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Executive Summary (1 minute read)

Lawrence v Gunner (No 3) (NSWCA) - judgments and orders - pleadings - joinder - subpoena - stay - notice of motion dismissed - costs orders

Diao v Cohen (NSWSC) - contract - moneys had a received - plaintiff's payments to first defendant were condition on signing of written agreement - no signed written agreement - recovery of money granted

Thomson v Golden Destiny Investments Pty Ltd (No 3) (NSWSC) - real property - caveat - Court not persuaded plaintiffs suffered loss attributable to impugned caveat - application for compensation dismissed

Duckworth v Water Corporation [No 3] (WASC) - pleadings - costs - extension of time to apply to amend pleadings following determination of preliminary issues - non-party to pay defendant's costs of action to date

Australian Maritime Systems Ltd v McConnell Dowell Constructors (Aust) Pty Ltd (WASC) - arbitration - dispute resolution clause - parties referred to arbitration - proceedings stayed

JMT Builders Pty Ltd v. Ryan (NTSC) - abuse of process - building contract - writ filed pursuant to deed of settlement - issuing proceedings in absence of genuine dispute was abuse of process - proceedings dismissed

Summaries With Link (Five Minute Read)

Lawrence v Gunner (No 3) [2016] NSWCA 18
Court of Appeal of New South Wales
Gleeson JA
Judgments and orders - three motions relating to judgments by Stevenson J - two motions dealt with by consent except for issue of costs - determination of third motion and costs issue - third motion sought various orders including variation of existing stay of orders, joinder of respondents, permission to issue subpoena for production and to strike out part of amended cross-claim - legitimate forensic purpose - whether material change in circumstances or new material - s83(1) *Civil and Administrative Tribunal Act 2013* (NSW) - s99 *Civil Procedure Act 2005* (NSW) - ss48, 75A(7), 75A(8) & 75A(9) *Supreme Court Act 1970* (NSW) - rr7.3(1), 13.4, 42.1, 51.31(1), 51.37(1) & 51.53(1) *Uniform Civil Procedure Rules 2005* (NSW) - held: costs orders made - notice of motion dismissed.
Lawrence

Diao v Cohen [2016] NSWSC 96
Supreme Court of New South Wales
Lindsay J
Contract - moneys had and received - proceedings concerning whether plaintiff and first defendant reached concluded agreement for purchase of share capital in second defendant - held: no evidence first defendant assumed there was a contract between parties - no evidence that plaintiff or plaintiff's agent induced first defendant to adopt assumption agreement existed - Court not satisfied first defendant acted or did not act in reliance on assumption of contract - plaintiff's payments to first defendant were made conditionally on parties signing written contract - execution of written contract never occurred - defendants did not establish elements of estoppel - 'change of position' defence failed - inequitable for first defendant to retain benefit of money - judgment for plaintiff.
Diao

Thomson v Golden Destiny Investments Pty Ltd (No 3) [2016] NSWSC 78
Supreme Court of New South Wales
Stevenson J
Real property - caveats - plaintiffs sought compensation from third defendant under s74P *Real Property Act 1900* (NSW) - plaintiffs claimed loss of chance to purchase properties due to wrongful maintenance and refusal to withdraw caveats - whether loss "attributable" to impugned caveat - causation - value of lost opportunity - held: Court not able make conclusion concerning valued of lost opportunity or whether opportunity had any value - Court not persuaded plaintiffs lost opportunity giving rise to pecuniary loss which was attributable to caveat - application dismissed.
Thomson

Duckworth v Water Corporation [No 3] [2016] WASC 24
Supreme Court of Western Australia
Mitchell J
Pleadings - costs - plaintiffs claimed in relation to Water Corporation's drawdown $3 million Banker's Undertaking securing performance of non-party's obligations under agreements to construct water headworks - plaintiffs claimed they were assigned non-party's rights under agreements by his bankruptcy trustee - Court determined preliminary issues - whether plaintiffs should have further opportunity to amend writ and statement of claim following the determination of the preliminary issues - whether there should be order for non-party to pay defendant's costs of action to date - held: plaintiffs granted further opportunity to apply to amend - extension of time granted - non-party to pay defendant's costs - other orders sought by no-party refused.
Duckworth

Australian Maritime Systems Ltd v McConnell Dowell Constructors (Aust) Pty Ltd [2016] WASC 52
Supreme Court of Western Australia
Mitchell J
Arbitration - parties entered agreement for design, supply and installation of navigation aids - parties executed supplemental agreement - plaintiff sought declaration supplemental agreement released it from obligations to defendant under agreement - defendant sought to stay action for plaintiff's failure to comply with agreement's dispute resolution clause - s8 *Commercial Arbitration Act 2012* (WA) - O58 r10 *Rules of the Supreme Court 1971* (WA) - art 8 *UNCITRAL Model Law on International Commercial Arbitration* - held: requirements of s8 satisfied - Court referred parties to arbitration - proceedings stayed until the process provided for in clause of agreement engaged and completed.
Australian Maritime Systems

JMT Builders Pty Ltd v. Ryan [2016] NTSC 6
Supreme Court of the Northern Territory
Master Luppino
Abuse of process - building contract - plaintiff sued defendant for breach of building contract - plaintiff's solicitors advised writ had been filed pursuant to deed of settlement entered between parties which fully settled claim - deed did not permit plaintiff to sue on initial dispute - whether proceedings were abuse of process - held: categories of abuse of process not closed - deed provided for dispute's final resolution - proceedings were an 'enforcement backup' in event of default by defendants - there was no genuine dispute - issuing proceedings in absence of genuine dispute was abuse of process - proceedings were abuse of process.
JMT

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