



Friday, 9 October 2015

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

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Executive Summary (1 minute read)

Malec Holdings Pty Ltd v Scotts Agencies Pty Ltd (in liq) (VSC) - corporations - statutory demand - off-setting claim established - statutory demand varied

Iron Mountain Mining Ltd v K & L Gates [No 2] (WASCA) - costs - applicant was not a third party payer under *Legal Profession Act 2008* (WA) - appeal allowed

NRW Pty Ltd as Trustee for NRW Unit Trust v Samsung C & T Corporation (WASC) - construction contract - determination that Samsung pay amount to NRW- certiorari refused - leave to enforce determination granted

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Summaries With Link (Five Minute Read)

Malec Holdings Pty Ltd v Scotts Agencies Pty Ltd (in liq) [2015] VSC 530

Supreme Court of Victoria

Gardiner J

Corporations - statutory demand - defendant served statutory demand on plaintiff for payment of debt for sale and delivery of fuel and other fluids - plaintiff applied pursuant to ss459G, 459H & 459J *Corporations Act 2001* (Cth) to set aside demand on basis there was a genuine dispute about existence and the amount of debt and a genuine claim by way of set off and cross demand - held: genuine dispute not established - plaintiff established off-setting claim - demand varied to take into account establishment of offsetting claim

[Malec](#)

Iron Mountain Mining Ltd v K & L Gates [No 2] [2015] WASC 373

Supreme Court of Western Australia

Master Sanderson

Costs - third party payer - client was director of applicant company - applicant sought assessment of costs rendered by respondent law firm to client - appeal from decision in which Registrar determined as preliminary issue that applicant was a third party payer within meaning of *Legal Profession Act 2008* (WA) (LPA) - *Leckenby v Note Printing Australia Ltd* [2014] VSC 538 - *Note Printing Australia Ltd v Leckenby* [2015] VSCA 105 - held: director's conviction of offences under *Corporations Act 2001* (Cth) rendered contractual indemnity and constitutional indemnity automatically void ab initio - applicant was not a third party payer under LPA - appeal allowed.

[Iron Mountain](#)

NRW Pty Ltd as Trustee for NRW Unit Trust v Samsung C & T Corporation [2015] WASC 369

Supreme Court of Western Australia

Mitchell J

Judicial review - construction contract - Samsung sought to quash adjudicator's determination under *Construction Contracts Act 2004* (WA) that Samsung amount to NRW - held: payment dispute arose when Samsung disputed payment claim made by NRW - adjudication application made within permissible time - adjudicator determined merits of dispute by reference to terms of construction contract - any error by adjudicator in construing certain contractual provisions was no more than misconstruction of construction contract and error within adjudicator's jurisdiction - Samsung's claimed set offs did not provide valid reason to refuse leave to enforce determination - certiorari refused - leave to enforce determination granted.

[NRW](#)



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Speech: “To be, or not to be, that is the question”

By William Shakespeare

(from Hamlet, spoken by Hamlet)

To be, or not to be, that is the question:
Whether 'tis nobler in the mind to suffer
The slings and arrows of outrageous fortune,
Or to take arms against a sea of troubles
And by opposing end them. To die—to sleep,
No more; and by a sleep to say we end
The heart-ache and the thousand natural shocks
That flesh is heir to: 'tis a consummation
Devoutly to be wish'd. To die, to sleep;
To sleep, perchance to dream—ay, there's the rub:
For in that sleep of death what dreams may come,
When we have shuffled off this mortal coil,
Must give us pause—there's the respect
That makes calamity of so long life.
For who would bear the whips and scorns of time,
Th'oppressor's wrong, the proud man's contumely,
The pangs of dispriz'd love, the law's delay,
The insolence of office, and the spurns
That patient merit of th'unworthy takes,
When he himself might his quietus make
With a bare bodkin? Who would fardels bear,
To grunt and sweat under a weary life,
But that the dread of something after death,
The undiscover'd country, from whose bourn
No traveller returns, puzzles the will,
And makes us rather bear those ills we have
Than fly to others that we know not of?
Thus conscience does make cowards of us all,
And thus the native hue of resolution
Is sicklied o'er with the pale cast of thought,
And enterprises of great pitch and moment
With this regard their currents turn awry
And lose the name of action.

<http://www.poetryfoundation.org/bio/william-shakespeare>

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