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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Medallion Homes Pty Ltd v Lares Homes Pty Ltd (FCA) - interlocutory injunction - consumer law - copyright - injunction restraining reproduction of floor plans and construction of display home refused (I B C)

Jobema Developments Pty Ltd v Zhu (NSWSC) - real property - conveyancing - vendor refused permission to rescind off the plan contract for sale under sunset clause (I B C)

Jetobee Pty Ltd (in liq) v Smith & Young Pty Ltd (NSWSC) - possession - contract - stay of writ of possession refused (B C)

Re Estate Ford; Application for Executor's Commission (NSWSC) - will and estates - review of deputy registrar's determination of application for allowance of commission out of estate refused (B BW)

Re Gillam (VSC) - wills and estates - application by mother's attorney for authorisation to make statutory will - authorisation granted (B)

Lanai Unit Holdings P/L v Mallesons Stephen Jacques (QSC) - security for costs - solicitors' duties - trade practices - defendant solicitors granted security for past and future costs in amount of \$450, 000 (I B C)

ELS v Countrywide Nominees Pty Ltd (WASCA) - negligence - slip and fall - CCTV footage did not 'incontrovertibly' contradict primary judge's findings of fact - appeal dismissed (I C)

Summaries With Link (Five Minute Read)

Medallion Homes Pty Ltd v Lares Homes Pty Ltd [2016] FCA 12

Federal Court of Australia

Besanko J

Interlocutory injunction - consumer law - copyright - corporations - applicant sought interlocutory injunction restraining respondents from reproducing floor plans and constructing display home - applicant contended respondents copied its plans and also sought to restrain respondents from making allegedly misleading or deceptive representations on website and promotional material - *Australian Consumer Law - s35 Copyright Act 1968 (Cth) - Corporations Act 2001 (Cth) - prima facie case - balance of convenience - held: applicant's causes of action failed to support grant of interlocutory injunction - balance of convenience in respondents' favour - application dismissed.*

[Medallion](#) (I B C)

Jobema Developments Pty Ltd v Zhu [2016] NSWSC 3

Supreme Court of New South Wales

Black J

Real property - conveyancing - plaintiff vendor sought order under 66ZL *Conveyancing Act 1919* (NSW) permitting it to rescind off the plan contract for sale with fourth defendant under sunset clause - ss15, 16, 66ZL, 66ZL(4), 66ZL(6) & 66ZL(7) - *Conveyancing Amendment (Sunset Clauses) Act 2015* (NSW) - "sunset date" - whether just and equitable to grant leave - whether purchaser consented to rescission - whether plaintiff acted unreasonably or in bad faith - reason for delay in creating subject lot - effect of rescission on purchaser - whether reasons for rescission established - held: permission to rescind contract refused - application dismissed.

[Jobema](#) (I B C)

Jetobee Pty Ltd (in liq) v Smith & Young Pty Ltd [2016] NSWSC 5

Supreme Court of New South Wales

Lindsay J

Possession - defendant sought stay of writ of possession in relation to land - defendant had filed notice of intention to appeal but no notice of appeal - application based on defendant's entry into contract for sale of land - if contract completed, plaintiff's mortgage could be paid out - plaintiff doubted defendant's bona fides and whether contract would be completed - plaintiff also claimed entitlement to fruits of judgment - held: Court concluded grounds of plaintiff's opposition told against defendant's application of stay - notice of motion dismissed.

[Jetobee](#) (B C)

Re Estate Ford; Application for Executor's Commission [2016] NSWSC 6

Supreme Court of New South Wales

Benchmark

Lindsay J

Wills and estates - plaintiff executor-beneficiary of deceased aunt's Will sought review of deputy registrar's determination of application under s86 *Probate and Administration Act 1898* (NSW) for allowance of commission out of estate - whether plaintiff should be allowed commission out of small estate - who should bear litigation costs - held: Court considered application afresh, reasons of deputy registrar, evidence, deputy registrar's determination, reasons for decision and whether any error in reasoning or decision-making - no error requiring intervention with determination - deputy registrar's determination in reasonable bounds - interests of justice best served by dismissal of application - application dismissed except in relation to agreed adjustment.

[Re Estate Ford](#) (B BW)

Re Gillam [2016] VSC 5

Supreme Court of Victoria

McMillan J

Wills and estates - statutory will - plaintiff attorney of mother sought orders pursuant to s21 *Wills Act 1997* (Vic) for making of a statutory will on mother's behalf - proposed will made no provision for defendant husband - whether mother had testamentary capacity - whether proposed will reflected what mother's intentions would be likely to be, or would reasonably be expected to be - whether reasonable in all circumstances to authorise making of statutory will - held: Court satisfied in relation to matters under s21B - no reason for Court not to exercise discretion to authorise making of proposed will - authorisation granted.

[Re Gillam](#) (B)

Lanai Unit Holdings P/L v Mallesons Stephen Jacques [2016] QSC 2

Supreme Court of Queensland

Jackson J

Security for costs - plaintiff trustee sued defendant solicitors in negligence or under s82 *Trade Practices Act 1974* (Cth) for contravention of s52 - defendant sought security for costs - no dispute order for security should be made - amount of security - stage of proceeding to which security should be ordered - delay in bringing application - past and future costs - s15 *Civil Proceedings Act 2011* (Qld) - s1335 *Corporations Act 2001* (Cth) - rr 5, 670, 671 & 681 *Uniform Civil Procedure Rules 1999* (Qld) - held: plaintiff to give security for defendant's future costs up to end of mediation stage - total amount of security for past and future costs of application \$450,000.

[Lanai](#) (I B C)

ELS v Countrywide Nominees Pty Ltd [2016] WASCA 4

Court of Appeal of Western Australia

Buss, Murphy & Mazza JJA

Negligence - appellant claimed she slipped on oil deposited by cooking station which respondent used to cook products offered to shoppers - appellant claimed respondent negligently allowed oil to drop and negligently failed to properly clean it - primary judge



dismissed claim - appellant contended CCTV footage incontrovertibly demonstrated findings on cause of slip and fall were erroneous. s79 *District Court of Western Australia Act 1969 (WA)* - s79C *Evidence Act 1906 (WA)* - s58 *Supreme Court Act 1935 (WA)* - held: CCTV footage did not 'incontrovertibly' contradict primary judge's findings of fact - primary judge's findings were amply justified - findings not 'glaringly improbable' or 'contrary to compelling inferences' - appeal dismissed.

[ELS](#) (I C)

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