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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)

Stratton v Bowles (No 2) (FCA) - bankruptcy - creditor's petition based on Family Court costs order - sequestration order set aside - matter remitted (B)

In the matter of Anglican Development Fund Diocese of Bathurst Board (recs and mgrs apptd) (NSWSC) - corporations - receivers granted leave to make interim distribution to creditors (B C)

AIG Australia Ltd v Jaques (No 2) (VSCA) - costs - indemnity costs sought in respect of appeal on basis of Calderbank offer made at trial - application refused (I)

Mules v Ferguson (QCA) - medical negligence - patient suffered injuries from meningitis - doctor liable - patient awarded damages of \$6.7 million (I)

Dipic v Bunning (QCA) - summary dismissal - limitations - application for leave to appeal to be dismissed if failure to comply with security for costs order (I B)

Brisbane City Council v Newton (QCA) - administrative law - application for leave to appeal - application to strike out leave application - adjournment (I G)

Kordamentha Pty Ltd & Calibre Capital Ltd v LM Investment Management Ltd (in liq); Park & Mullerv Kordamentha Pty Ltd & Calibre Capital Ltd (QSC) - equity - trusts and trustees - prosecution and defence of proceedings - directions (B)

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Summaries with links (5 Minute Read)

Stratton v Bowles (No 2) [2015] FCA 43

Federal Court of Australia

Beach J

Bankruptcy - Federal Circuit Court judge made sequestration order against appellant's estate on petition of respondent - Family Court costs order against appellant in respondent's favour formed basis for bankruptcy notice - creditor's petition filed on basis of act of bankruptcy by non-compliance with notice - appellant sought to challenge costs order - *other sufficient cause* - s52(2)(b) *Bankruptcy Act 1966* (Cth) - relevance of defamation proceedings in New South Wales - held: primary judge did not sufficiently analyse effect and significance of appellant's challenge to Family Court costs order - primary judge did not fully engage with question whether there was leave to appeal application which embraced Family Court costs order and merits of potential challenge - no discussion of adjournment of respondent's petition to await outcome of Family Court challenge - sequestration order set aside - matter remitted for determination.

[Stratton](#) (B)

In the matter of Anglican Development Fund Diocese of Bathurst Board (recs and mgrs apptd) [2015] NSWSC 6

Supreme Court of New South Wales

Black J

Corporations - plaintiffs in capacity as receivers and managers sought permission to make interim distribution to creditors of fund in accordance with distribution schedule - receivers claimed submitted proof of debt lodged by bank reflected its judgment debt against fund, that bank's proof of debt admitted; that issues remained to be resolved in respect of four other claimants and that receiver proposed to put aside sufficient funds to pay claimants whose proofs of debt were deferred if proofs ultimately admitted - ss12CA, 12CB, 12GF & 12GM *Australian Securities and Investments Commission Act 2001* (Cth) - ss180, 181, 182, 420(1), 420(2), 420(2)(k), 423, 536, 1317H & 1321 *Corporations Act 2001* (Cth) - held: Court satisfied receivers' approach to identification of persons to whom interim distribution should be made or set aside pending adjudication of claims was appropriate - leave granted to make interim distribution subject to condition.

[In the matter of Anglican Development Fund Diocese of Bathurst Board](#) (B C)

AIG Australia Ltd v Jaques (No 2) [2015] VSCA 3

Court of Appeal of Victoria

Warren CJ & Neave JA

Costs - Court of Appeal dismissed appellant's appeal - respondent sought costs on indemnity basis - respondent relied on fact that trial judge had awarded indemnity costs on basis of Calderbank offer made prior to trial - respondent submitted that appeal costs should also be awarded on indemnity basis to ensure benefits he obtained as result of trial judge's order not undermined by additional costs incurred in meeting appeal - respondent also submitted degree

of unreasonableness of appellant's rejection of offer to compromise supported application - held: offers of compromise made pursuant to Pt2 O26 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) were confined to compromise of claim at trial - Rules now provided for offers of compromise to be made to compromise appeal pursuant to r26.12 - not suggested such offer made by respondent - evidence of unreasonableness insufficient to warrant departing from usual order - appellant to pay respondent's costs on standard basis.

[AIG Australia Ltd \(I\)](#)

Mules v Ferguson [2015] QCA 5

Court of Appeal of Queensland

M McMurdo P; Applegarth & Boddice JJ

Medical negligence - appellant suffered injuries and disabilities after contracting meningitis - appellant sued doctor for failure to undertake proper examination or make proper enquires as to symptoms - primary judge assessed damages at \$6.7 million but dismissed appellant's claim - appellant contended judge erred in finding doctor's breach of care did not cause her injuries and in finding doctor had a defence under s22 *Civil Liability Act 2003* (Qld) - held (by majority): trial judge's findings that respondent breached duty of care open on evidence - trial judge's findings as to likely outcome of consultations had respondent not breached duty against weight of evidence - no evidence sufficient to satisfy respondent's onus in respect of s22 - appeal allowed - judgment for appellant for \$6.7 million.

[Mules \(I\)](#)

Dipic v Bunning [2014] QCA 338

Court of Appeal of Queensland

Holmes JA

Summary judgment - limitations - security for costs - applicant filed statement of claim in relation to alleged agreement that he and wife would give respondents money to help them buy house or land - respondents obtained summary judgment on basis statement of claim out of time - applicant sought to appeal - primary judge ordered applicant to pay security for costs - respondents sought to have application for leave to appeal dismissed - applicant sought to have order for security set aside or varied so that security did not have to be provided until police investigation of claims against respondents completed - held: applicant had limited prospects of success on appeal - no basis to vary or set aside order for security for costs - Court not prepared to dismiss application for leave to appeal out of hand - unless applicant complied with order for security for costs by certain date, application for leave would be deemed to be dismissed with costs.

[Dipic \(I B\)](#)

Brisbane City Council v Newton [2014] QCA 337

Court of Appeal of Queensland

Holmes JA

Administrative law - Appeal Division of Queensland Civil and Administrative Tribunal refused applicant's application for leave to appeal from decision concerning his tenancy of Council

property - applicant sought leave to appeal on ground of QCAT's lack of jurisdiction - Council sought order striking out application for leave - held: applicant had asserted Appeal Tribunal did not consider evidence or appellant's arguments which were arguably capable of being questions of law as to procedural fairness - applicant had also raised other matters which were capable of amounting to questions of law - it could not be said application not properly instituted - Court did not propose to resolve arguments - there were practical reasons against embarking as single Judge on determination of application against Court's usual practice - applications adjourned.

[Brisbane City Council](#) (I G)

Kordamentha Pty Ltd & Calibre Capital Ltd v LM Investment Management Ltd (in liq); Park & Mullerv Kordamentha Pty Ltd & Calibre Capital Ltd [2015] QSC 4

Supreme Court of Queensland

Martin J

Equity - trusts and trustees - two applications under s96 *Trusts Act 1973* - application for directions whether or not proceedings should be brought against respondents - application by first respondent that if direction sought was given, it should defend proceeding - statement of facts - service - costs estimate - merits of proposed proceeding - necessity for leave to proceed against company in liquidation - s471B *Corporations Act 2001* (Cth) - held: directions given in each application with respect to prosecution and defence of proceedings in accordance with applications.

[Kordamentha Pty Ltd & Calibre Capital Ltd](#) (B)

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