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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Important Announcement



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Executive Summary (1 minute read)

Willmott Growers Group Inc v Willmott Forests Ltd (Receivers and Managers Appointed) (In Liq) (HCA) - corporations - winding up - liquidators empowered to disclaim leases granted by company to investors - appeal dismissed (B)

Apotex Pty Ltd v Sanofi-Aventis Australia Pty Ltd (HCA) - intellectual property - method of medical treatment of human body was patentable invention (I G)

Commonwealth Bank of Australia t/as Bankwest v Khoury (NSWSC) - pleadings - mortgages - possession of property - paragraphs of defence struck out (B)

Max Swalding Earthmoving Pty Ltd v Stellason (NSWSC) - real property - mortgages - stay of execution of writs of possession refused (B)

HM&O Investments Pty Ltd (In Liq) v Ingram (NSWSC) - costs - special order for costs against non-parties refused (I B)

Royal Guardian Mortgage Management Pty Ltd v Nguyen (NSWSC) - security for costs - guarantee – second application dismissed (I B)

Walton Construction Pty Ltd v Pines Living Pty Ltd (ACTSC) - building contract - injunction restraining company from calling on bank guarantees (I C)

Summaries with links (5 minute read)

Willmott Growers Group Inc v Willmott Forests Ltd (Receivers and Managers Appointed) (In Liq) [2013] HCA 51

High Court of Australia

French CJ; Hayne, Kiefel, Gageler & Keane JJ

Corporations - winding up - company managed forestry investment schemes - company leased portions of land which it owned or leased to investors - company went into voluntary administration - creditors resolved company should be wound up - liquidators sought directions and orders concerning negotiated sales of company's assets which provided title was to pass free from the encumbrances of the scheme – company appealed from decision of Court of Appeal of Victoria that liquidators were empowered to disclaim leases with effect of extinguishing tenants' interests in land – power of liquidator to disclaim property: ss568(1), 568(1A) & 568D(1) *Corporations Act 2001* (Cth) - held: a lease granted by company to tenant was a *contract* within meaning of s568(1) of the Act - liquidators had power under Div 7A, Pt 5.6 of the Act to disclaim leases granted by company to investors - disclaimer terminated landlord's obligations and tenants' correlative rights under leases - appeal dismissed.

[Willmott Growers Group Inc](#) (B)

**Apotex Pty Ltd v Sanofi-Aventis Australia Pty Ltd [2013] HCA 50**

High Court of Australia

French CJ; Hayne, Crennan, Kiefel & Gageler JJ

Intellectual property - patents - respondent company was registered owner of patent that claimed method of preventing or treating psoriasis by administration of compound *leflunomide* - appellant company intended to supply a compound in Australia under trade name *Apo-Leflunomide* for treatment of rheumatoid arthritis and psoriatic arthritis - respondents claimed appellant would infringe patent by supplying Apo-Leflunomide to treat psoriatic arthritis - appellant sought to have patent revoked on basis it did not claim a patentable invention under s18(1) *Patents Act 1990* (Cth) - appellant appealed from decision of Full Court of Federal Court that patent was valid - s117(1) - held (by majority): patent claimed a *manner of manufacture* within meaning of s18(1) and was thus a patentable invention - challenge to validity of patent failed - appeal allowed against Federal Court finding that appellant infringed patent.

[Apotex Pty Ltd](#) (I G)

Commonwealth Bank of Australia t/as Bankwest v Khoury [2013] NSWSC 1787

Supreme Court of New South Wales

Harrison AsJ

Pleadings - contract - mortgages - bank (CBA) sought possession of defendants' property on basis of default on loan agreement - CBA and receivers and managers of property sought to strike out part of defence under r14.28 (a) & (b) *Uniform Civil Procedure Rules 2005* (NSW) - effect of purchase by CBA of 100% of share capital of BankWest - defendants contended debt claimed by CBA was not part of *business* transferred by Bankwest to CBA because Bankwest and CBA excluded defendants' debt from transaction - carve out and claw back - ss18 & 22 *Financial Sector (Business Transfer and Group Restructure) Act 1999* (NSW) - held: transfer was total transfer - all assets and liabilities of Bankwest became assets and liabilities of CBA - claim there was no loss suffered by CBA was not arguable - no reasonable causes of action disclosed - paragraphs of defence struck out.

[Commonwealth Bank of Australia](#) (B)

Max Swalding Earthmoving Pty Ltd v Stellason [2013] NSWSC 1789

Supreme Court of New South Wales

Davies J

Real property - mortgages - stay - lender obtained judgment for possession of two properties - defendant sought stay of execution of writs of possession on basis of upcoming sale of property -



held: no explanation given as to why application was made on morning that sheriff arrived to execute writs - sale of property would not result in repayment of amount owing - repayment would require sale of other property - lender had not consent to either sale - stay of execution of writs refused.

[Max Swalding Earthmoving Pty Ltd](#) (B)

HM&O Investments Pty Ltd (In Liq) v Ingram [2013] NSWSC 1778

Supreme Court of New South Wales

Stevenson J

Costs – special costs orders against non-parties - defendants sold business to companies - companies alleged defendants engaged in misleading and deceptive conduct in relation to sale - primary judge concluded companies in substance failed and ordered them to pay defendants' costs on ordinary basis - companies placed in liquidation - defendants sought order pursuant to s98(1) *Civil Procedure Act 2005* (NSW) that companies related to plaintiffs be jointly and severally liable to pay costs, including a company which had funded the litigation - *functus officio* - whether associated companies were *real litigants* in proceedings - held: court was not *functus* and had power to make special order for costs sought but court not satisfied conduct of litigation was improper - application dismissed.

[HM&O Investments Pty Ltd](#) (I B)

Royal Guardian Mortgage Management Pty Ltd v Nguyen [2013] NSWSC 636

Supreme Court of New South Wales

Hall J

Security for costs - guarantee - parties resolved first application for security by guarantee from related third party entity – further application under s1335(1) *Corporations Act 2001* (Cth) or r42.21 *Uniform Civil Procedure Rules 2005* (NSW) on the basis that guarantee was conditional on continuing satisfaction of plaintiff that guarantor could meet costs order - delay - held: no evidence guarantee was conditional on continuing satisfaction as to company's ongoing ability to meet costs order - improbable that company was not in position to meet obligations that might arise under deed - in all circumstances court did not consider orders sought should be made - application dismissed.

[Royal Guardian Mortgage Management Pty Ltd](#) (I B)

**Walton Construction Pty Ltd v Pines Living Pty Ltd [2013] ACTSC 237**

Supreme Court of the Australian Capital Territory

Master Mossop

Injunction - building contract - dispute concerning building defects and payment for works - builder sought interlocutory injunction restraining company from calling on bank guarantees relating to contract for retirement village constructed by builder - whether company entitled to claim on guarantees when it had no more than arguable claim for damages or compensation - construction of contract - held: contract did not permit company to call on guarantee while its entitlement to do so was subject to genuine dispute - damages not appropriate remedy because company was in very difficult financial circumstances - significant risk that any money paid to company may not be recoverable if it was ultimately found that it was not entitled to money - builder entitled to injunction to restrain defendant from calling on guarantee.

[Walton Construction Pty Ltd](#) (I C)

The morns are meeker than they were - (32)

By Emily Dickinson

The morns are meeker than they were -
The nuts are getting brown -
The berry's cheek is plumper -
The rose is out of town.

The maple wears a gayer scarf -
The field a scarlet gown -
Lest I sh'd be old-fashioned
I'll put a trinket on.

[Emily Dickinson](#)

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