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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)

**Woodlawn Capital Pty Ltd v Motor Vehicles Insurance Ltd** (NSWCA) - contract - proceedings arising from termination of agreements for provision of investment and asset management services - appeal allowed in part - cross-appeal dismissed

**Pymont Point Pty Ltd v Westacott** (NSWCA) - leases and tenancies - retail lease - *Retail Leases Act 1994* (NSW) did not apply to lease - appeal dismissed

**Ferella v Official Trustee in Bankruptcy** (NSWCA) - costs - dismissal of appeal against appointment of trustees for sale of properties - indemnity costs awarded in Official Trustee's favour

**Collis Finance Pty Ltd v Hertford (No. 2)** (NSWSC) - real property - possession - no defence to claim - plaintiff free to move for default judgment

**Nitro Circus Touring Australia Pty Ltd v Ilaria Lenzone** (NSWSC) - service - contract - service on defendant in Italy - Italian Authority's certificate of service substantially complied with approved form - plaintiff entitled to default judgment

**Investec v Butters** (VSC) - banking - facility agreement - assignment - plaintiff entitled to judgment against first defendant for payment of amount owing pursuant to guarantee

## Summaries With Link (Five Minute Read)

### **Woodlawn Capital Pty Ltd v Motor Vehicles Insurance Ltd [2016] NSWCA 28**

Court of Appeal of New South Wales

Macfarlan, Ward & Gleeson JJA

Contract - insurance - appellant provided investment and asset management services to respondent - appellant contended agreements' early termination entitled it to retain funds held on trust for respondent for repayment of early termination fees and accrued fees - primary judge held that while there was a statutory right of rescission in respondent's favour, respondent had lost statutory right by not exercising it within a reasonable time and by affirming agreements - primary judge also found agreements validly terminated for default and appellant entitled only to certain accrued fees - appellant challenged orders in relation to pre-judgment interest and costs - respondent contended it had not lost right to rescind agreements - held: appeal dismissed except in relation to operation of indemnity clause to release costs concerning certain issues - cross-appeal dismissed.

[Woodlawn](#)

### **Pyrmont Point Pty Ltd v Westacott [2016] NSWCA 33**

Court of Appeal of New South Wales

Ward & Leeming JJA; Emmett AJA

Leases and tenancies - retail lease - statutory interpretation - applicant was lessee of bottle shop - respondent was lessor of premises - applicant acquired leasehold interest in premises by assignment from company - prior to exercising option to renew applicant sought appointment of specialist retail valuer pursuant to s 32 *Retail Leases Act 1994* (NSW) - after applicant exercised option application amended to similar application under s31 - respondent denied lease governed by Retail Leases Act and Administrative Decisions Tribunal had no jurisdiction to appoint valuer - jurisdictional issue determined in respondent's favour - applicant sought to appeal from primary judge's decision to refuse leave to appeal from Appeal Panel's decision - whether Retail Leases Act applied to lease - construction of s6(1)(b) - held: no error in primary judge's conclusion that Retail Leases Act did not apply to lease - leave to appeal granted - appeal dismissed.

[Pyrmont](#)

### **Ferella v Official Trustee in Bankruptcy [2016] NSWCA 27**

Court of Appeal of New South Wales

Bergin CJ in Eq, Tobias & Emmett AJJA

Costs - Court dismissed appellants' appeal from order appointing trustees for sale of properties made pursuant to s66G *Conveyancing Act 1919* (NSW) - Court decided appellants' arguments hopeless and should not have been made - whether indemnity costs warranted in Official Trustee's favour - held: appellants' contentions in opposition to indemnity costs orders had no more merit than arguments advanced on appeal - indemnity costs ordered.

[Ferella](#)

**Collis Finance Pty Ltd v Hertford (No. 2) [2016] NSWSC 192**

Supreme Court of New South Wales

Davies J

Real property - possession - default in making interest repayments - defence had been struck out in proceedings - further "Defence" had been handed to Court in proceedings - held: "Defence" sought to be relied upon did not disclose defence to claim - defendants had no defence to claim for possession of land - plaintiff free to move for default judgment.

[Collis](#)

**Nitro Circus Touring Australia Pty Ltd v Ilaria Lenzone [2016] NSWSC 178**

Supreme Court of New South Wales

Hammerschlag J

Service - default judgment - contract - plaintiff sued defendant for amount owing under agreement in which plaintiff granted defendant right to present and promote show - plaintiff sought default judgment - defendant resided in Italy - whether defendant validly served with process by post effected by Italian Authority - Arts 3 - 6 *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* - s80 *Interpretation Act 1987* (NSW) - s17 *Civil Procedure Act 2005* (NSW) - Pt 6 r 6.9(1), Pt 11 rr 11A.1, 11A.3(1), 11A.4(1), (2), 11A.5(1), 11A.6(1), (2), (3), 11A.8, 11A.10 *Uniform Civil Procedure Rules 2005* (NSW) - held: certificate of service provided by Italian Authority diverged from approved form but substantially complied with it - process validly served - plaintiff entitled to default judgment.

[Nitro Circus](#)

**Investec v Butterss [2016] VSC 80**

Supreme Court of Victoria

Digby J

Banking - facility agreement - plaintiff sought recovery from first defendant under guarantee and indemnity - novation of facility agreement - assignment of facility agreement, novated facility agreement and guarantee from company to plaintiff - held: plaintiff's demand made to first defendant in accordance with guarantee was properly made - first defendant had failed to make payment in accordance with demand - judgment for plaintiff.

[Investec](#)

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