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

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Mineralogy Pty Ltd v Sino Iron Pty Ltd (No 3) (FCA) - leave to intervene - Attorney General for Western Australia granted leave to intervene in proceedings (I B C)

GE Commercial Corporation (Australia) Pty Ltd v Wallis and Wallis (NSWSC) - contract - default under facility agreement - assignment of interests to plaintiff by financier - plaintiff entitled to payment of amount by guarantors of amount outstanding (B)

Flanagan v Flanagan (NSWSC) - costs - possession - defendants conceded plaintiffs were entitled to possession - defendants to pay plaintiffs' costs of proceedings (B)

Wallaby Grip Ltd v Key (NSWSC) - cross-vesting - proceedings in Dust Diseases Tribunal removed to Supreme Court and cross-vested to Supreme Court of Queensland (I B C)

Wales v Vrsecky (VSC) - trusts - Wills and estates - joinder rule - joinder of applicants as defendants to proceedings (B)

Driesen v Gold Coast City Council (QCA) - environment and planning - extension of time to appeal against Council's grant of development permit refused (B C)

Melreef Pty Ltd v Glenn (WASCA) - contract - agistment of cattle - no inferred contract for payment for services - appeal dismissed (I B)

Summaries With Link (Five Minute Read)

Mineralogy Pty Ltd v Sino Iron Pty Ltd (No 3) [2015] FCA 542

Federal Court of Australia

Edelman J

Leave to intervene - Attorney General for Western Australia sought leave to intervene in proceedings - application limited to making submissions concerning construction of contractual provisions of State Agreement - parties to State Agreement included State of Western Australia, Mineralogy, Sino Iron and Korean Steel - State Agreement was Sch1 to *Iron Ore Processing (Mineralogy Pty Ltd) Agreement Act 2002 (WA)* - Mineralogy claimed State had no 'direct interest' in proceedings and that it should not be given leave to intervene - r9.12 *Federal Court Rules 2011* - held: Court satisfied State had sufficient interest in the subject matter for leave to be granted to intervene - construction of Agreement in light of facilities deeds might have real and substantial effect on rights of State - leave granted to intervene in proceedings. [Mineralogy \(I B C\)](#)

GE Commercial Corporation (Australia) Pty Ltd v Wallis and Wallis [2015] NSWSC 704

Supreme Court of New South Wales

Adams J

Contract - plaintiff sued defendants as guarantors of debts of company in own right and as trustee for discretionary trust (customer) - money was advanced under facility agreement discounting rendered invoices - initial financier sold its discounting business to plaintiff assigning and novating its securities to plaintiff - company ceased to trade constituting event of default under facility agreement and the guarantees - plaintiff issued notice to customer terminating facility - administrators disposed of company's assets and applied proceeds in reduction of its indebtedness under facility - plaintiff issued notices of demand to defendants requiring them to pay the remaining debt - held: relevant clauses permitted Allianz unilaterally to assign interests to plaintiff whether or not defendants consented and gave prior consent to substitution of plaintiff as party to facility agreement and guarantees - deed between Allianz and plaintiff assigned and novated agreements with customer and defendants' guarantees - judgment for plaintiff.

[GE \(B\)](#)

Flanagan v Flanagan [2015] NSWSC 697

Supreme Court of New South Wales

Davies J

Costs - real property - possession - parties agreed plaintiffs should be entitled to possession of property, that defence be struck out and that defendants have twenty-eight days to vacate property - plaintiffs sought that defendants pay costs of proceedings - defendants resisted paying costs on basis there was an arguable defence to claim - held: fact that arguable defence

may have been raised would not ordinarily prevent costs order being made - defendants had ultimately agreed possession must be given to plaintiffs - it was necessary for plaintiffs to commence proceedings to achieve result - defendants should pay plaintiffs' costs of proceedings.

[Flanagan](#) (B)

Wallaby Grip Ltd v Key [2015] NSWSC 699

Supreme Court of New South Wales

Davies J

Cross-vesting - proceedings between injured worker and respondents in Dust Diseases Tribunal settled - cross-claims between three respondents remained - plaintiffs sought orders pursuant to *Jurisdiction of Courts (Cross-Vesting) Act 1987* (NSW) that proceedings be removed to Court and transferred to Supreme Court of Queensland - availability of s25 *Dust Diseases Tribunal Act 1989* (NSW) which had no counterpart in some other jurisdictions within Australia - held: Court satisfied it was appropriate proceedings be cross-vested to Queensland because of clear relationship between issues and jurisdiction of Queensland - orders made to bring proceedings from Dust Diseases Tribunal into Court to enable cross-vesting to occur.

