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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)

Polo Enterprises Australia Pty Ltd v Pinctada Hotels and Resorts Pty Ltd (NSWCA) - contract - issue estoppel - dismissal of application for permanent injunction - procedural decision binding appellant to construction of joint venture agreement and denying permission to seek relief for breach - leave to appeal refused (I B)

Brown v Hewson (NSWCA) - negligence - fall or jump from balance beam at child care centre - proprietors liable - erroneous award of "buffer" for past and future economic loss - appeal allowed in part (I)

Australia and New Zealand Banking Group Limited v; Bragg (No. 2) (NSWSC) - possession - leave to amend defence and file cross-claim for damages refused (B)

Obeid v Independent Commission Against Corruption (NSWSC) - judicial review - misfeasance in public office - no error in Commissioner's refusal to release documents - summons dismissed (I B G)

Thompson v Thompson (VSC) - succession - testator's family maintenance - further provision order made in favour of long-standing second wife of deceased (B)

Brett Grimley Sales Pty Ltd v Petrovic (VSC) - caveat - caveat removed - order for possession of property made (B)

Westpac Banking Corporation v Clark; ex parte Gallop Reserve Pty Ltd (QSC) - contract -

applicant was assigned benefit of judgment in bank's favour - leave granted to commence enforcement proceedings (B C)

Summaries With Link (Five Minute Read)

Polo Enterprises Australia Pty Ltd v Pinctada Hotels and Resorts Pty Ltd [2015] NSWCA 397

Court of Appeal of New South Wales
Bathurst CJ, Ward JA & Tobias AJA

Contract - joint venture agreement - appellant sought leave to appeal from two decisions in Equity Division of Supreme Court - first decision dismissed appellant's application for permanent injunction to restrain first respondent from staging beach polo event in or within 50km of Broome - second decision ruled appellant was bound by issue estoppel in relation to construction of parties' joint venture agreement and refused them permission to seek relief for a claimed breach - *Civil Procedure Act 2005* (NSW) - ss101 & 103 *Supreme Court Act 1970* (NSW) - r28.2 *Uniform Civil Procedure Rules 2005* (NSW) - held: there had been delay and there was no point of principle or general importance raised - there may have been argument concerning construction of agreement relating to whether clause gave appellant exclusive right to stage beach polo event but decision not more than arguably wrong - in any argument relied upon was first raised on appeal - appeal against decision in relation to issue estoppel was hopeless - leave to appeal refused - summons dismissed.

[Polo Enterprises](#) (I B)

Brown v Hewson [2015] NSWCA 393

Court of Appeal of New South Wales
Macfarlan JA; Sackville AJA & Adamson J

Negligence - three and a half year old respondent injured when he fell or jumped from balance beam at child care centre - respondent sued appellant proprietors of child care centre - case heard sixteen years after accident - appellants denied liability and disputed respondent suffered head injury - appellants also disputed that any ongoing neurological or behavioural problems were caused by accident - primary judge found appellants breached duty of care but did not accept plaintiff injured head - primary judge found plaintiff not entitled to damages for any neurological or behavioural problems - appellants challenged finding of negligence - *Centre Based and Mobile Child Care Services Regulation (No. 2) 1996* (NSW) - *Children (Care and Protection) Act 1987* (NSW) - *Civil Liability Act 2002* (NSW) - held: no error in finding appellants failed to exercise reasonable care in supervising respondent's activities - causation established - not open to primary judge to award a "buffer" for past and future economic loss - appeal allowed in part.

[Brown](#) (I)

Australia and New Zealand Banking Group Limited v; Bragg (No. 2) [2015] NSWSC 1903

Supreme Court of New South Wales

Davies J

Possession - defendants sought leave to amend defence to rely on "unjust and unfair lending, improvident lending, unconscionable lending and breach of *National Consumer Protection Act 2009* (Cth) (sic)" - defendants also sought leave to file cross-claim seeking damages - *Contracts Review Act 1980* (NSW) - *Competition and Consumer Act 2010* (Cth) - held: leave to allow reliance on *Contracts Review Act* futile - Court not satisfied defendants established entitlement to argue about unjustness of contract entered with bank - no evidence demonstrating breach of *Competition and Consumer Act* - notice of motion dismissed.

[ANZ](#) (B)

Obeid v Independent Commission Against Corruption [2015] NSWSC 1891

Supreme Court of New South Wales

Davies J

Judicial review - plaintiffs claimed declarations that first to ninth defendants engaged in misfeasance in public office, that the reports issued by ICAC 4 were ultra vires and a nullity, and order permanently restraining ICAC from issuing certain reports to extent reports concerned plaintiffs - plaintiffs also claimed damages - plaintiffs sought judicial review of Commissioner's refusal to issue release documents - held: Commissioner correctly identified and applied test of public interest in ss111 & 112 *Independent Commission Against Corruption Act 1988* (NSW) - plaintiffs not denied procedural fairness - not demonstrated that Commissioner's decision was unreasonable - summons dismissed.

[Obeid](#) (I B G)

Thompson v Thompson [2015] VSC 706

Supreme Court of Victoria

McMillan J

Succession - testator's family maintenance - plaintiff widow and second wife of deceased sought further provision for proper maintenance and support from deceased's estate pursuant to s91 *Administration and Probate Act 1958* (Vic) - contest between deceased's obligations to second wife and towards adult children by first wife - held: plaintiff's proper maintenance and support was foremost but competing claims and testator's wishes significant in consideration of what provision should be made - further provision provided by extended portable life interest in apartment which plaintiff and deceased had maintained separate ownership of, and towards purchase of which they had both contributed - order for further provision made.

[Thompson](#) (B)

Brett Grimley Sales Pty Ltd v Petrovic [2015] VSC 716

Supreme Court of Victoria

Garde J

Caveat - applicant sought removal of caveat from property under s90(3) *Transfer of Land Act 1958* (Vic) and order for possession of property to effect transfer of vacant possession to purchaser - applicant's father sought declaration applicant held his legal interest in property on

trust for him - applicant had undertaken to Court to conduct public auction of property and to pay amounts in priority from proceeds of sale - property sold - settlement scheduled - applicant sought to comply with undertakings so settlement could proceed - held: there were serious issues to be tried as to father's claim - balance of convenience favoured removal of caveat - appropriate to make an order for possession of property to avoid disruption of sale or settlement - orders made.

[Brett Grimley Sales](#) (B)

Westpac Banking Corporation v Clark; ex parte Gallop Reserve Pty Ltd [2015] QSC 353

Supreme Court of Queensland

Martin J

Contract - applicant sought leave to enforce judgment obtained by bank against first defendant in 2011 on basis of deed of transfer between applicant, bank and others - whether deed assigned bank's rights in judgment to applicant enabling it to obtain leave to commence enforcement proceedings - construction of deed - meaning of "Westpac Debt" - "in connection with" - declaration of intent in recital- held: clause of deed sufficiently wide to capture judgment and assign applicant benefit of judgment - leave granted to commence enforcement proceedings upon discontinuing action against first defendant.

[Westpac Banking Corporation](#) (B C)

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