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Executive Summary (1 minute read)

Fortress Credit Corporation (Australia) II Pty Ltd v Fletcher (HCA) - corporations - insolvency - voidable transactions - s588FF(3) *Corporations Act 2001* (Cth) allowed making of shelf orders - appeal dismissed

Grant Samuel Corporate Finance Pty Ltd v Fletcher: JPMorgan Chase Bank, National Association v Fletcher (HCA) - corporations - voidable transactions - order varying extension of time for liquidators to bring proceedings under s588FF(1) Corporations Act 2001 (Cth) set aside - appeal allowed

Sienkiewicz (As Trustee for the Sienkiewicz Superannuation Fund) v Salisbury Group Pty Ltd (in Liq) (No 2) (FCA) - insurance - financial services errors and omissions policy - financial adviser's cross-claim against insurers dismissed

Ioppolo v Conti (WASCA) - superannuation - trustee's discretion - *Superannuation Industry (Supervision) Act 1993* (Cth) did not require appointment of executor of deceased member's estate - appeal dismissed

The Hancock Family Memorial Foundation Ltd v Lowe (WASCA) - professional indemnity insurance - construction and validity of condition - appeal dismissed

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Summaries with links (5 Minute Read)

Fortress Credit Corporation (Australia) II Pty Limited v Fletcher [2015] HCA 10
High Court of Australia
French CJ; Hayne, Kiefel, Gageler & Keane JJ
Corporations - insolvency - voidable transactions - liquidators obtained order under s588FF(3)(b) *Corporations Act 2001* (Cth) extending time to make applications under s588FF(1) (shelf order) - liquidators sought order under s588FF(1) against applicants with respect to certain transactions - applicants sought to have shelf order set aside on basis that it was invalid - Court of Appeal of New South Wales found s588FF(3)(b) allowed making of shelf orders, that applications under ss588FF(1) and (3) were distinct applications, and that Court did not err in exercising discretion not to set aside shelf order - held: Court could make order extending time under s588F(3)(b) without identifying particular transaction or transactions to which it would apply - availability of shelf orders was a construction open on text of s588FF(3)(b) - construction consistent with purpose of provision to allow Court to mitigate strictness of time limits in an appropriate case - effect of re-enactment of s588FF(3), in light of construction adopted by Court of Appeal, is no barrier to construction and may be taken to support it - appeal dismissed.
Fortress Credit Corporation (Australia)

Grant Samuel Corporate Finance Pty Ltd v Fletcher: JPMorgan Chase Bank, National Association v Fletcher [2015] HCA 8
High Court of Australia
French CJ; Hayne, Kiefel, Bell, Gageler & Keane JJ
Corporations - winding up - voidable transactions - liquidators sought order extending period to bring proceedings under s588FF(1) *Corporations Act 2001* (Cth) - Supreme Court of New South Wales granted extension (extension order) - further application made within period of extension but after par (a) period had expired - Supreme Court varied extension order under r36.16(2)(b) *Uniform Civil Procedure Rules 2005* (NSW) by changing date set in extension order from 3 October 2011 to 3 April 2012 (variation order) - appellants sought to set aside variation order - held: bringing of application within time required by s588FF(3) was precondition to jurisdiction under s588FF(1) - only power to vary par (a) period was given by s588FF(3)(b) - once par (a) period had elapsed, UCPR could not be utilised to further extend time to bring proceedings, because s588FF(3) *otherwise provided* - extension order within power - as a result of extension order, proceedings could be brought by 3 October 2011, but no further extension could be granted - appeal allowed.
Grant Samuel Corporate Finance Pty Ltd

Sienkiewicz (As Trustee for the Sienkiewicz Superannuation Fund) v Salisbury Group Pty Ltd (in Liq) (No 2) [2015] FCA 147
Federal Court of Australia
Robertson J
Insurance - financial services errors and omissions insurance policy - proceedings originally

comprised two claims - claim by trustee of Sienkiewicz retirement fund - claim by trustee for AT Melville retirement fund - both claims for damages against former financial advisers, namely company and its representatives - company in liquidation - there was also claim against financial advisers' professional indemnity insurers - applicants settled case against representatives and discontinued against company - one representative continued claim against insurers for indemnity - meaning and application of insuring clause of policy - whether representative an *insured* - *any Authorised representative* - meaning and application of endorsements and exclusions - *approved investment products* - whether s54 *Insurance Contracts Act 1984* (Cth) prevented insurer from refusing to pay claim - held: representative's cross-claim against insurers dismissed.
Sienkiewicz (As Trustee for the Sienkiewicz Superannuation Fund)

Ioppolo v Conti [2015] WASCA 45
Court of Appeal of Western Australia
Martin CJ, Buss JA & Beech J
Superannuation - first respondent (Mr Conti) and late wife (Mrs Conti) became trustees and beneficiaries of trust fund established by deed which required compliance with *Superannuation Industry (Supervision) Act 1993* (Cth) - after Mrs Conti died, probate of Will granted to appellants, who were son and daughter - Mr Conti as trustee of fund determined benefits standing to account of late Mrs Conti would be paid to him rather than children - executors claimed that Mr Conti required by s17A to appoint one of them to act as trustee of fund in place of late Mrs Conti and that until such appointment Mr Conti had no power to deal with Mrs Conti's interest in fund - executors asserted determination to confer interest void - held: Master correct to hold s17A did not require Mr Conti to appoint one or other of executors trustee of the Fund, and that there was no evidence of bad faith in making determination - appeal dismissed.
Ioppolo

The Hancock Family Memorial Foundation Ltd v Lowe [2015] WASCA 38
Court of Appeal of Western Australia
McLure P, Newnes JA & Beech J
Professional indemnity insurance - primary judge dismissed appellant's action against respondents under s51 *Insurance Contracts Act 1984* (Cth) - primary issue at trial was proper construction of condition in two excess professional indemnity insurance contracts between late solicitor and respondents - appeal also included challenge to the validity of the condition as construed by the trial judge - test of implied retainer - estoppel by convention - classification of policies as true excess insurance - held: purpose of condition was to make obligation to indemnify conditional on solicitor establishing both the fact and amount of fund's liability to indemnify solicitor - trial judge's construction of condition correct - condition not void under s52 - appeal dismissed.
The Hancock Family Memorial Foundation Ltd

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