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

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### Executive Summary (1 minute read)

**Australian Gypsum Industries Pty Ltd v Dalesun Holdings Pty Ltd (WASCA)** - contract - deed of company arrangement - creditor not entitled to recover unpaid sums from surety - appeal dismissed.



# Benchmark

## Summaries With Link (Five Minute Read)

### **Australian Gypsum Industries Pty Ltd v Dalesun Holdings Pty Ltd [2015] WASCA 95**

Court of Appeal of New South Wales

Buss, Newnes & Murphy JJA

Contract - corporations - deed of company arrangement - appellants (creditor) supplied goods on credit to principal debtor - related company to principal debtor guaranteed obligations to the creditor - guarantee was supported by charge over surety's land - surety went into administration and entered into a deed of company arrangement (DOCA) which released all claims against surety including contingent claims - surety financially rehabilitated - DOCA terminated - creditor supplied further goods on credit to debtor - debtor defaulted - creditor sought to recover unpaid sums from surety - primary judge found creditor's claims precluded by operation of DOCA - s444D(2) *Corporations Act 2001* (Cth) - terms of DOCA - statutory construction - held (by majority): creditor failed in sole ground of appeal that primary judge erred in concluding 444D prevented secured creditor who did not vote in favour of DOCA from realising or otherwise dealing with its security in respect of contingent or future claims which fructified after date specified in DOCA - appeal dismissed.

[AustralianGypsum](#)

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