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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)

Ehrenfeld v Zeng (NSWCA) - trusts - corporations - contract - respondents entitled to recover from appellant amount paid out of trust account - appeal dismissed

Stankovic v Hockey (NSWSC) - professional negligence - solicitors' duties - no breach of duty by solicitor - proceedings dismissed

Amaca Pty Ltd v Moir (NSWSC) - cross-vesting - proceedings commenced in Dust Diseases Tribunal of New South Wales transferred to Supreme Court of Queensland

Westpac Banking Corporation v Chamberlain (SASC) - real property - possession - any claim which owners of mortgaged property might have had on basis of native title extinguished - mortgagee granted order for possession

Cauldron Energy Ltd v Beijing Joseph Investment Co Ltd (WASC) - contract - share placement agreements - plaintiff entitled to recover contractual debts and to damages for wasted expenditure - claim for interference with contractual relations failed

JLLJ Nominees Pty Ltd v Conspect Construction Pty Ltd [No 2] (WASC) - costs - corporations - non-party costs order granted against director of fourth defendant company

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Summaries With Link (Five Minute Read)

Ehrenfeld v Zeng [2016] NSWCA 6

Court of Appeal of New South Wales
Macfarlan & Gleeson JJA; Emmett AJA

Trusts - corporations - contract - dispute arising from project which failed to reach fruition - project involved acquisition of company which was to acquire quarry and publish prospectus for proposed issue of shares to recapitalise it - respondent and associates contended that payments made out of an account controlled by fourth respondent in accordance with appellant's instructions were made in breach of trust - respondent and associates claimed reimbursement from fourth and fifth respondent and from appellant and associated entities - primary judge found in favour of respondents - whether breach of contract and breach of trust - procedural fairness - natural justice - validity of prospectuses - Sch 2 *Competition and Consumer Act 2010* (Cth) - s719 *Corporations Act 2001* (Cth) - held: appellant failed to make out any grounds of appeal - appeal dismissed.

[Ehrenfeld](#)

Stankovic v Hockey [2016] NSWSC 31

Supreme Court of New South Wales
Harrison J

Professional negligence - solicitors' duties - bankruptcy - plaintiff client sued former solicitor for professional negligence and breach of retainer in relation to proceedings which followed sequestration of plaintiff's estate - plaintiff alleged solicitor acted without instructions and that dismissal of application for annulment was arranged or consented to by defendant without authorisation - plaintiff claimed losses in amount of \$35M - held: plaintiff failed to demonstrate breach of duty by defendant - no evidence of claimed losses - proceedings dismissed.

[Stankovic](#)

Amaca Pty Ltd v Moir [2016] NSWSC 35

Supreme Court of New South Wales
Davies J

Cross-vesting - Amaca sought to have proceedings commenced against it in Dust Diseases Tribunal of New South Wales transferred to Supreme Court of Queensland under ss8 & 5 *Jurisdiction of Courts (Cross-vesting) Act 1987* (NSW) - held: worker domiciled in Queensland - disease incurred while working in Queensland - doctors who had examined plaintiffs located in Queensland - no connection of proceedings with New South Wales - natural forum was Queensland particularly because place of tort was Queensland - in interests of justice that proceedings be transferred to Supreme Court of Queensland.

[Amaca](#)

Westpac Banking Corporation v Chamberlain [2016] SASC 3

Supreme Court of South Australia

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Judge Dart

Real property - possession - loans and mortgages - native title - plaintiff registered mortgagee of land owned by defendants sought order for possession pursuant to *s192 Real Property Act 1886 (SA)* - defendants alleged they had superior title to plaintiff's on basis of native title - *Law of Property Act 1936 (SA)* - *s23B Native Title Act 1993 (Cth)* - consideration of parent title - whether any claim which defendants might have had was extinguished - held: native title had been extinguished - no arguable defence made out by defendants - order for possession granted.

[Westpac Banking Corporation](#)

Cauldron Energy Ltd v Beijing Joseph Investment Co Ltd [2016] WASC 22

Supreme Court of Western Australia

Mitchell J

Contract - inducement of breach of contract - Cauldron Energy was plaintiff by counter-claim (plaintiff) - Cauldron Energy entered agreements with defendants by counterclaim (defendants) and company 'Guangzhou Joseph' for placement of shares in plaintiff - plaintiff sought to recover subscription sums payable by defendants under agreements and to recover wasted expenditure for obtaining shareholder approval - plaintiff also claimed defendants induced or procured defendant and Guangzhou Joseph to breach agreements - ss606, 607, 611 & 1041 *Corporations Act 2001 (Cth)* - O 20, r14, O 34, r4 *Rules of the Supreme Court 1971 (WA)* - held: subscription sums payable under agreements - plaintiff entitled to recover contractual debts and damages for wasted expenditure - tortious claim for interference with contractual relations failed.

[Cauldron](#)

JLLJ Nominees Pty Ltd v Conspect Construction Pty Ltd [No 2] [2016] WASC 21

Supreme Court of Western Australia

Master Sanderson

Costs - corporations - plaintiff sought non-party costs order against director of fourth defendant - whether party to litigation insolvent or man of straw - whether non-party played active role in litigation's conduct - whether non-party had interest in litigation - held: first second third and fourth defendants all insolvent - director played active role in litigation and had an interest in the litigation - director ordered to pay costs.

[JLLJ](#)

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