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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)

Stuart Olson Dominion Construction Ltd. v. Structal Heavy Steel (SCC) - trusts - liens - interaction between statutory remedies of construction liens and statutory trusts in provincial legislation - trust and lien provisions existed separately and could be concurrently pursued - appeal dismissed

TriCare (Hastings) Ltd v Allen (NSWCA) - competency of appeal - appeal misconceived and incompetent because brought against reasons, not "judgment or order" - appeal dismissed

Kadac Proprietary Ltd v Complete Health Products Pty Ltd (VSC) - cross-vesting - oppression - interests of justice - proceedings transferred to Supreme Court of Queensland

Francis v Duffy (WASC) - real property - mortgage - application for access to and vacation of farming properties - interlocutory injunction granted

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Summaries With Link (Five Minute Read)

Stuart Olson Dominion Construction Ltd. v. Structal Heavy Steel, 2015 SCC 43

Supreme Court of Canada

McLachlin C.J. and Rothstein, Cromwell, Moldaver, Wagner, Gascon & Côté JJ

Trusts - liens - appellant was general contractor - respondent was subcontractor for construction project - respondent filed builder's lien against property on which work being done - appellant filed lien bond in amount of respondent's claim and sought declaration it had satisfied its trust obligations - respondent sought payment of its past-due invoices upon appellant receiving funds from owner - Court of Appeal overturned decision of motion judge that security in form of lien bond extinguished appellant's trust obligations pursuant to *Manitoba Builders' Liens Act* - Court of Appeal concluded subcontractors had two rights to sue for breach of contract beyond common law right: right to statutory trust and right to file lien - interaction of statutory remedies of construction liens and statutory trusts in provincial legislation - held: trust and lien provisions independent and could be pursued concurrently under s66 - lien bond secured contractor's or subcontractor's lien claim and did not extinguish obligations under statutory trust - filing of lien bond did not affect existence and application of trust remedy - appeal dismissed.

[Stuart Olson Dominion](#)

TriCare (Hastings) Ltd v Allen [2015] NSWCA 344

Court of Appeal of New South Wales

Ward & Simpson JJA; Tobias AJA

Competency of appeal - NSW Civil and Administrative Tribunal (NCAT) terminated residential site agreements concerning respondent's relocatable dwellings under s113 *Residential Parks Act 1998* (NSW) (the Act) and granted appellant vacant possession of land on which dwellings located - NCAT awarded respondents compensation pursuant to s128 - respondents sought judicial review of NCAT's findings - appellant sought to challenge primary judge's obiter observations concerning construction of s130A regarding valuation of dwellings - appellant also sought variation of primary judge's remittal order in light of its construction of s130A - s101(1)(a) *Supreme Court Act 1970* (NSW) - held: appeal misconceived and incompetent because it was brought against reasons not "judgment or order" - appeal dismissed as incompetent.

[TriCare](#)

Kadac Proprietary Limited v Complete Health Products Pty Ltd [2015] VSC 613

Supreme Court of Victoria

Sifris J

Cross-vesting - oppression - proceeding commenced by plaintiff shareholder concerning conduct of first defendant's company's affairs - defendants sought to transfer proceedings to Supreme Court of Queensland pursuant to s1337H(2) *Corporations Act 2010* (Cth) - ss1337H & 1337L *Corporations Act 2001* (Cth) - s5(2)(b)(iii) *Jurisdiction of Courts (Cross-vesting) Act 1987* (Vic) - whether in interests of justice to transfer proceedings - conduct of defendants - location of



events and conduct - location of principal place of business - held: it was in interests of justice to transfer proceedings - application granted.

[Kadac](#)

Francis v Duffy [2015] WASC 426

Supreme Court of Western Australia

Beech J

Real property - mortgage - first defendants were partners in farming partnership - director of second-named first defendant owned properties - second plaintiff bank provided facilities to first defendants secured by securities including mortgage over properties - first plaintiffs were receivers and managers of properties appointed by bank under mortgages - plaintiffs sought orders that defendants give them access to and vacate farming properties - interlocutory injunction principles - held: bank had established strong prima facie case in respect of all allegations - no delay by bank - balance of injunction favoured granting of injunction - injunction granted.

[Francis](#)

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