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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)

The Owners Corporation Strata Plan No 74667; 74670 and 74662 v Auburn City Council (NSWSC) - costs - offers made to owners' corporations - costs payable up to time of offer, not time of communication of acceptance by executive committees (I C)

Traivlog Pty Ltd v Electrometals Technologies Ltd (Subject to a Deed of Company Arrangement) (QSC) - corporations - voluntary administration - deed of company arrangement not set aside (B)

Re: Starkey (QSC) - Wills - succession - letters of administration in limited form granted (B)

Argus Group Pty Ltd v Litigation Lending Services Ltd (No 2) (SASC) - corporations - company represented by plaintiffs - compromise - company to pay balance of plaintiffs' costs and disbursements (I B)

Hemat Shir & Sayed Developments Pty Ltd v Haseeb (WASC) - costs - possession - offers of settlement - appropriate costs orders (I B)

West Coast Council v Coverdale (No 2) (TASFC) - real property - Valuer-General obliged to value lands subject of marine farming leases - appeal allowed (I G)

Compass Group Healthcare Hospitality Service Pty Ltd v Beaton (ACTSC) - workers compensation - worker's mental injury caused by employer's unreasonable conduct - appeal dismissed (I)

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Summaries with links (5 Minute Read)

The Owners Corporation Strata Plan No 74667; 74670 and 74662 v Auburn City Council [2015] NSWSC 86

Supreme Court of New South Wales

Rein J

Costs - equity - plaintiffs sued defendants in respect of allegedly negligent certifications of buildings of which plaintiffs were respectively the owners corporation - plaintiffs each accepted offer of compromise made by subject to confirmation of general meeting of owners corporation - general meeting of each owners corporation approved settlement - plaintiffs contended they were entitled to costs up to time they communicated acceptance of offers by executive committees - defendants contended plaintiffs were entitled to costs only up to date of offers of compromise - rr20.26, 20.27 & 42.13A *Uniform Civil Procedure Rules 2005* (NSW) - held: offer made in all circumstances must be taken to be one that costs to the time of the offer would be paid - defendants required to pay plaintiffs' costs up to the time of the offer and not beyond that time.

[The Owners Corporation Strata Plan No 74667; 74670 and 74662](#) (I C)

Traivelog Pty Ltd v Electrometals Technologies Ltd (Subject to a Deed of Company Arrangement) [2015] QSC 27

Supreme Court of Queensland

P McMurdo J

Corporations - voluntary administration - creditors sought to set aside deed of company arrangement executed by first respondent company - reg 5.3A.07 *Corporations Regulations 2001* (Cth) - ss445D, 447A & 513B *Corporations Act 2001* (Cth) - delay - held: no ground to set aside DOCA established under s445D(1)(a) & (b) - Court not persuaded DOCA unfairly prejudicial or unfairly discriminatory - application heard more than five months after execution of DOCA, during which time the company continued to trade with consequence those who became creditors, contractors or investors in that period would be likely to be prejudiced from orders sought - application dismissed.

[Traivelog Pty Ltd](#) (B)

Re: Starkey [2015] QSC 32

Supreme Court of Queensland

Henry J

Wills - succession - applicants sought a grant of letters of administration pursuant to r603(1)(d) *Uniform Civil Procedure Rules 1999* (Qld) - applicants sought to be appointed as administrators with view to initiating inquiries to ascertain who was entitled to beneficial distribution of estate and thereafter return to seek Court's declarations and other orders - held: Court persuaded applicants were persons appropriate for appointment pursuant to r603(2) - materials were adequate to justify Court granting letters of administration in limited form contemplated to them - appropriate to order grant.

[Re: Starkey](#) (B)

Argus Group Pty Ltd v Litigation Lending Services Ltd (No 2) [2015] SASC 20

Supreme Court of South Australia

Gray J

Corporations - costs - plaintiffs held minority interest in first defendant litigation funding company - dispute arising out of fifth defendant's attempt to take control of company - fifth defendant sued litigation funding company for breach of contract - plaintiffs claimed second to fourth defendants engaged in oppressive conduct and breaches of their directors duties by impermissibly dealing with fifth defendant - plaintiffs granted leave to represent litigation funding company - during plaintiffs' opening they reached compromises with defendants - plaintiffs sought pursuant to s242 *Corporations Act 2001* (Cth) to recover balance of costs from litigation funding company - held: there was serious question to be tried - proceedings had been brought in good faith for the benefit of litigation funding company - under compromises plaintiffs had obtained substantially all relief sought - appropriate that plaintiffs be indemnified by litigation funding company for balance of their costs and disbursements.

[Argus Group Pty Ltd](#) (I B)

Hemat Shir & Sayed Developments Pty Ltd v Haseeb [2014] WASC 485

Supreme Court of Western Australia

Beech J

Costs - possession - defendant succeeded on plaintiff's claim for possession and alternative counterclaim - defendant was unsuccessful on primary counterclaim which was founded on false evidence - appropriate costs orders - O66 r 1(1) *Rules of the Supreme Court 1971* (WA) - held: substantial justice of case favoured an order there be no orders as to costs except in relation to defendant's application to set aside default judgment - defendant to pay costs of that application - none of the settlement offers made by parties justified any different order for costs.

[Hemat Shir & Sayed Developments Pty Ltd](#) (I B)

West Coast Council v Coverdale (No 2) [2015] TASFC 1

Full Court of the Supreme Court of Tasmania

Tennent, Escort & Pearce JJ

Real property - Council sought declaration that Valuer-General obliged to keep and maintain valuation rolls and to provide valuation lists to Council including particulars of ownership and values of lands subject of marine farm leases - leases were granted in respect of areas in Macquarie Harbour pursuant to *Marine Farming Planning Act 1995* (Tas) - Council claimed primary judge erred in failing to determine grant of each of the marine farming leases created an interest in land which was rateable pursuant to section 87(1) *Local Government Act 1993* (Tas) - statutory construction - held (by majority): seabed and waters of Macquarie Harbour were Crown land for the purposes of *Crown Lands Act 1976* (Tas) - they were *Crown lands that are liable to be rated* because they were not exempt - Valuer-General under duty to value lands the subject of the leases - appeal allowed.

[West Coast Council](#) (I G)

Compass Group Healthcare Hospitality Service Pty Ltd v Beaton [2015] ACTSC 18

Court of Appeal of the Australian Capital Territory

Burns J

Workers compensation - worker sued appellant for mental injury arising out of or in course of her employment with the appellant - appellant claimed any injury sustained by worker was result of reasonable action taken by it in relation to disciplining worker - Magistrate found appellant's unreasonable conduct in meeting cause worker's injury - appellant appealed - ss4, 31(1) & 197 *Workers Compensation Act 1951* (ACT) - held: no failure to make findings as to content of discussion at meeting between worker and appellant's human resources manager - no failure to make finding as to worker's emotional state during meeting - no failure to provide sufficient reasons for concluding worker displayed an adverse reaction and an emotional response to meeting process - Magistrate entitled to accept worker's evidence as to conduct of meetings - Magistrate did not make finding that there was objective evidence available during meeting that worker was not a person of normal fortitude - appeal dismissed.

[Compass Group Healthcare Hospitality Service Pty Ltd \(I\)](#)

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