

Monday, 7 March 2016

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

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

JR Consulting & Drafting Pty Limited v Cummings (FCAFC) - contract - copyright - ownership and control of software used in design and manufacture of items used in construction of buildings - appeal dismissed - cross-appeal allowed in part (I B C)

Seymour v Commissioner of Taxation (FCAFC) - taxation - AAT's decision to allow appellants in tax appeals to give evidence by video-link from overseas quashed - appeal dismissed (B)

Wilmar Sugar Australia Limited v Queensland Sugar Limited, in the matter of Queensland Sugar Limited (No 2) (FCA) - corporations - oppression - leave to intervene in proceedings determining appropriate final relief (I B)

Mali, in the matter of Head Quarters (WA) Pty Ltd v Head Quarters (WA) Pty Ltd as trustee for the Three Flights Up Unit Trust (FCA) - corporations - director of company granted leave to bring proceedings on company's behalf upon giving appropriate undertakings (I B)

Jennings v Jennings (NSWCA) - contract - deed of release - appellant ordered to sign deed of release - summons for leave to appeal dismissed (I B)

BRJ v Council of the New South Wales Bar Association (NSWSC) - legal practitioners - unsatisfactory professional conduct - psychiatric disorder - summons dismissed (I)

Yule v Irwin (SASC) - bias - administration and probate - application for recusal by judge dismissed (B)

Summaries With Link (Five Minute Read)

JR Consulting & Drafting Pty Limited v Cummings [2016] FCAFC 20

Full Court of the Federal Court of Australia

Bennett, Greenwood & Besanko JJ

Contract - proceedings relating to ownership and control of software used in design and manufacture of items used in construction of buildings - primary judge determined Deed of Agreement between first appellant and first respondent abandoned and termination of licence agreement between second appellant and second respondent invalid - construction of contract - doctrine of abandonment - principles in relation to copyright in computer software - ss236, 237 *Australian Consumer Law* - ss10(1), 13(2), 14(1), 22(1), 29(1) & (2), 31(1), 32(1) and (2), 36(1), 36(1A), 115 & 135AQ(2) *Copyright Act 1968* (Cth) - s126 *Trade Marks Act 1995* (Cth) - appeal dismissed - cross-appeal allowed to extent of variation of restraint orders and declaration to be made.

[JR Consulting](#) (I B C)

Seymour v Commissioner of Taxation [2016] FCAFC 18

Full Court of the Federal Court of Australia

Siopis, Griffiths & Pagone JJ

Taxation - Commissioner sought judicial review of Administrative Appeals Tribunal's decision to allow appellants to give evidence in tax appeals by video link from outside Australia - primary judge quashed decision on basis AAT's interlocutory decision erroneous because AAT took irrelevant considerations in account, failed to apply s39 *Administrative Appeals Tribunal Act 1975* (Cth) and denied Commissioner procedural fairness - held (by majority): no error in decision of primary judge - appeal dismissed.

[Seymour](#) (B)

Wilmar Sugar Australia Limited v Queensland Sugar Limited, in the matter of Queensland Sugar Limited (No 2) [2016] FCA 180

Federal Court of Australia

Yates J

Interlocutory application - corporations - oppression - interveners - Court declared resolution amending article of defendant's Constitution was oppressive to plaintiff member of defendant under s232(e) *Corporations Act 2001* (Cth) - "Mill Owner Members" sought leave to intervene with further hearing of proceeding determining appropriate form of further final relief - whether leave should be granted - form of further orders - held: leave to intervene granted - Constitution returned to form prior to amendment - defendant granted order under s233(3)(a).

[Wilmar](#) (I B)

Mali, in the matter of Head Quarters (WA) Pty Ltd v Head Quarters (WA) Pty Ltd as trustee

for the Three Flights Up Unit Trust [2016] FCA 171

Federal Court of Australia

Edelman J

Corporations - fiduciary duties - applicant sought leave to commence proceedings on behalf of first respondent as trustee for trust in reliance on s237 *Corporations Act 2001* (Cth) - applicant alleged his co-director in first respondent diverted valuable opportunity which first respondent had right to take benefit of - ss182(1), 183(1), 236, 236(1)(a), 236(1)(b), 237, 237(2)(a), 237(2)(b), 237(2)(c), 237(2)(e), 237(3), 237(3)(b), 237(3)(c)(ii) & 240 *Corporations Act 2001* (Cth) - held: applicant granted leave to bring proceedings upon giving appropriate undertakings.

[Mali](#) (I B)

Jennings v Jennings [2016] NSWCA 29

Court of Appeal of New South Wales

Ward & Leeming JJA; Emmett AJA

Contract - deed of release - primary judge ordered first applicant to execute deed of release - first applicant sought leave to appeal - first applicant contended primary judge should have found parties' objective intention was not to make concluded bargain unless formal contract executed, erred in finding parties bound by oral agreement, erred in finding parties proposed to substitute oral agreement with written document, and erred in finding third person entitled to benefits under agreement - held: proposed appeal was not reasonably arguable - summons for leave to appeal dismissed.

[Jennings](#) (I B)

BRJ v Council of the New South Wales Bar Association [2016] NSWSC 146

Supreme Court of New South Wales

Adamson J

Legal practitioners - unsatisfactory conduct - psychiatric disorder - plaintiff challenged findings of Civil and Administrative Tribunal that she engaged in unsatisfactory professional conduct - held: ground of appeal failed that Tribunal erred in relation to medical evidence - ground of appeal failed that Tribunal erred in finding unsatisfactory professional conduct when psychiatric disorder gave rise to conduct - no error in relation to interpretation or application of case law - summons dismissed.

[BRJ](#) (I)

Yule v Irwin [2016] SASC 30

Supreme Court of South Australia

Nicholson J

Administration and probate - third defendant sought that judge recuse himself from further participation in matter due to apprehended bias - conflict of interest - due process - pre-judgment - abuse of process - s69 *Administration and Probate Act 1919* (SA) - held: fair minded lay observer would not observe apprehended bias by judge - application for recusal dismissed.

[Yule](#) (B)



[Click Here to access our Benchmark Search Engine](#)