



Thursday, 16 July 2015

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

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

J Cummins Pty Ltd v F & D Bonaccorso (NSWCA) - contract - option agreement - no common intention deposit to be treated as paid - appeal dismissed

Gazzana v Santamaria (NSWSC) - partnership - dissolution and winding up - determination of separate questions

Benchmark

Summaries With Link (Five Minute Read)

J Cummins Pty Ltd v F & D Bonaccorso [2015] NSWCA 200

Court of Appeal of New South Wales

Beazley P; Ward & Leeming JJA

Contract - evidence - credit - appellant sought rectification of option agreement it entered with respondent, and order for specific performance of rectified agreement - agreement preceded by an earlier option agreement not exercised prior to its expiry - second option agreement provided for higher purchase price - whether common intention at time second option agreement entered that stated deposit to be treated as if paid - trial judge found no such common intention established - held: trial judge justified in not accepting evidence of appellant's principal of an arrangement outside formal contract documents - evidence did not support principal's version of events - there was evidence that developer interested in property at higher price than in either option agreement - appellant's contention rejected that price in second agreement was commercially irrational - appeal dismissed.

[JCummins](#)

Gazzana v Santamaria [2015] NSWSC 916

Supreme Court of New South Wales

Ball J

Partnership - dissolution and winding up - separate questions - proceedings concerning winding up of partnership carried on by plaintiff and first defendant - separate determination of questions concerning assets and liabilities of partnership and whether partners reached agreement on their division - ownership of equipment - whether certain work did not fall within terms of partnership - s42 *Partnership Act 1892* (NSW) - separate questions answered.

[Gazzana](#)

[Click Here to access our Benchmark Search Engine](#)