

Monday 10 November 2014

Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Kolundzic v Quickflex Constructions Pty Ltd (NSWSC) - judicial review - no error in decisions of Workers Compensation Commission - proceedings dismissed

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

Worksafe Western Australia Commissioner v Australian Countertop Pty Ltd (in liq) (WASC) - corporations - Commissioner granted leave to commence proceeding against company in liquidation

Summaries with links (5 minute read)

Kolundzic v Quickflex Constructions Pty Ltd [2014] NSWSC 1523

Supreme Court of New South Wales

Campbell J

Judicial review - plaintiff challenged legality of three decisions of Workers' Compensation Commission - two decisions of approved medical specialist (AMS) - decision refusing plaintiff's application to appeal from the decision of MAS - legal status of Work Cover Guidelines - held: AMS did not disregard, or mistake, limits of his function or powers imposed by WorkCover Guides - Court not persuaded Medical Assessment Certificate vitiated by jurisdictional error or error on the

face of the record - refusal of AMS to reconsider assessment not vitiated by jurisdictional error or error on the face of the record - no error in Registrar's refusal of application to appeal - proceedings dismissed.

[Kolundzic](#)

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](#)

Worksafe Western Australia Commissioner v Australian Countertop Pty Ltd (in liq) [2014] WASC 413

Supreme Court of Western Australia

Master Sanderson

Corporations - Commissioner sought leave under s471B *Corporations Act 2001* (Cth) to commence proceedings against company in liquidation under *Occupational Safety and Health Act 1984* (WA) (OSHA) in relation to accident at company's premises in which employee of company died - Commissioner claimed that company failed to take Commissioner's recommendations as to safe system of work in breach of the OSHA - liquidator claimed company had no assets and questioned worth of issuing proceedings - held: leave to issue proceedings was justified - there was real prospect that company may have breached OSHA - under s553B(1) *Corporations Act*, any penalty imposed by a court was not provable in the insolvency - no creditor would suffer as a result of leave being granted.

[Worksafe Western Australia Commissioner](#)

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