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Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Caltex Australia Petroleum Pty Ltd v Troost (NSWCA) – guarantee and indemnity – respondent bound by clauses constituting “Guarantee and Indemnity by Directors”

Samsung C & T Corporation v Laing O’Rourke Australia Construction Pty Ltd (WASC) – contractor granted injunction for delivery to it of construction materials retained by subcontractor

B & T Constructions (ACT) Pty Ltd v Construction Occupations Registrar (ACTCA) – building and construction – order for rectification of defective or incomplete building work – appeal dismissed

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Summaries with links (5 Minute Read)

Caltex Australia Petroleum Pty Ltd v Troost [2015] NSWCA 64

Court of Appeal of New South Wales

Meagher, Barrett & Emmett JJA

Guarantee and indemnity - company indebted to Caltex - Caltex claimed respondent liable to pay amount owing to company by reason of guarantee and indemnity signed by him - Caltex sued respondent for balance owed by company - loan application form called "Guarantee and Indemnity by Directors" divided into two columns with two signature blocks - respondent signed only one signature block - trial judge found respondent's liability under guarantee clause discharged by variation in terms and conditions and that respondent never bound by indemnity clause because he had not signed indemnity in right-hand column - Caltex contended trial judge ought to have found respondent bound by indemnity clause - Pt 2K.2 *Corporations Act 2001* (Cth) - whether indemnity clause separate from guarantee clause - held: author of documentation intended guarantee and indemnity section create only one obligation for any director who signed that section - trial judge erred in concluding respondent not bound by clauses constituting "Guarantee and Indemnity by Directors" - contentions advanced on respondent's behalf rejected - appeal allowed.

[Caltex](#)

Samsung C & T Corporation v Laing O'Rourke Australia Construction Pty Ltd [2015] WASC 83

Supreme Court of Western Australia

Edelman J

Injunction – plaintiff contractor sought urgent interlocutory injunction requiring defendant to deliver up construction materials it needed to performance of duties as principal on mining project – contract materials retained by subcontractor pending payment of claim for work done - serious question to be tried – strength of plaintiff's case that it owned materials – prejudice – balance of convenience - held: plaintiff had a very strong case that title to construction materials had passed to it – respondent's case very weak – balance of convenience strongly favoured grant of injunction – injunction granted.

[Samsung](#)

B & T Constructions (ACT) Pty Ltd v Construction Occupations Registrar [2015] ACTCA 7

Court of Appeal of the Australian Capital Territory

Murrell CJ, Gilmour J & Cowdroy AJ

Building and construction – ACT Civil and Administrative Tribunal affirmed registrar's decision to issue a rectification order to appellant under Pt 4 *Construction Occupations (Licensing) Act 2004* (ACT) – rectification order directed appellant to undertake rectification works to building – primary judge dismissed appellant's appeal – Pt 4, ss4, 16, 31, 33A, 34, 35, 36, 38, 40, 55, 117 & 121 *Construction Occupations (Licensing) Act 2004* (ACT) – held (by majority): Court did not wrongly assume there was evidence of loss and damage under s36(1)(a) - Court did not



misunderstand proper role of the public record, constituted by approved building plans – contention rejected that primary judge erred in assuming owners corporation could represent individual unit owners - no error in approach of primary judge in understanding of nature of appeal – appeal dismissed.

[B&T](#)

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