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Daily Construction 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



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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](#)

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