to permitting payments to be made out of proceeds should be set aside - question of what if any proceeds respondent should be permitted to access should be left to judge of Trial Division - appeal allowed.

[Distinctive FX](#)

### **Malec Holdings Pty Ltd v Scotts Agencies Pty Ltd (in liq) [2015] VSCA 330**

Court of Appeal of Victoria

Kyrou, Ferguson & Kaye JJA

Corporations - statutory demand - applicant operated transport company - respondent supplied applicant with fuel and other fluids - liquidators appointed to respondent which served statutory demand on applicant in relation to a debt for fuel - applicant sought to set aside demand pursuant to s459G *Corporations Act 2001* (Cth) on basis of genuine dispute about existence and amount of debt and that it had offsetting claim - trial judge found applicant established offsetting claim but no genuine dispute - trial judge varied demand - applicant sought to appeal - application of 'real prospect of success' test adopted in *Kennedy v Shire of Campaspe* [2015] VSCA 47 - held: Court concluded that the application for leave to appeal should be refused as it did not have 'a real prospect of success' - leave to appeal refused.

[Malec](#)

### **Jackson v Abram [2015] SASCFC 175**

Full Court of the Supreme Court of South Australia

Peek, Stanley & Lovell JJ

Negligence - accounting and taxation services - appellants engaged respondents for accounting and taxation services - appellants alleged they suffered loss as result of negligent advice and breaches of statutory duty - trial judge dismissed most of appellant's claims in relation to respondents' advice to invest in schemes but awarded damages against respondent for negligence for failure advise appellant of need to diversify his investments - held: judge erred in not finding respondent liable to appellant for loss from investment in 2006 cattle project and loss for amount invested in 2007 beef cattle project - appellant had benefit of taxation deductions in respect of investments which were to be brought to account in assessment of damages but



# Benchmark

judge erred in calculating amount lost due to respondent's negligence - appeal allowed - appeal in relation to costs also allowed.

[Jackson](#)

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