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## Daily Insurance A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Carlene Randall v City of Canada Bay Council (No 4)** (NSWSC) - judgments and orders - application to set aside judgments and orders made against company refused - amended statement of claim dismissed

**IDP Education Ltd v Lejburg Pty Ltd** (VSC) - consumer law - misleading or deceptive conduct - promotional material on website - website to be removed and not republished - declarations and injunctions

**Range Resources Ltd v Lind Asset Management LLC** (WASCA) - corporations - statutory demand - sale of shares in appellant - no genuine dispute about amount of debt - off-setting claim not made - appeal dismissed

**KWS Capital Pty Ltd v Love** (WASCA) - loans and mortgages - contract - finance broker entitled to fee from respondent for procuring conditional finance agreement - appeal allowed

**Scald Pty Ltd v Turner Developments Pty Ltd** (ACTSC) - application for account refused on basis there remained a preliminary question to be decided in proceedings

## Summaries With Link (Five Minute Read)

### **Carlene Randall v City of Canada Bay Council (No 4) [2015] NSWSC 1759**

Supreme Court of New South Wales

Kunc J

Judgments and orders - corporations - plaintiff sought to set aside judgments and orders made against company in 2009 subsequently varied in 2010 in Court of Appeal - plaintiff and husband were shareholders and directors of company - plaintiff contended proceedings were tainted by misrepresentation made to both Courts by Council - plaintiff also sought reinstatement of company - held: plaintiff had standing under r36.15 *Uniform Civil Procedure Rules 2005* (NSW) and Court's inherent jurisdiction to bring proceedings - no fraudulent misrepresentations by Council - no basis to reinstate company under s601AH(2) *Corporations Act 2001* (Cth) - none of plaintiff's arguments succeeded - even if plaintiff's arguments were correct they would not justify Court granting the relief sought - amended statement of claim dismissed.

[Carlene](#)

### **IDP Education Ltd v Lejburg Pty Ltd [2015] VSC 650**

Supreme Court of Victoria

Judd J

Consumer law - allegation of misleading or deceptive promotional material - defendants established and operated website - plaintiffs alleged statements on website involved conduct in contravention of ss18, 29(1)(g) & 29(1)(f) *Australian Consumer Law* and that second defendant director of first defendant company guilty of same contraventions as company by operation of s12 *Australian Consumer Law and Fair Trading Act 2012* (Vic) - held: not disputed publication by defendants of website was in trade or commerce - website's central themes and dominant messages false or misleading - plaintiffs established strong case of contraventions of ss18, & 29(1)(f) & (g). - second defendant as well as first defendant contravened provisions - plaintiffs entitled to declarations and injunctions under s232 *Australian Consumer Law* and s202 *Australian Consumer Law and Fair Trading Act* - website to be removed as a whole and not republished - parties to be heard on claim for damages and costs.

[IDP](#)

### **Range Resources Ltd v Lind Asset Management LLC [2015] WASCA 233**

Court of Appeal of Western Australia

Newnes & Murphy JJA; Corboy J

Corporations - statutory demand - respondent advanced funds to appellant pursuant to a Varied Funding Agreement (VFA) - default occurred - respondent served demand on appellant under s459E *Corporations Act 2001* (Cth) - appellant contended respondent sold shares in appellant issued and delivered as security for advances and that there was genuine dispute about amount of debt claimed - held: Master correct to hold there was no genuine dispute about amount of debt - any claim by appellant regarding sale of shares could only be off-setting claim - however appellant did not contend it had an off-setting claim - appeal dismissed.

## [Range](#)

### **KWS Capital Pty Ltd v Love [2015] WASCA 237**

Court of Appeal of Western Australia

McLure P, Murphy JA & Beech J

Loans and mortgages - finance broker - contract concerning fees payable by proposed borrower to agent in business of arranging provision of loans - appellant was finance broker who claimed entitlement to fee from respondent for procuring conditional financing agreement for respondent. - trial judge dismissed appellant's claim for structuring fee on basis it wasn't payable until advance made by company from whom finance offer procured - trial judge found it would be an uncommercial construction to be found liable to pay structuring fee irrespective whether advance made - contractual construction - common intention - held (by majority): approval of finance on terms and conditions in offer triggered the respondent's liability to pay structuring fee - appeal allowed.

[KWS](#)

### **Scald Pty Ltd v Turner Developments Pty Ltd [2015] ACTSC 270**

Supreme Court of the Australian Capital Territory

Burns J

Application for account - dispute between companies and persons involved in joint venture for development of units - plaintiff and other defendants were lenders to first defendant - apartments sold and insufficient funds to fully repay lenders' interest - correctness of repayments are in issue - substantial balance held by solicitors in trust account - plaintiff claimed right to an account - rr2721, 2722 *Court Procedures Rules 2006* (ACT) - what constitutes a preliminary question - held: a preliminary question went to a party's right to recover "in whole or in part", and must be resolved in order for court appointed referee to determine what was due to each party - there remained a preliminary question to be decided - Court not prepared to order account be taken - once preliminary question decided, Court might reconsider making proposed orders - application refused.

[Scald](#)

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