

Thursday, 9 July 2015

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

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### Executive Summary (1 minute read)

**Carey v Laikin** (SCC) - contempt - Mareva injunction - return of money to client - lawyer in contempt - erroneous permission to relitigate initial finding - appeal dismissed (I B)

**Michael v RJ Chalmers & Co;; Edwards v Causbrook & Associates;; Smidmore v RJ Chalmers & Co** (NSWSC) - discovery - misleading and deceptive conduct - discovery of documents ordered (I B)

**Quach v Health Care Complaints Commission** (NSWCA) - stay - cancellation of registration of medical practitioner - notices of motion dismissed (I G)

**Beck v Colonial Staff Super Pty Ltd** (NSWSC) - superannuation - estoppel - amendment of trust deed to remove benefit - plaintiff entitled to consideration of benefits under clause (B)

**Bedshed Franchising Pty Ltd v Battersby** (WASC) - interlocutory injunction - alleged breaches of franchise agreement - prima facie case - injunction granted (B)

**Wright Prospecting Pty Ltd v Hancock Prospecting Pty Ltd [No 3]** (WASC) - pleadings - contract or legally binding promise asserted in statement of claim not sustainable - paragraphs struck out (I B C)

**Coffey LPM Pty Ltd v The Contaminated Sites Committee** (WASC) - costs - fourth defendant successful party in opposing appeal - appellant to pay fourth defendant's costs not including costs in relation to misconceived notice of contention (I B C)

**Ruhe v Patel** (ACTSC) - bankruptcy - extension of caveat over property granted to trustee of bankrupt's estate (B)

## Summaries With Link (Five Minute Read)

### **Carey v Laikin 2015 SCC 17**

Supreme Court of Canada

McLachlin CJ; Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ

Contempt - respondent brought contempt proceedings against appellant lawyer alleging he breached terms of Mareva injunction by returning money to client for whom he was holding it in trust - injunction issued in course of litigation between respondent, client and related parties and enjoined any person with knowledge of order from disposing or dealing with assets of various parties, including client's - motions judge found lawyer in contempt - lawyer moved to reopen contempt hearing and filed new evidence - motions judge set aside previous finding of contempt - Court of Appeal allowed appeal and restored initial contempt finding - held: lawyer was in contempt - Court of Appeal correctly held motions judge erred in exercising discretion to permit lawyer to relitigate initial contempt finding, and erred in setting finding aside - appeal dismissed.

[Carey](#) (I B)

### **Michael v RJ Chalmers & Co;; Edwards v Causbrook & Associates;; Smidmore v RJ Chalmers & Co [2015] NSWSC 879**

Supreme Court of New South Wales

Hidden J

Discovery - misleading and deceptive conduct - plaintiffs were partners of law firm - plaintiffs together with wives and superannuation funds sued accountants for losses said to have been sustained by them by entering into recommended investments - plaintiffs sought order that defendants give discovery of certain categories of documents - Pt21 *Uniform Civil Procedure Rules 2005* - relevance - held: second defendant ordered to provide discovery of documents in categories sought relating to investments referred to in amended statement of claim.

[Chalmers](#) (I B)

### **Quach v Health Care Complaints Commission [2015] NSWCA 187**

Court of Appeal of New South Wales

Meagher JA

Stay - applicant sought declaration that decisions of New South Wales Civil & Administrative Tribunal were void, stay of order cancelling registration as medical practitioner, and that he be registered unconditionally as medical practitioner - held: order cancelling registration operated immediately - evidence was that practitioner's name removed from Register of Medical Practitioners - there was no continuing operation of that order which might be subject of stay - having regard to serious nature findings by NCAT and public interest it was not a case in which

any discretion to grant a stay would have been exercised - application for extension of the time in which to bring "appeal for merits review" refused - any such application should have been brought by way of summons seeking leave to appeal - notices of motion dismissed.

[Quach](#) (I G)

## **Beck v Colonial Staff Super Pty Ltd [2015] NSWSC 723**

Supreme Court of New South Wales

Slattery J

Superannuation - plaintiff was former employee of bank and member of superannuation fund to which he contributed - trustee of fund amended trust deed of fund to remove existing fund rule (clause A11.3) which provided for certain discretionary benefits - plaintiff contended trustee's exercise of power to amend breached its general law duty to act in best interests of fund's beneficiaries and contravened statutory duties under s52(2)(c) *Superannuation Industry Supervision Act (Cth) 1993* and *Superannuation Industry (Supervision) Regulations 1994* - estoppel - unconscionable conduct - held: plaintiff successful in challenge to validity of decision to amend rules of fund to remove clause - plaintiff entitled to consideration of possible benefits under clause - plaintiff also successful in estoppel case - plaintiff entitled to relief on basis he was entitled to pension at age 55 subject to adjustments and other relief considerations - parties to bring in short minutes of order - proceedings adjourned.

[Beck](#) (B)

## **Bedshed Franchising Pty Ltd v Battersby [2015] WASC 224**

Supreme Court of Western Australia

Beech J

Interlocutory injunction - defendants were parties as guarantors to franchise agreements entered between plaintiff as franchisor and companies associated with defendants as franchisees - plaintiffs claimed defendants were in breach of clause of agreement because they each had an interest in a competing business - plaintiff sought interlocutory injunction restraining defendants from breaching clause - held: - balance of convenience in favour of granting injunction - plaintiff established prima facie case against first and third defendants but not second defendant - injunctions granted against first and third defendants.

[Bedshed](#) (B)

## **Wright Prospecting Pty Ltd v Hancock Prospecting Pty Ltd [No 3] [2015] WASC 231**

Supreme Court of Western Australia

Le Miere J

Pleadings - claim to entitlements in relation to mining tenements acquired by first defendant or its subsidiaries - first and second defendants sought to strike out parts of substituted statement of claim and reply - held: contract or legally binding promise asserted by plaintiff in paragraph of substituted statement of claim, which was foundation for the pleas in two subsequent paragraphs, was not sustainable - paragraphs of statement of claim struck out.

[Wright](#) (I B C)

**Coffey LPM Pty Ltd v The Contaminated Sites Committee [2014] WASC 504**

Supreme Court of Western Australia

Chaney J

Costs - appeal dismissed in proceedings - fourth respondent had appeared in opposition to appeal at hearing of matter and relied substantially on submissions made by intervener - fourth respondent made submissions in relation to contentions in 'Notice of Contention' - fourth respondent sought an order for payment of its costs on basis it was a successful party to appeal for purposes of O 66 r1 *Rules of the Supreme Court 1971 (WA)* - held: fourth respondent was successful party in opposing appeal - appellant ordered to pay its costs not including costs in relation to notice of contention, which was misconceived.

[Coffey](#) (I B C)

**Ruhe v Patel [2015] ACTSC 169**

Supreme Court of the Australian Capital Territory

Refsauge J

Bankruptcy - caveat - applicant appointed trustee of bankrupt's estate - bankrupt lived at house - Crown lease for property was granted to bankrupt's respondent wife - applicant sought to extend caveat over property - held: Court had concerns about nature of interest claimed as caveatable interest - Court extended caveat so that it would not lapse and applicant could provide sufficient information to satisfy Court of interest in property - it was possible trustee's interests would be better protected by an injunction requiring wife to retain proceeds of sale from dispersal - caveat extended.

[Ruhe](#) (B)

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