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

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Executive Summary (1 minute read)

Otto Energy (Tanzania) Pty Ltd v Swala Energy Ltd (FCA) - corporations - service - permission to serve originating process and statement of claim on second and fifth respondents out of jurisdiction

Kzacos v Shuangling International Development Pty Ltd (NSWSC) - contract - sale of land - default by purchaser - vendors' claims for second half of deposit and liquidated damages for costs and expenses under clause of contract dismissed

Mullett v Nixon & Ors (No. 2) (VSC) - costs - dismissal of claims for misfeasance in public office and malicious prosecution - indemnity costs awarded on basis of unreasonable failure to accept Calderbank offer

Littore & Ors v Rabobank & Ors (VSCA) - stay - no error in primary judge's decision to stay counterclaim in proceedings - leave to appeal refused

McMillan v The Federal Capital Press of Australia Pty Ltd (ACTSC) - pleadings - defamation - action arising from publication of article in newspaper and in other publications - two imputations struck out - leave granted to file amended statement of claim

Summaries With Link (Five Minute Read)

[Otto Energy \(Tanzania\) Pty Ltd v Swala Energy Ltd \[2016\] FCA 1266](#)

Federal Court Australia

McKerracher J

Corporations - service - trusts and trustees - joint venture - applicant sought leave to serve originating application and statement of claim on second and fifth respondents out of jurisdiction - s470 *Companies Act 2002* (Tanzania) - knowing assistance - *Barnes v Addy* (1984) LR 9 Ch App 244 - s1010 *Companies Act 2015* (Kenya) - Sch 2, ss4 & 18 *Competition and Consumer Act 2010* (Cth) - r10.43 *Federal Court Rules 2011* (Cth) - s39B(1A)(c) *Judiciary Act 1903* (Cth) - held: Court satisfied in all circumstances it should permit service out on second and fifth respondents - orders made.

[Otto](#)

Kazacos v Shuangling International Development Pty Ltd [2016] NSWSC 1504

Supreme Court of New South Wales

White J

Contract - sale of land - plaintiff vendors and defendant purchaser entered contract for sale of land - purchaser failed to complete - vendor terminated and retained 5% deposit - vendors resold property, making a profit from purchaser's default - vendors sued purchaser and guarantor for second half of 10% deposit and sum of liquidated damages for certain costs and expenses under clause of contract - held: vendor not entitled to claim further 5% of purchase price as purported deposit - amount was void as a penalty - purchaser entitled to credit for deposit forfeited against vendor's claim for costs and expenses - purchaser also entitled to credit surplus on resale against claim for costs and expenses under clause's second limb - vendor's claim failed.

[Kazacos](#)

Mullett v Nixon & Ors (No. 2) [2016] VSC 641

Supreme Court of Victoria

T Forrest J

Costs - indemnity costs - Calderbank offer - plaintiff's claims of misfeasance in public office against first and second defendant, and malicious prosecution against the first, second and third defendants failed - defendants sought indemnity costs to be awarded from proceeding's commencement or that there were dates in proceeding's history from which indemnity costs could be awarded - held: plaintiff's claims were not 'spurious allegations of bad faith' which deserved condemnation - indemnity costs not awarded from commencement of proceedings - indemnity costs awarded from date of expiry of Calderbank on basis of unreasonable failure to accept it - orders.

[Mullett](#)

Littore & Ors v Rabobank & Ors [2016] VSCA 258

Court of Appeal of Victoria

Maxwell P & Weinberg JA

Stay - first and second applicants were principal debtors of first respondent for sum exceeding

\$90 million, and were defendants in proceeding in which first respondent sought payment of outstanding amount - first respondent sought to stay counterclaim - primary judge found 'overarching purpose' in s7(1) *Civil Procedure Act 2010* (Vic) required stay - first and second applicants sought leave to appeal - held: Court not satisfied primary judge's decision affected by appealable error - conclusions 'well open on the evidence' - stay was 'wholly consistent' with Act's overarching purpose and objects of case management - leave to appeal refused.

[Littore](#)

McMillan v The Federal Capital Press of Australia Pty Ltd [2016] ACTSC 286

Supreme Court of the Australian Capital Territory

Mossop AsJ

Pleadings - defamation - actions arising from publication of article in newspaper and in other publications - defendants sought to strike out eight pleaded imputations on basis they were not capable of arising and that two of the imputations were also embarrassing - rr425 & 1701(2) *Court Procedures Rules 2006* (ACT) - held: two imputations struck out - plaintiff granted leave to file amended statement of claim.

[McMillan](#)

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