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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)

Nichols Constructions Pty Ltd v Elphick (NSWSC) - default judgment - bona fide defence giving rise to triable issues - irregularity - default judgments set aside

CBX2 Pty Ltd v National Australia Bank (NSWSC) - discovery - notice to produce - privilege - bank granted access to documents sought

Robinson v Jones (No 2) (VSC) - costs - wills and estates - reasonableness and proportionality - Court's concerns not addressed - adjournment

Summaries With Link (Five Minute Read)

Nichols Constructions Pty Ltd v Elphick [2015] NSWSC 940

Supreme Court of New South Wales

Harrison AsJ

Default judgment - loan agreement - defendant sought that default judgments be set aside pursuant to rr36.15 or 36.16 *Uniform Civil Procedure Rules 2005* (NSW), leave to file and serve defence and leave to file and serve cross claim - National Credit Code - *Contracts Review Act 1980* (NSW) - held: there was satisfactory explanation for delay - no prejudice caused to plaintiff by delay - proposed defence was bona fide and gave rise to triable issues - defendant should be allowed proper opportunity to have defence argued on merits - default judgment for monetary sum entered in wrong amount which was irregularity pursuant to r35.15(1) - default judgments set aside - defendant to file a serve defence and cross-claim.

[Nichols](#)

CBX2 Pty Ltd v National Australia Bank [2015] NSWSC 943

Supreme Court of New South Wales

Harrison AsJ

Discovery - notice to produce - company brought proceedings against bank concerning dealings in respect of company's account with bank - bank issued notice to produce to company seeking certain documents - legitimate forensic purpose - relevance to security for costs application - whether documents privileged - rr1.9 & 34.1 *Uniform Civil Procedure Rules 2005* (NSW) - s119 *Evidence Act 1995* (NSW) - held: documents sought for legitimate forensic purpose - it was on the cards that they would materially assist bank's case - copies of retainer and costs agreement between company and lawyers, tax invoices, remittance advices and trust account ledger entries did not result in disclosure of confidential communications - documents produced by company to Court did not include any legal advice given - access to documents granted.

[CBX2](#)

Robinson v Jones (No 2) [2015] VSC 334

Supreme Court of Victoria

McMillan J

Costs - wills and estates - plaintiffs pursuant to s9 *Wills Act 1997* (Vic) sought grant of probate of unexecuted draft Will - Court refused application - plaintiffs sought that their costs be costs in administration of estate and that defendants' costs be paid out of estate - s24 *Civil Procedure Act 2010* (NSW) - r5.02 *Supreme Court (Administration and Probate) Rules 2014* (Vic) - held: parties specifically requested to address Court's concerns expressed in judgment and to address reasonableness and proportionality of costs of proceeding - Court no better informed on aspects of costs after considering plaintiffs' written submissions - parties to file affidavits setting out details of respective professional costs and disbursements including basis of charges, and affidavit setting out basis of settlement or settlements reached with either defendant and 'resolution between potential beneficiaries' - further hearing adjourned.

[Robinson](#)

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