[Wallaby](#) (I B C)

Wales v Vrsecky [2015] VSC 223

Supreme Court of Victoria

McMillan J

Trusts - plaintiff was executrix of deceased's estate - plaintiff's daughters were beneficiaries of deceased's estate - plaintiff and daughters were trustees of trusts before removal orders made - plaintiff sought relief against defendant replacement trustee of trusts in respect of unpaid present entitlements to deceased's estate - applicants were representative of estate of capital beneficiary of trusts - applicants sought to be joined to proceedings - held: on basis of general law rule, permissive joinder rule under r9.06(b)(i) *Supreme Court (General Civil Procedure) Rules 2005* and overarching purpose of the *Civil Procedure Act 2010*, it was appropriate to allow applicants to be joined to proceeding - applicants joined as defendants to proceedings.

[Wales](#) (B)

Driesen v Gold Coast City Council [2015] QCA 85

Court of Appeal of Queensland

Holmes & Morrison JJA; Dalton J

Environment and planning - Planning and Environment Court dismissed applicant's application for extension of time to appeal against Council's grant of development permit to second respondent property developer - applicant sought leave to appeal - ss337, 361, 363, 366, 462, 497 & 498 *Sustainable Planning Act 2009* (Qld) - whether primary judge took irrelevant considerations into account - whether sufficient grounds to extend time - explanation for delay - held (by majority): primary judge erred in exercise of discretion - re-exercise of discretion required - sufficient grounds to extend time not shown - applicant knew rights to appeal limited

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under s337 from time running from receipt of decision - applicant left country knowing decision under s337 was pending without making proper arrangements to be informed when decision made - applicant failed to instruct anyone to prepare and lodge appeal - extension of time refused.

[Driesen](#) (B C)

Melreef Pty Ltd v Glenn [2015] WASCA 111

Court of Appeal of Western Australia

Martin CJ; Newnes & Murphy JJA

Contract - inferred contract - primary judge's dismissed appeal from decision in which Magistrate dismissed appellant's action against respondent for fees owing to it for agistment of respondent's cattle - appellant claimed primary erred in holding that Magistrate's findings of fact were sufficient basis for concluding respondent did not intend to contract with appellant - appellant also claimed primary judge erroneously concluded that Magistrate attached appropriate weight to all relevant facts and that no facts would invalidate inference that respondent did not intend to contract - held: it was clearly open to magistrate to conclude there was no inferred agreement that respondent would pay for appellant's services - primary judge did not err in dismissing the appeal from magistrate's decision - appeal dismissed.

[Melreef](#) (I B)

CRIMINAL

Executive Summary

Ewen v R (NSWCCA) - criminal law - offences of sexual intercourse without consent - appeals against conviction and sentence dismissed

Summaries With Link

Ewen v R [2015] NSWCCA 117

Court of Criminal Appeal of New South Wales

Basten JA; Simpson & Davies JJ

Criminal law - appellant found guilty of offences of sexual intercourse without consent against same complainant - appellant was sentenced to 12 years imprisonment with non-parole period of 8 years (taking into account guilty pleas on additional charges) - appellant appealed against convictions and sought leave to appeal against sentence - whether trial judge had failed to direct or warn himself resulting in failure to comply with s133 *Criminal Procedure Act 1986* - presumption of innocence - *Robinson/Murray* direction - warning pursuant to s165(1)(c) *Evidence Act 1995* - flight as consciousness of guilt - whether verdict unsafe and unsound -



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held: convictions not unreasonable or unsupportable on evidence - no identifiable miscarriage of justice - leave granted to appeal against sentence - appeals against conviction and sentence dismissed.

[Ewen](#)

Song: "Under the greenwood tree"

BY William Shakespeare
(from As You Like It)

Under the greenwood tree
Who loves to lie with me,
And turn his merry note
Unto the sweet bird's throat,
Come hither, come hither, come hither:
 Here shall he see
 No enemy
But winter and rough weather.

Who doth ambition shun
And loves to live i' the sun,
Seeking the food he eats,
And pleased with what he gets,
Come hither, come hither, come hither:
 Here shall he see
 No enemy

[William Shakespeare](#)

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