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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)

Wilson v British Columbia (Superintendent of Motor Vehicles) (SCC) - judicial review - automatic roadside driving prohibition scheme - Notice of Driving Prohibition - reasonable grounds - appeal dismissed (I B C G)

North Coast Conveyancing Pty Ltd v Bradbury (NSWCA) - negligence - conveyancing - failure to make critical findings of fact in relation to causation - appeal allowed (I B C)

Nichols Constructions Pty Ltd v Elphick (NSWSC) - loans and mortgages - power to order decision of separate question - questions to be decided separately from and after all other issues in proceedings (I B C)

Kossaifi v ACN 111 804 383 Pty Ltd (NSWSC) - show cause - not appropriate to dismiss proceedings - plaintiffs to be put on terms for further conduct - proceedings adjourned (I B)

Yuksels Nominees Pty Ltd v Nguyen (VSC) - property law - caveat - prima facie case - balance of convenience - removal of caveat ordered (I B C)

Best Tech & Engineering Ltd v Samsung C&T Corporation [No 2] (WASC) - injunction - performance guarantee - existing injunction varied (I B C)

Wintle v The Yilgarn Shire Council (WASC) - discovery - permission to issue early return subpoenas prior to determination of summary judgment application refused (I B)

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Summaries With Link (Five Minute Read)

Wilson v British Columbia (Superintendent of Motor Vehicles) 2015 SCC 47

Supreme Court of Canada

McLachlin CJ; Cromwell, Moldaver, Karakatsanis, Wagner, Gascon & Cote JJ

Administrative law - judicial review - automatic roadside driving prohibition scheme - appellant stopped at police road check - appellant provided breath samples which registered 'Warn' reading - peace officer served appellant with Notice of Driving Prohibition which prohibited him from driving for three days - appellant contended that test result alone could not provide officer with reasonable grounds required by s.215.41(3.1) *Motor Vehicle Act* - Superintendent did not set aside Notice - Notice was set aside on judicial review - Court of Appeal reinstated Notice - "has reasonable grounds to believe, as a result of the analysis, that the driver's ability to drive is affected by alcohol" - held: appellant's case rested on flawed premise that s215.41(3.1) was ambiguous - s215.41(3.1) not ambiguous - Superintendent's interpretation reasonable and consistent with grounds for review of peace officer's decision - Superintendent's interpretation consistent with legislative objectives - appeal dismissed.

[Wilson](#) (I B C G)

North Coast Conveyancing Pty Ltd v Bradbury [2015] NSWCA 361

Court of Appeal of New South Wales

Basten & Leeming JJA; Emmett AJA

Negligence - conveyancing - respondents entered deed of option for purchase of property - option fee was 10% of purchase price - deed required option to be exercised by certain date and time - option not exercised - respondents forfeited fee - respondents had occupied premises subject of option for weekly fee - respondents also incurred expenditure by improving property - respondents sued appellant which acted for them with respect to deed of option and proposed agreement for sale, seeking to recover option fee, interest, fees, disbursements and amount spent on improvements - trial judge gave judgment for respondents - trial judge rejected claim for expenditure by improvements - appellants appealed - appellant contended trial judge failed to make necessary findings with respect to causation- held: appeal allowed in light of respondents' concessions - it was ultimately common ground trial judge did not make critical findings of fact on causation - judgment in favour of respondent set aside.

[North Coast Conveyancing](#) (I B C)

Nichols Constructions Pty Ltd v Elphick [2015] NSWSC 1732

Supreme Court of New South Wales

McCallum J

Separate question - loans and mortgages - power to order decision of separate question - defendant borrowed amount to buy property - loan secured by mortgage over property - no repayments made - plaintiff sought judgment for possession of property and for money sum outstanding - default judgments entered and subsequently set aside - defendant filed defence and cross-claim - plaintiff sought orders for expedited hearing and separate decision of certain

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questions - ss56-60 *Civil Procedure Act 2005* (NSW) - *Contracts Review Act 1980* (NSW) - s79 *National Credit Code 2011* (NSW) - rr1.21 & 28.2 *Uniform Civil Procedure Rules 2005* (NSW) - held: on consideration of pleadings Court persuaded "interventionist approach" was warranted of "identifying and separating important issues which can resolve significant parts of the litigation expeditiously": *Integral Home Loans Pty Limited v Interstar Wholesale Finance Pty Limited* [2006] NSWSC 1464 - questions to be decided separately from and after all other issues in proceedings.

[Nichols](#) (I B C)

Kossaifi v ACN 111 804 383 Pty Ltd [2015] NSWSC 1743

Supreme Court of New South Wales

Harrison J

Show cause - plaintiffs claimed defendants negligently mismanaged shareholders' dispute that arose between them and corporate business associates - Registrar referred matter to Court in order that plaintiffs might show cause why proceedings ought not be dismissed pursuant to s61(3)(a) *Civil Procedure Act 2005* (NSW) and/or r12.7 *Uniform Civil Procedure Rules 2005* (NSW) - prejudice - held: plaintiffs had disregarded orders - matter had been on foot 10 months which was not a long time in comparison to other successfully prosecuted litigation - Court did not have basis to determine viability of plaintiffs' claim or any extent to which their inability to progress proceedings was related to defendants' conduct - not appropriate to dismiss proceedings - plaintiffs to be put on terms for further conduct of proceedings - proceedings adjourned.

[Kossaifi](#) (I B)

Yuksels Nominees Pty Ltd v Nguyen [2015] VSC 663

Supreme Court of Victoria

T. Forrest J

Property law - caveat - applicant sought removal of caveat registered pursuant to s90(3) *Transfer of Land Act 1958* (VSC).- first defendant opposed removal of caveat, submitting that proceeding was abuse of process because substantiation of caveat was component of County Court litigation - ss89, 89A & 90 *Transfer of Land Act 1958* (Vic) - held: present s90(3) proceeding not vexatious - no other proceeding was being maintained in another court in respect of same subject matter - first defendant did not have prima facie case to justify maintenance of caveat - balance of convenience favoured removal of caveat - removal of impugned caveat pursuant to s 90(3) ordered.

[Yuksels](#) (I B C)

Best Tech & Engineering Ltd v Samsung C&T Corporation [No 2] [2015] WASC 447

Supreme Court of Western Australia

Chaney J

Injunction - performance guarantee - judge granted urgent interim injunction restraining defendant from making requesting, calling or demanding for payment on guarantees issued by bank relating to obligations under contract entered into between parties - whether interim

injunction should be discharged or left in place until trial - held: plaintiff had raised prima facie case that defendant not entitled to call upon the security - balance of convenience favoured interim injunction - injunction should not be continued in wide terms previously granted - injunction varied.

[Best](#) (I B C)

Wintle v The Yilgarn Shire Council [2015] WASC 445

Supreme Court of Western Australia

Master Gething

Subpoena - plaintiff owned property in Shire - plaintiff alleged Shire unlawfully interfered with plaintiff's ability to develop power generation invention - Shire sought summary judgment - plaintiff sought to lodge two early return subpoenas, one addressed to Shire, other to Department of Transport - O 36B r3(6) *Rules of the Supreme Court 1971 (WA)* - held: issue of subpoena against party to an action was an abuse of court's processes - not appropriate to issue subpoena prior to determination of the summary judgment application - not necessary for plaintiff to have information sought in subpoenas for just determination of application for summary judgment - permission to issue early return subpoenas not granted.

[Wintle](#) (I B)

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