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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)

Croucher v Cachia (No 2) (NSWCA) - stay granted subject to conditions - determination of form of undertakings - addition of provision to undertakings refused

Damien v JKAM Investments Pty Ltd (NSWCA) - contract - building work debt - identity of contracting party - assignment of debt - appeal dismissed

Yee v O'Dea (NSWSC) - foreign judgments registration - 'forum non conveniens' - application to set aside registration of foreign judgment refused

Orlanski v Spiegel (VSC) - trusts and trustees - trust deeds lost and subsequently found - questions in relation to family trusts answered

Thorpe v Jason Weller Plumbing & Contracting (TASSC) - workers compensation - appellant injured felling tree was not a worker under *Workers Compensation and Rehabilitation Act 1988* (Tas) at time of injury - appellant not entitled to benefits - appeal dismissed

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Summaries With Link (Five Minute Read)

Croucher v Cachia (No 2) [2015] NSWCA 366

Court of Appeal of New South Wales

Tobias AJA

Stay - form of undertakings - verdict and judgment in proceedings entered in respondent's favour - applicant sought stay of order - Court indicated stay to be granted subject to conditions - Court directed applicant to bring in short minutes containing necessary undertakings - Court accepted minor amendments sought by respondent - major issue between parties was that respondent wished to add certain provision to undertakings - held: extension of undertakings sought by respondent would have effect of entitling respondent to a form of security - respondent not entitled to such security, which was unnecessary for protection of respondent's position - orders made as to form of undertakings.

[Croucher](#)

Damien v JKAM Investments Pty Ltd [2015] NSWCA 368

Court of Appeal of New South Wales

Gleeson & Simpson JJA; Tobias AJA

Contract - building work debt - assignment - appeal arising from proceedings concerning property owned by appellant - different parties claimed interest in property - disputes determined by Darke J, who ordered separate determination of cross-claim brought by respondent and second cross-claim brought by appellant - Rein J entered judgment for respondent following set-off - identity of contracting entity - refusal of tender of email correspondence - post-contractual conduct - held: primary judge correct to reject tender of email correspondence - primary judge made permissible use of post contractual conduct - more than open to primary judge to find appellant contracted with company (ACPL) concerning building work - no error in finding appellant liable to respondent as assignee of debt from ACPL - appeal dismissed.

[Damien](#)

Yee v O'Dea [2015] NSWSC 1752

Supreme Court of New South Wales

RS Hulme AJ

Foreign judgments registration - defendant sought to set aside registration of foreign judgment on basis of principle of 'forum non conveniens' - foreign judgment was of High Court of Hong Kong Special Administrative Region Court of First Instance - defendant contended that his lack of connection with New South Wales meant Court was not "the appropriate court" within r53.3(1)(e) *Uniform Civil Procedure Rules 2005* (NSW) - grounds on which registered judgment can be set aside - ss6 & 7 *Foreign Judgments Act 1991* (Cth) - held: no express requirement in Act requiring that appropriate court be one in state where debtor resided - application to set aside registration of foreign judgment refused.

[Yee](#)

Orlanski v Spiegel [2015] VSC 662

Supreme Court of Victoria

Ginnane J

Trusts and trustees - lost trust deed - deeds of confirmation - questions for determination arising partly from loss and finding of family trust deeds arranged by deceased - executor sought answers to questions concerning trusts and their operation - legal effect of deeds of confirmation executed while trust deeds lost - whether trust deed's requirement that decisions be made with trust Guardians' written consent required consent of all Guardians - whether real estate held on trust by family trusts vested in deceased by trustees' decisions and now formed part of estate - proceeding also sought to answer other questions - held: parties agreed on answers to most of questions - questions determined.

[Orlanski](#)

Thorpe v Jason Weller Plumbing & Contracting [2015] TASSC 57

Supreme Court of Tasmania

Pearce J

Workers compensation - appellant injured when struck by limb of tree he was felling at a property - appellant claimed to be entitled to benefits under *Workers Compensation and Rehabilitation Act 1988* (Tas) from respondent - Workers Rehabilitation and Compensation Tribunal found appellant not entitled to benefits because appellant was not a worker under the Act at time of injury - appellant challenged Tribunal's finding he had not entered into and was not working under contract of service with respondent - held: Tribunal's determination that appellant was not a worker was reasonably open to it - Tribunal did not err in not expressly dealing with s4B - appeal dismissed.

[Thorpe](#)

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