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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)

Le Breton v Pacific Mirage Ltd (No 2) (FCA) - corporations - leases and tenancies - sub-lessor liable for maintenance, repair, and upkeep of certain areas of sub-lessee's suite (B, C)

Levi v Australian Securities Investments Commission (No 2) (NSWSC) - no variation of costs orders - non-publication order vacated (I, B, G)

In the matter of Idylic Solutions Pty Ltd - Australian Securities Investments Commission v Hobbs (NSWSC) - corporations - winding up - unregistered managed investment schemes - orders and directions approving settlement and distribution of funds (I, B, G)

Hargraves Secured Investments Ltd v Sharpe (NSWSC) - loans and mortgages - relief sought by self-represented litigant against possession of property declined (I, B)

Re Great Southern Finance Pty Ltd (in liq) (VSC) - corporations - managed investment scheme - leave granted to join companies as defendants (I, B)



D & Z Constructions Pty Ltd v IHI Corporation (WASC) - commercial arbitration - no error by arbitrator in interim award - leave to appeal refused (I, B, C)

The Estate of Rauch (NTSC) - succession – solicitor appointed administrator of deceased's estate (B)

Summaries with links (5 minute read)

Le Breton v Pacific Mirage Ltd (No 2) [2013] FCA 691

Federal Court of Australia

Edmonds J

Corporations - leases and tenancies - company held Crown lease of land in perpetuity - company sub-leased suites of building erected on land to shareholders - sub-lessee sought declaration company was liable for ongoing maintenance, repair and upkeep of external, garden and rooftop areas for all suites, or for suite *Villa 43* - construction and interaction of provisions of sub-lease - boundaries of sub-leased premises - *suite - the Suite* - held: company liable for ongoing maintenance, repair and upkeep of or areas identified by sub-lessee in respect of *Villa 43*.

[Le Breton](#) (B, C)

Levi v Australian Securities Investments Commission (No 2) [2013] NSWSC 932

Supreme Court of New South Wales

Rothman J

Costs - suppression order - Court made orders dismissing proceedings and ordered plaintiff to pay ASIC's costs (first judgment) - Court also made suppression order to prevent identification of plaintiff - first judgment was subject to appeal and a motion for interim stay of disciplinary proceedings brought by ASIC, which was refused - plaintiff sought different costs order - ASIC sought vacation of suppression order - plaintiff argued that, in first judgment, issue of Court's jurisdiction to make orders sought was determined in his favour, and that proceedings were analogous to proceedings for stay of criminal proceedings, for which costs order would not usually issue - held: analogy with criminal proceedings did not withstand scrutiny - ASIC not deprived of ordinary entitlement to be compensated for costs - non-publication order vacated.

[Levi](#) (I, B, G)



In the matter of Idylic Solutions Pty Ltd - Australian Securities Investments Commission v Hobbs [2013] NSWSC 950

Supreme Court of New South Wales

Hammerschlag J

Corporations - managed investment schemes - first defendant New Zealand resident operated unregistered managed investment schemes in contravention of *Corporations Act 2001* (Cth) - liquidator applied for orders and directions pursuant to s601EE(2) of the Act in relation to winding up of the schemes, and more particularly in relation to proposed distribution of funds for investors' benefit in accordance with terms of consent orders signed and entered by High Court of New Zealand - *Ponzi scheme* - evidence - orders and directions made approving settlement and distribution.

[In the matter of Idylic Solutions Pty Ltd - Australian Securities Investments Commission](#) (I, B, G)

Hargraves Secured Investments Ltd v Sharpe [2013] NSWSC 940

Supreme Court of New South Wales

Schmidt J

Loans and mortgages - Court set aside writ of possession of defendant's property - plaintiff granted another writ of possession, and took possession of property - defendant disputed right to possession on basis he had not breached obligations to pay money under deed and that plaintiff did not take steps to ensure he received notice of writ - dispute as to whether defendant was in occupation of property when plaintiff obtained possession - defendant sought various relief - held: defendant entitled to rely on matters complained of, but needed to pursue a different kind of relief against plaintiff - orders declined.

[Hargraves Secured Investments](#) (I, B)

Re Great Southern Finance Pty Ltd (in liq) [2013] VSC 351

Supreme Court of Victoria

Robson J

Corporations - managed investment scheme - plaintiff appealed from refusal of leave under s471B *Corporations Act 2001* (Cth) to issue proceedings against defendant members of Great Southern group of companies - plaintiff alleged prospectus issued by defendant was defective within meaning of s1022A(1) of the Act and that other defendant, by its involvement in preparing the prospectus, had contributed to its defectiveness - test to be applied under s471B - limitations - *liable person* - held: Associate Justice erred in requiring plaintiff to provide evidence or pleading of



when loss and damage occurred - limitation issues should be determined at trial - there was a serious issue to be tried - appeal allowed - leave granted to join companies as defendants.

[Re Great Southern Finance Pty Ltd \(in liq\)](#) (I, B)

D & Z Constructions Pty Ltd v IHI Corporation [2013] WASC 265

Supreme Court of Western Australia

Martin CJ

Commercial arbitration - contract - payment dispute in connection with works undertaken for construction of power station - applicant sought leave to appeal interim award issued by arbitrator under *Commercial Arbitration Act 1985 (WA)* - construction of contract - express terms concerning minimisation of actual costs - alleged implied term limiting actual costs to those reasonably and properly incurred - burden of proof for actual costs - held: applicant failed to identify any manifest error of law on face of the interim award which, if resolved by Court, could substantially affect rights of one or more parties to the arbitration agreement - application for leave to appeal dismissed.

[D & Z Constructions](#) (I, B, C)

The Estate of Rauch [2013] NTSC 34

Supreme Court of the Northern Territory

Hiley J

Succession - applicant solicitor sought grant of administration with will annexed in relation to deceased's estate, because executors had both renounced probate - application brought pursuant to r88.07 *Supreme Court Rules* and invoked Court's jurisdiction conferred by s14 *Administration and Probate Act (NT)* - jurisdiction - *necessary or convenient* - security - held: Court satisfied there was and is no spouse or de facto partner of deceased, that each of next of kin had been duly cited and that none of them had appeared and prayed for administration - necessary and convenient to appoint applicant to be administrator of deceased's estate without any security being provided - order granted.

[The Estate of Rauch](#) (B)



Flowers

Morandi, 1924

By Luke Fischer

Apparition
 on the threshold
 quivering
 like a muslin veil
 Around the bouquet
 hints of evening purple
 little more than scents
 of iris
 The poppies
 diaphanous wings
 of butterflies
 poised
 Out of muted foliage
 ray reed-like stems
 lines which levitate
 vanish reappear
 The vase overcast teal
 of a cloak 'round
 a herdsman
 merging with the moors
 All bathed in sun
 ambient dust of an endless wheatfield
 imprinted with dreams of the wind's tread
 perduring nap

Luke Fischer won the 2012 Overland Judith Wright Poetry Prize. His book of poems *Paths of Flight* (Black Pepper Publishing) is forthcoming later this year.

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