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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)

**Donald J. Trump, President of the United States, Et Al. No. 16–1436 (16A1190) v. International Refugee Assistance Project, Et Al. (SCOTUS)** - interlocutory injunction - U.S Constitutional law - Executive Order No. 13780, Protecting the Nation From Foreign Terrorist Entry Into the United States - Government's application for stay of preliminary injunctions barring enforcement of order granted in part

**White (Trustee), in the matter of Vlahos (Bankrupt) v Ljubicic (FCA)** - summary judgment - bankruptcy - transfers from bankrupt to respondent were void against trustees - declaration and orders made

**Aquagenics Pty Limited (in liquidation) v Certain Underwriters at Lloyd's Subscribing to Contract Number NCP106108663 (No 2) (FCA)** - costs - indemnity costs - Calderbank offer - respondents not unreasonable to reject applicant's offer to settle - indemnity costs refused

**Optus Administration Pty Limited v Glenn Wright by his tutor James Stuart Wright (No 2) (NSWCA)** - interest - costs - restitution - appropriate to grant interest on principal sum - parties to pay own costs of motion

**Trembath v Trembath (VSC)** - summary judgment - testator's family maintenance - contention that plaintiff was deceased's stepchild was not fanciful - summary judgment refused

**Slea Pty Ltd v Connective Services Pty Ltd & Ors (VSC)** - privilege - client legal privilege - objection of plaintiff and subpoenaed party to production of documents upheld

**Bennett v Talacko** (VSCA) - conspiracy - unlawful means conspiracy - no failure to establish pecuniary loss - tort of unlawful means conspiracy established - appeal allowed

## Summaries With Link (Five Minute Read)

### **Donald J. Trump, President of the United States, Et Al. No. 16–1436 (16A1190) v. International Refugee Assistance Project, Et Al. : 582 U. S. (2017)**

Supreme Court of the United States

Per Curiam

Interlocutory injunction - U.S Constitutional law - President Trump signed Executive Order Executive Order No. 13780, Protecting the Nation From Foreign Terrorist Entry Into the United States, which altered practices concerning foreign nationals' entry to United States - respondents obtained preliminary injunctions barring enforcement of provisions of order, including provision which suspended entry of national from six countries for 90 days - Government sought stay of preliminary injunctions - held: Government's applications to stay preliminary injunctions granted to extent that they prevented enforcement with respect to 'foreign nationals who lack any bona fide relationship with a person or entity in the United States' - stay application granted in part.

[Donald J Trump](#)

### **White (Trustee), in the matter of Vlahos (Bankrupt) v Ljubicic [2017] FCA 717**

Federal Court of Australia

Beach J

Summary judgment - bankruptcy - trustees made application for summary judgment under s31A(1) *Federal Court of Australia Act 1976* (Cth) - trustees sought declarations and ancillary orders that transactions bankrupt entered, or relating to bankrupt's property, were void against trustees under s120 *Bankruptcy Act 1966* (Cth) - whether relevant payments were transfers of property by bankrupt to respondent in five years before 'the commencement of the bankruptcy' - whether transfers supported by consideration under s120 *Bankruptcy Act* - held: respondent had no reasonable prospect of successfully defending claim - summary judgment granted in trustees' favour.

[White](#)

### **Aquagenics Pty Limited (in liquidation) v Certain Underwriters at Lloyd's Subscribing to Contract Number NCP106108663 (No 2) [2017] FCA 724**

Federal Court of Australia

Davies J

Costs - indemnity costs - Court found that applicant entitled to be indemnified by respondents under insurance policy pursuant to s57 *Insurance Contracts Act 1984* (Cth) - applicant sought indemnity costs on basis of Calderbank offer which it made to respondents, and which respondents rejected - held: at time of offer, applicant had not pleaded certain entitlements to

# Benchmark

indemnity - offer was 'minimal compromise' measured against indemnity subsequently sought - even though applicant's offer was very favourable compared with judgment, respondents were not, in the circumstances, unreasonable to reject applicant's offer - indemnity costs refused.

[Aquagenics](#)

## **Optus Administration Pty Limited v Glenn Wright by his tutor James Stuart Wright (No 2) [2017] NSWCA 154**

Court of Appeal of New South Wales

Basten, Hoeben & Gleeson JJA

Interest - costs - restitution - Court allowed appeal by Optus and set aside orders of primary judge - Court made orders to effect Optus not liable to first respondent for injuries and not liable to indemnify second respondent for compensation payments it made to first respondent - Optus sought payment of principal sum by second respondent and interest - Optus had paid the principal sum to second respondent pursuant to primary judge's declaration - issues for determination were whether Optus entitled to interest on principal sum, and costs - whether demand for restitution and interest 'unreasonable in the circumstances' - Court's power to order restitution of money paid under judgment later set aside - Optus's failure to comply with r51.19 *Uniform Civil Procedure Rules 2005* (NSW) by omitting to claim restitution including interest in notice of appeal - s75A(10) *Supreme Court Act 1970* (NSW) - r51.54 of the Rules - s151Z(1)(d) *Workers Compensation Act 1987* (NSW) - held: Court concluded it was not appropriate to deny interest - Court declined to stay order for payment of interest, pending outcome of first respondent's special leave application to High Court - appropriate that each party pay own costs of motion - orders made.

[Optus Administration](#)

## **Trembath v Trembath [2017] VSC 369**

Supreme Court of Victoria

Lansdowne AsJ

Summary judgment - testator's family maintenance - family provision - plaintiff sought further provision from deceased's estate - plaintiff described deceased as his stepmother - defendant executor contended plaintiff had no real prospect of success in establishing he was deceased's stepchild at date of death because plaintiff's father had predeceased deceased - defendant contended death of father ended stepchild/stepparent relationship between plaintiff and deceased - s90 *Administration and Probate Act 1958* (Vic) - held: contention that plaintiff was a stepchild was not fanciful - Court not satisfied plaintiff had no real prospect of success because he could not be deceased's stepchild - summary judgment refused.

[Trembath](#)

## **Slea Pty Ltd v Connective Services Pty Ltd & Ors [2017] VSC 361**

Supreme Court of Victoria

Almond J



Privilege - client legal privilege - discovery - first, second and fourth to ninth defendants challenged objection of plaintiff and subpoenaed party, on ground of client legal privilege, to production of discovered documents - state of mind - relevance - waiver - confidentiality - dominant purpose - ss117, 118 & 119 *Evidence Act 2008* (Vic) - held: no loss of privilege in respect of any communications or documents - objection of plaintiff and subpoenaed party upheld.

[Slea](#)

## **Bennett v Talacko [2017] VSCA 163**

Court of Appeal of Victoria

Beach & McLeish JJA; Keogh AJA

Conspiracy - unlawful means conspiracy - plaintiffs pursued causes of action in conspiracy to injure; unlawful means conspiracy; *Barnes v Addy* claims; inducing breach of contract; and claims in respect of two properties under s172 *Property Law Act 1958* (Vic) - primary judge found that the only claim made out was claim under s172 Property Law Act in respect of one property - second to fifth plaintiffs sought to appeal against decision in respect of unlawful means conspiracy - whether trial judge erred in finding unlawful conspiracy cause of action failed because plaintiffs did not establish element of suffering pecuniary loss - loss of opportunity - whether certain expenses constituted pecuniary loss - held: plaintiffs had 'perfected the tort of unlawful means conspiracy' by reference to heads of pecuniary loss - appeal allowed.

[Bennett](#)

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