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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)

Belvino Investments No. 2 Pty Ltd v Australian Vintage Ltd (NSWSC) - stay - lease of vineyard - proceedings stayed pending determination of issues by expert (I B C)

Amprimo v Wynn (NSWSC) - succession - plaintiff not an *eligible person* - family provision order refused (B)

In the matter of Dr Green Sustainable Energy Pty Ltd (NSWSC) - corporations - statutory demand - genuine dispute existed - demand set aside (B C)

Jianwei Liu v State of New South Wales (No. 2) (NSWSC) - costs - unreasonable refusal of offer of compromise - indemnity costs (I G)

Liesfield v SPI Electricity Pty Ltd (Ruling No 3) (VSC) - Black Saturday bushfires - interrogatories to be answered by SPI's proper officer not employees or contractors (I B C G)

Melbourne City Investments Pty Ltd v Treasury Wine Estates Ltd (No 3) (VSC) - representative proceedings - solicitor restrained from acting for lead plaintiff investment company which he controlled (I B)



Treadstone Developments Pty Ltd Wever Family Trust v The Salisbury Group Pty Ltd (I B) - negligence - misleading or deceptive conduct - financial advice - security for costs - leave to amend pleading and to proceed against company in liquidation (I B)

Summaries with links (5 minute read)

Belvino Investments No. 2 Pty Ltd v Australian Vintage Ltd [2014] NSWSC 978

Supreme Court of New South Wales

White J

Stay - equity - leases and tenancies - lessor sought declarations as to meaning and effect of provisions in lease of vineyard - lessee sought stay of proceedings pending determination of parties' dispute by expert in viticulture - lessor claimed it had contractual right under lease to have issues determined by Court and that issues not appropriate for expert's determination - lessee claimed parties had agreed under lease to have disputed matters determined by expert and should adhere to procedure - construction of lease - held: proceedings stayed pending determination of dispute by an expert in viticulture - lessor bound to accept term of expert's retainer that expert not be liable except for fraud, misleading or deceptive conduct, or gross negligence - stay granted.

[Belvino Investments No. 2 Pty Ltd \(I B C\)](#)

Amprimo v Wynn [2014] NSWSC 991

Supreme Court of New South Wales

Rein J

Succession - plaintiff sought family provision order pursuant to s59 *Succession Act 2006* (NSW) on basis she was living in de facto relationship with deceased at time of his death, or that she was a person with whom deceased was living in a close personal relationship, or that he was a person on whom she was wholly or partly dependent - ss57(1)(b), 57(1)(f) & 57(1)(e)(i) - credit - held: plaintiff and deceased not living in de facto relationship at time of deceased's death - plaintiff not a member of deceased's household - close personal relationship not established - plaintiff not an *eligible person* within meaning of s57 - family provision order refused.

[Amprimo \(B\)](#)

In the matter of Dr Green Sustainable Energy Pty Ltd [2014] NSWSC 985

Supreme Court of New South Wales

Bergin CJ in Eq

Corporations - statutory demand - plaintiff sought to set aside statutory demand - originating process made reference to s459G, not s459H *Corporations Act 2001* (Cth) - held: Court satisfied there was jurisdiction to entertain application even though specific section under which Court may



set aside statutory demand not identified in originating process - Court satisfied there was genuine dispute - statutory demand set aside.

[In the matter of Dr Green Sustainable Energy Pty Ltd](#) (B C)

Jianwei Liu v State of New South Wales (No. 2) [2014] NSWSC 993

Supreme Court of New South Wales

Nicholas AJ

Costs - Calderbank offer - indemnity costs - Court gave judgment for plaintiff in proceedings for assessment of damages for loss of pendant and necklace destroyed while in custody - plaintiff sought costs against defendant on ordinary basis - defendant sought indemnity costs on basis of Calderbank offer - lack of evidence justifying plaintiff's claim - judgment less than \$500,000 threshold - held: Court entirely unpersuaded commencement and continuation of proceedings in Supreme Court rather than District Court was warranted - no aspect of claim justified its determination in Supreme Court - plaintiff's refusal to accept Calderbank offer was unreasonable - parties to bear own costs up to date of deadline for acceptance of offer of compromise - defendant awarded indemnity costs thereafter - orders made

[Jianwei Liu](#) (I G)

Liesfield v SPI Electricity Pty Ltd (Ruling No 3) [2014] VSC 346

Supreme Court of Victoria

Dixon J

Interrogatories - class action arising out of Black Saturday bushfires - plaintiff sought leave to deliver interrogatories for examination of SPI and specifically nominated employees or contractors of SPI - rr30.05 & 30.08 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - held: not a proper occasion to direct that interrogatories be answered by a person other than a proper officer of party interrogated - interrogatories should be directed to proper officer of SPI and not to nominated individual present and former employees and contractors - question of form not a reason to deny leave to interrogate SPI - plaintiff given leave to serve interrogatories to be answered by SPI by its proper officer but otherwise substantially in form of plaintiff's draft interrogatories - directions made.

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

Melbourne City Investments Pty Ltd v Treasury Wine Estates Ltd (No 3) [2014] VSC 340

Supreme Court of Victoria

Ferguson J

Representative proceedings - securities class actions - stay - abuse of process - plaintiff was investment company managed and controlled by solicitor - plaintiff commenced group proceedings against three publicly listed companies alleging failure to disclose and misleading or deceptive conduct in breach of ss674(2) & 1041H *Corporations Act 2001* (Cth) - plaintiff held small parcel of shares in companies - companies contended proceedings were brought for collateral purpose of generating legal fees for solicitor and that each proceeding was an abuse of process and should



be stayed - held: Court not satisfied proceedings abuse of process - however Court satisfied that solicitor ought to be restrained from acting for company whilst it was lead plaintiff and that proceedings ought not be permitted to continue as group proceedings whilst company and solicitor acted in tandem as plaintiff and solicitor.

[Melbourne City Investments Pty Ltd](#) (I B)

Treadstone Developments Pty Ltd Wever Family Trust v The Salisbury Group Pty Ltd [2014] QSC 109

Supreme Court of Queensland

Daubney J

Security for costs - contract - negligence - misleading and deceptive conduct - financial advice - plaintiff trustee of family trust contended it suffered loss because of investments made on advice of defendants - defendants sought security for costs - not in issue trustee's financial capacity was such that it would not be able to meet an adverse order for costs if unsuccessful at trial - Ch 17, Pt 1 *Uniform Civil Procedure Rules 1999* (Qld) - s1335 *Corporations Act 2001* (Cth) - held: unlikely those standing behind plaintiff who made guarantees could make good on guarantees - little weight to plaintiff's argument that security for costs would stifle litigation - no evidence that plaintiff's impecuniosity caused by defendant - appropriate to make order for security - plaintiff given leave to amend statement of claim, to proceed against first defendant company in liquidation and to obtain disclosure of company's professional indemnity insurance policy.

[Treadstone Developments Pty Ltd Wever Family Trust](#) (I B)

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