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

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Executive Summary (1 minute read)

Spence v Rigging Rentals WA Pty Ltd (FCA) - costs - plaintiff very substantially successful in proceedings - cross-claim substantially failed - second and third defendants to pay plaintiff's costs of action - first defendant to pay plaintiff's costs of cross-claim (I B C)

Tanamerah Estates Pty Ltd v Tibra Capital Pty Ltd (NSWCA) - corporations - statutory demand - applicant not entitled to commence proceedings because it had not complied with Pt 7, Div 1, r 7.1. | *Uniform Civil Procedure Rules 2005* (UCPR) - leave to appeal refused (I B)

Collis Finance Pty Ltd v Hertford (NSWSC) - real property - possession - no defence to claim disclosed - defence struck out (B)

WIN Corporation Pty Ltd v Nine Network Australia Pty Ltd (NSWSC) - discovery - respondent granted leave to issue notice to produce to applicant in respect of certain documents (I B)

Willmott Forests Ltd (Receivers & Managers appointed) (In Liq) v Armstrong Dubois Pty Ltd (VSC) - pleadings - failure to disclose justiciable cause of action - embarrassing pleadings - leave to file further amended statement of claim in current form refused (I B)

Fleming v Advertiser-News Weekend Publishing Co P/L (No 2) (SASC) - defamation - defamatory imputation conveyed by publications that plaintiff engaged in criminal sexual behaviour was substantially true - plaintiff's claim dismissed - judgment for defendants (I)

Rankilor v City of South Perth (WASCA) - negligence - trip and fall on protruding paver - no

breach of duty of care by City - appeal dismissed (I C)

Summaries With Link (Five Minute Read)

Spence v Rigging Rentals WA Pty Ltd [2016] FCA 154

Federal Court of Australia

Gilmour J

Costs - Court gave judgment for plaintiff in proceedings - second and third defendants ordered to purchase half of plaintiff's shares from third defendant - first defendant ordered to pay amount to plaintiff - plaintiff sought costs of action and cross-claim - defendants sought orders for apportionment of costs - ss43 & 52 *Federal Court of Australia Act 1976* (Cth) - r40.32 *Federal Court Rules 2011* (Cth) - held: Court not prepared to apportion costs on primary claim - plaintiff had very substantial success on primary claim and should have costs - cross-claim substantially failed - cross-claim did not warrant apportionment of costs - first defendant to pay plaintiff's costs of cross-claim.

[Spence](#) (I B C)

Tanamerah Estates Pty Ltd v Tibra Capital Pty Ltd [2016] NSWCA 23

Court of Appeal of New South Australia

McColl & Meagher JJA

Corporations - statutory demand - respondent issued statutory demand to applicant under s459E *Corporations Act 2001* (Cth) - proceedings commenced by applicant's director to set demand aside - director not separately a plaintiff in proceedings pursuing cause of action - applicant did not retain solicitor to commence claim - respondent sought declaration applicant not entitled to commence proceedings because it failed to comply with Div 1, Pt 7, r7.1 *Uniform Civil Procedure Rules 2005* (UCPR), and stay of proceedings following which proceedings would be dismissed if rule not complied with - primary judge stayed proceeding to enable applicant to obtain legal representation - applicant indicated it did not propose to retain solicitor - primary judge dismissed proceeding - whether company a "person under legal incapacity" - whether director a "tutor" and "plaintiff" - held: applicant's proposed appeal did not have arguable prospects of success - leave to appeal refused.

[Tanamerah](#) (I B)

Collis Finance Pty Ltd v Hertford [2016] NSWSC 149

Supreme Court of New South Wales

Davies J

Real property - possession - claim for possession of shops mortgaged to plaintiff - self-represented defendants filed defence to claim - defendants' son given leave to appear for parents - son contended copies of mortgages not provided to parents and that a plan had been put forward to plaintiff which plaintiff had not responded to - held: no defence to claim disclosed - defence struck out.

[Collis Finance](#) (B)

WIN Corporation Pty Ltd v Nine Network Australia Pty Ltd [2016] NSWSC 153

Supreme Court of New South Wales

Meagher JA

Discovery - proceedings concerning Program Supply Agreement between parties - respondent sought leave to issue notice to produce to applicant or order for discovery - Practice Note No. SQ Eq 11 - held: description of documents in original notice too broad - application granted in respect of certain documents.

[WIN Corporation](#) (I B)

Willmott Forests Ltd (Receivers & Managers appointed) (In Liq) v Armstrong Dubois Pty Ltd [2016] VSC 61

Supreme Court of Victoria

Derham AsJ

Pleadings - plaintiff in liquidation operated managed investment schemes - plaintiff sued former auditor for failing to conduct proper audit of its financial statements, and provide audit reports pursuant to *Corporations Act 2001* (Cth) - plaintiff sought leave to file and serve proposed further amended statement of claim (FASOC) - held: FASOC did not seek to revive claims made in indorsement to writ subsequently abandoned in statement of claim - FASOC did not make allegations beyond perimeter set by indorsement except claim under s1041H - claim not statute barred when introduced in statement of claim - no good reason amendment should not be allowed - however FASOC failed to disclose justiciable causes of action and certain paragraphs were embarrassing - leave not granted to file FASOC in current form.

[Willmott](#) (I B)

Fleming v Advertiser-News Weekend Publishing Co P/L (No 2) [2016] SASC 26

Supreme Court of South Australia

Gray AJ

Defamation - defences - justification - contextual truth - action arising from publication of articles in newspapers with common theme that plaintiff was subject of Paedophile Task Force investigation - plaintiff's claim for damages included damages for personal injury arising from publication of defamatory matter - held: publications conveyed defamatory imputation that plaintiff engaged in criminal sexual behaviour while a priest - defendants established that defamatory imputation was substantially true - plaintiff's claim dismissed - judgment for defendants.

[Fleming](#) (I)

Rankilor v City of South Perth [2016] WASCA 29

Court of Appeal of Western Australia

Buss, Newnes & Murphy JJA

Negligence - appellant injured when she fell after tripping on protruding paver - appellant sued



respondent for failure to maintain footpath to prevent tree roots from lifting the pavers - ss5B & 5Z *Civil Liability Act 2002* (WA) - ss9.56 & 9.57 *Local Government Act 1995* (WA) - s5(4)(a) *Occupiers' Liability Act 1985* (WA) - primary judge dismissed claim - held: open to primary judge to find respondent did not breach duty of care - appeal dismissed.

[Rankilor](#) (I C)

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