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Daily Banking A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

O'Toole v Kent (VSC) - contract - sale of land - application to set aside default judgment dismissed

1165 Stud Road Pty Ltd v Power (VSC) - evidence - business record exemption - representations inadmissible

Haynes v St George Bank a Division Of Westpac Banking Corporation (SASC) - pleadings - contract - late application to amend statement of claim granted

Sims v Suda Ltd [No 2] (WASCA) - security for costs - employment contract - indemnity clause - respondent granted security for costs of appeal

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Summaries With Link (Five Minute Read)

O'Toole v Kent [2015] VSC 470

Supreme Court of Victoria

Mukhtar AsJ

Contract - sale of land - plaintiff alleged first defendant purchaser defaulted under contract for sale of property by failing to complete or settle purchase - plaintiff obtained default judgment in default of defence against defendants - there was also judgment against second defendant who was purchaser's guarantor - defendants sought to set aside judgment - plaintiff opposed setting aside judgment on basis explanation for failure to provide defence unsatisfactory or unmeritorious, and that asserted defences had no merit - keynote defence was that purchasers could not complete because expected source of funds did not come good - defendants contended contracts should not be enforced because they could not obtain expected finance - held: defences bound to fail - purchasers risked agreeing to buy land under contract not expressed to be or sought to be subject to finance - assertion contract subject to finance legally unsustainable on facts - purchasers did not have money for deposit or to complete - defences were attempt to extricate from financial consequences of breach - even if purchasers subject to scam plaintiff not implicated in misfortune - application to set aside default judgment dismissed.

[O'Toole](#)

1165 Stud Road Pty Ltd v Power [2015] VSC 476

Supreme Court of Victoria

Vickery J

Admissibility of evidence - third defendant sought admission of documents as business records - respondents to summons object on basis documents did not satisfy requirements of s69 *Evidence Act 2008* (Vic) - held condition for admissibility of 'First Representation' on which third defendant sought to rely, contained in business record comprised in 'Report', did not satisfy s69(2) and therefore did not fall within exception to hearsay rule - Court had taken into account potential importance of evidence - representation containing asserted fact was not admissible - even if representation admissible and did give rise to exception to hearsay rule Court would exclude it pursuant to s135 - second category or representation excluded on ground of lack of relevance under s56(2).

[Stud](#)

Haynes v St George Bank a Division Of Westpac Banking Corporation [2015] SASC 136

Supreme Court of South Australia

Nicholson J

Pleadings - plaintiff brought late application to amend statement of claim to permit him to rely on new particular of breach of contract - application made when plaintiff's case at trial was nearing end - justice of the case - fair trial - held: amendment would likely have significant costs consequences for parties - Court not satisfied potential argument being pursued had earlier come to plaintiff's attention at all or sufficiently to preclude him from relying on it now - Court



satisfied delay largely contributed to by exigencies of this litigation - potential importance of proposed amendment was significant - significance of proposed case outweighed prejudice to bank - application granted.

[Haynes](#)

Sims v Suda Ltd [No 2] [2015] WASCA 180

Court of Appeal of Western Australia

McLure P & Newnes JA

Security for costs - appellant claimed damages for alleged breach by respondent of an indemnity clause in the appellant's contract of employment - action dismissed - respondent sought security for its costs of appeal - r44(1) *Supreme Court (Court of Appeal) Rules 2005* (WA) - held: Court satisfied appellant unlikely to be able to meet order for costs if appeal unsuccessful - appellant did not have strong prospects of success - appellant would not be shut out of appeal if security for costs ordered - no material delay by respondent in applying for security for costs - respondent entitled to security for costs - security for costs ordered.

[Sims](#)

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