

Friday, 2 November 2018

Weekly Wills Estates and Superannuation Law Selected Bulletins covering Weekly Wills Estates and Superannuation Law

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Executive Summary (1 minute read)

Sreckovic v Sreckovic (NSWSC) - wills and estates - succession - adult child of deceased sought provision from deceased mother's estate and/or notional estate - lump sum provision of \$100,000 granted

Giurina v Giurina (VSCA) - wills and estates - removal of executors and appointment of State Trustees as trustee of deceased's estate and will's administrator - stay of orders refused

Commissioner for Consumer Affairs v Piantadosi & Anor (SASCFC) - consumer law - trusts and trustees - agents' indemnity fund - s30 *Land Agents Act 1994* (SA) - claim for \$200,000 compensation upheld - appeal dismissed

H.E.S.T. Australia Ltd v Inkley (SASC) - superannuation - trusts and trustees - application for variation of terms of trust deed - application granted

In the Estate of Peter Ronald Wiseman (ACTSC) - wills and estates - informal will - Court satisfied document constituted deceased's last will - declaration

Summaries With Link (Five Minute Read)

Sreckovic v Sreckovic [2018] NSWSC 1597

Supreme Court of New South Wales

Hallen J

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Will and estates - succession - family provision - plaintiff adult child of deceased sought provision from deceased mother's estate and/or notional estate under Ch 3 *Succession Act 2006* (NSW) - application not brought in time - no provision made for plaintiff in Will - defendant was deceased's other child - plaintiff's 'character and conduct' - plaintiff's relationship with deceased - defendant's competing claim - statements by deceased - provision's 'adequacy and propriety' - held: plaintiff permitted to make application out of time - will did not make adequate provision for plaintiff - lump sum of \$100,000 granted in plaintiff's favour.

[View Decision](#)

[From Benchmark Friday, 2 November 2018]

Giurina v Giurina [2018] VSCA 262

Court of Appeal of Victoria

Whelan JA

Stay - wills and estates - State Trustees sought removal of executors and trustees, and independent administrator's appointment - McMillan J, on basis of 'inordinate delay' in estate's administration, incapacity of one executor and trustee (Licia Giurina), and potential conflict of interest between estate's interests and 'personal interest' of other executor and trustee (Ermanno Giurina), ordered removal of executors and appointed State Trustees as trustee of deceased's estate and will's administrator - Ermanno Giurina sought stay of orders - whether exceptional circumstances warranting stay of orders - held: stay refused.

[Giurina](#)

[From Benchmark Friday, 2 November 2018]

Commissioner for Consumer Affairs v Piantadosi & Anor [2018] SASCF 109

Full Court of the Supreme Court of South Australia

Peek, Stanley & Hinton JJ

Consumer law - trusts and trustees - respondents were trustees of self-managed superannuation fund who received real estate investment advice from 'The Charterhill Group' including Nova Real Estate Pty Ltd (Nova) and Lending Solutions International Pty Ltd (Nova & LSI) - Commissioner for Consumer Affairs rejected claim for \$200,000 compensation from agents' indemnity fund under s30 *Land Agents Act 1994* (SA) - Commissioner found the \$200,000 was made so respondents could earn interest on it, that 'payment was voluntary not mandatory', and that, because the \$200,000 was not received by Nova & LSI as agent, it was not 'trust money' within meaning of Act - primary judge allowed appeal on basis the \$200,000 was 'received by the putative agent on trust' for real estate's purchase - whether primary judge erroneously distinguished *Commissioner for Consumer Affairs v McMurray* (2017) 128 SASR 1 - whether erroneous finding that the \$200,000 was "trust money" under the Act - whether erroneous failure to 'give proper weight' to the voluntary nature of the payment - whether judge erred in relation to onus placed on Commissioner - held: appeal dismissed.

[Commissioner of Consumer Affairs](#)

[From Benchmark Friday, 2 November 2018]

H.E.S.T. Australia Ltd v Inkley [2018] SASC 127

Supreme Court of South Australia

Blue J

Superannuation - trusts and trustees - plaintiff, under s59C *Trustee Act 1936* (SA) sought variation of Health Employees Superannuation Australia Trust's terms contained in its trust deed - plaintiff sought variation of power of amendment, variation of 'substantive provisions' of trust deed 'to reflect past amendments', the validity of which had been doubted, and 'new proposed variations' of trust deed's substantive provisions - whether variations in beneficiaries' interests - whether variations accorded with trust's spirit - whether variations would disturb trust beyond necessity - held: application granted.

[H.E.S.T.](#)

[From Benchmark Friday, 2 November 2018]

In the Estate of Peter Ronald Wiseman [2018] ACTSC 292

Supreme Court of the Australian Capital Territory

McWilliam AsJ

Wills and estates - informal will - applicant, pursuant to s11A *Wills Act 1968* (ACT) (*Wills Act*), sought order that document constituted deceased's valid will even though it did not comply with *Wills Act's* 'formal requirements' - deceased's signature on document had lacked witnesses - whether 'service on potentially interested persons' - whether there was a document - whether intention by deceased to revoke earlier will - whether document embodied testamentary intentions of deceased - whether deceased intended document to form his will - held: application granted - declaration.

[In the Estate of Peter Ronald Wiseman](#)

[From Benchmark Friday, 2 November 2018]

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From Halloween

By: Robert Burns, 1759 - 1796

Upon that night, when fairies light
On Cassilis Downans dance,
Or owre the lays, in splendid blaze,
On sprightly coursers prance;
Or for Colean the route is ta'en,
Beneath the moon's pale beams;
There, up the cove, to stray and rove,
Among the rocks and streams
To sport that night.

Among the bonny winding banks,
Where Doon rins, wimplin' clear,
Where Bruce ance ruled the martial ranks,
And shook his Carrick spear,
Some merry, friendly, country-folks,
Together did convene,
To burn their nits, and pou their stocks,
And haud their Halloween
Fu' blithe that night.

The lasses feat, and cleanly neat,
Mair braw than when they're fine;
Their faces blithe, fu' sweetly kythe,
Hearts leal, and warm, and kin';
The lads sae trig, wi' wooer-babs,
Weel knotted on their garten,
Some unco blate, and some wi' gabs,
Gar lasses' hearts gang startin'
Whiles fast at night.

Then, first and foremost, through the kail,
Their stocks maun a' be sought ance;
They steek their een, and graip and wale,
For muckle anes and straught anes.
Poor hav'rel Will fell aff the drift,
And wander'd through the bow-kail,
And pou't, for want o' better shift,
A runt was like a sow-tail,
Sae bow't that night.



Then, staught or crooked, yird or nane,
They roar and cry a' throu'ther;
The very wee things, todlin', rin,
Wi' stocks out owre their shouter;
And gif the custoc's sweet or sour.
Wi' joctelegs they taste them;
Syne cozily, aboon the door,
Wi cannie care, they've placed them
To lie that night.

https://en.wikipedia.org/wiki/Robert_Burns

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