

Friday, 5 October 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)

Antov v Bokan (NSWSC) - wills and estates - trusts and trustees - estoppel - equity - plaintiff sought relief concerning property which he claimed to be held on constructive trust for him - claims dismissed

Elizabeth Joan Paulsen as executor of the estate of the late Miriam Lesley Jean Douglass v Northern Sydney Local Health District (NSWSC) - wills and estates - application for judicial advice by sole executor of deceased's estate - declaration and judicial advice granted

Fussell v Deigan (NSWSC) - contract for sale of land - wills and estates - in issuing second rescission notice, defendant executrix took advantage of breach of contract by deceased's estate - plaintiff entitled to specific performance

Lana Clarice Photios as Executor of the Estate of Henry Basil Photios & Anor v David Peter Photios (NSWSC) - pleadings - wills and estates - probate - leave to further amend cross claim to seek revocation of grant of probate and prove earlier Will refused

Re Williams (VSC) - wills and estates - deceased did not intend to revoke will by handwritten alterations - application for grant of letters of administration on intestacy dismissed

Summaries With Link (Five Minute Read)

[Antov v Bokan \[2018\] NSWSC 1474](#)

Supreme Court of New South Wales

Ward CJ in Eq

Wills and estates - trusts and trustees - estoppel - equity - plaintiff sought relief concerning property he claimed to be held on constructive trust for him - claim based on representations in two documents, 'Macedonian Power of Attorney' and 'Contract for a Gift', which his deceased grandmother 'allegedly executed' - property was principal asset of deceased's estate - first defendant was estate's executor - second defendant was plaintiff's mother - presumption of undue influence - unconscionable conduct - promissory estoppel - held: Court satisfied 'Macedonian Power of Attorney' was an authentic document - Court not satisfied 'Contract for a Gift' was 'authentic document' - Court not satisfied grandmother executed 'Contract for a Gift' as alleged by plaintiff - claims dismissed.

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[From Benchmark Friday, 5 October 2018]

Elizabeth Joan Paulsen as executor of the estate of the late Miriam Lesley Jean Douglass v Northern Sydney Local Health District [2018] NSWSC 1473

Supreme Court of New South Wales

Ward CJ in Eq

Wills and estates - judicial advice - plaintiff sole executor of deceased's estate sought judicial advice concerning questions in respect of estate's administration - plaintiff sought declaration that 'The Norman Anderson and Norman Memorial Trust' had "ceased to exist" at time deceased died and advice concerning construction of will - whether in plaintiff's discretion to 'choose a charitable organisation' and, if so, whether plaintiff justified to apply estate's residue to Garvan Institute of Medical Research for cancer research on certain terms - s63 *Trustee Act 1925* (NSW) - held: declaration and judicial advice granted.

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Fussell v Deigan [2018] NSWSC 1419

Supreme Court of New South Wales

Parker J

Contract - equity - estoppel - proceedings concerned contract for sale of land - land owned by deceased - plaintiff was purchaser - defendant was executrix - plaintiff and deceased entered contract - completion date passed without settlement occurring - deceased died - defendant contended special condition of contract entitled deceased's 'legal personal representative' to rescind contract if deceased died - defendant sought to rescind contract under special condition - plaintiff sought specific performance compelling defendant to complete contract - whether clause of contract permitted contract to be rescinded on deceased's behalf following death - whether clause should be rectified - whether defendant not entitled to rescind due to estoppel, breach of contract by deceased, 'accrued right to specific performance' and/or relief against forfeiture - whether defendant had authority to issue first rescission notice as she had not obtained probate - whether subsequent grant of probate retrospectively conferred authority on

defendant - held: plaintiff entitled to specific performance because, in issuing second rescission notice, defendant took advantage of breach of contract by deceased's estate in failing to complete contract - judgment for plaintiff.

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[From Benchmark Friday, 5 October 2018]

Lana Clarice Photios as Executor of the Estate of Henry Basil Photios & Anor v David Peter Photios [2018] NSWSC 1414

Supreme Court of New South Wales

Rees J

Pleadings - wills and estates - probate - application to further amend cross claim to seek revocation of grant of probate and prove earlier Will - testamentary capacity - acquiescence - whether explanation for delay - prejudice - *Succession Act 2006* (NSW) - *Probate and Administration Act 1898* (NSW) - held: Court not satisfied to grant leave to amend cross claim as claims 'doomed to fail' - leave refused.

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[From Benchmark Friday, 5 October 2018]

Re Williams [2018] VSC 543

Supreme Court of Victoria

McMillan J

Wills and estates - proceedings concerned issue whether Court should make grant of letters of administration on intestacy - issue turned on whether deceased's will had been revoked by deceased's 'handwritten alterations' - plaintiff contended that deceased, in making the handwritten alterations had 'intended to and in fact revoked' will such that he died intestate - plaintiff contended handwritten alterations were within s12(2)(g) *Wills Act 1997* (Vic) - revocation test - held: Court satisfied that deceased did not intend to revoke will by handwritten alterations - application for a grant of letters of administration on intestacy dismissed.

[Re Williams](#)

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A Sonnet to the Noble Lady, the Lady Mary Wroth

By: Ben Jonson

I that have been a lover, and could show it,
Though not in these, in rithmes not wholly dumb,
Since I exscribe your sonnets, am become
A better lover, and much better poet.
Nor is my Muse or I ashamed to owe it
To those true numerous graces, whereof some
But charm the senses, others overcome
Both brains and hearts; and mine now best do know it:
For in your verse all Cupid's armory,
His flames, his shafts, his quiver, and his bow,
His very eyes are yours to overthrow.
But then his mother's sweets you so apply,
Her joys, her smiles, her loves, as readers take
For Venus' ceston every line you make.

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

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