

Monday 10 November 2014

Banking

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Katter v Melhem (No 2) (FCA) - bankruptcy - no basis for Court to *go behind* District Court judgment on which bankruptcy notice was based

Kennett Pty Ltd v Janssen (SASC) - subcontract between builder and bricklayers - repudiation by bricklayers - builder entitled to damages

Summaries with links (5 minute read)

Katter v Melhem (No 2) [2014] FCA 1176

Federal Court of Australia

Wigney J

Bankruptcy - applicants sought order setting aside bankruptcy notice issued on basis of judgment of District Court of NSW - judgment had not been set aside or varied - applicants submitted Court should go behind the judgment and conclude they were not indebted to respondent - applicants also submitted judgment exceeded jurisdictional limit of District Court and was based on terms of settlement that operated as a penalty - applicants submitted judgment debt was not enforceable by way of bankruptcy notice - held: no substantial reasons for Court to go behind judgment - compelling discretionary reasons for not going behind judgment - judgment was satisfactory evidence of the debt - no other basis for setting aside bankruptcy notice - application dismissed.

[Katter](#)

Kennett Pty Ltd v Janssen [2014] SASC 164

Supreme Court of South Australia

Blue J

Contract - builder (Kennett) entered subcontract with bricklayers (Janssen) to undertake bricklaying for facility - Janssen wrote to Kennett alleging it was in breach of contract by not paying progress and variation claims and changing scope of work - Janssen stated it had suspended work and would only resume after all invoices paid and revised scope of work and variations were agreed - Kennett issued notice terminating subcontract for repudiation - Kennett sued Janssen for damages for breach of contract - held: repudiatory conduct may be comprised of acts or omissions in breach of contract or of statements of intention as to future acts or omissions, provided that the conduct evinced an unwillingness or inability to render substantial performance of the contract - adoption by one party of an erroneous view as to the construction of a contract or another relevant matter apparent to a reasonable observer in the position of the other party was one factor to be taken into account in assessing whether a party's conduct was repudiatory - objectively from perspective of reasonable observer in the position of Kennett, Janssen's conduct was repudiatory - judgment for Kennett.

[Kennett Pty Ltd](#)

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