

# Benchmark

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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)

**John Holland Pty Ltd v Kellogg Brown & Root Pty Ltd** (NSWSC) - commercial arbitration - disputes arising out of two arbitration agreements or their breach - referral of one dispute to arbitration - other proceeding stayed

**Grocon Constructors (Qld) Pty Ltd v Juniper Developer No.2 Pty Ltd** (QSC) - construction contract - preliminary issue - liquidated damages clause was not a penalty

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## Summaries With Link (Five Minute Read)

### **John Holland Pty Ltd v Kellogg Brown & Root Pty Ltd [2015] NSWSC 451**

Supreme Court of New South Wales

Hammerschlag J

Commercial arbitration - plaintiff builder engaged defendants by agreements for performance of services concerning stormwater detention facilities - builder sued defendants including for breach of contract, negligence, under *Trade Practices Act 1974* - agreements contained arbitration agreements - first defendant sought referral to arbitration pursuant to s8(1) *Commercial Arbitration Act 2010* - second defendant sought order that proceedings against it be stayed permanently - held: dispute between builder and first defendant arose out of or in connection with arbitration agreement or breach - alleged oral agreement not established - no waiver or estoppel - dispute between builder ad second defendant also arose out of or in connection with arbitration agreement or breach - no waiver - agreement not void for uncertainty - precondition of negotiation not fulfilled - arbitration agreement inoperative - builder and first defendant referred to arbitration - second defendant granted stay of action against it.

[JohnHolland](#)

### **Grocon Constructors Pty Ltd v Juniper Developer No.2 Pty Ltd [2015] QSC 102**

Supreme Court of Queensland

P Lyons J

Construction contract - preliminary question - plaintiff sought declaration liquidated damages clause of contract with first defendant was void because it imposed penalty - construction of contract - held: liquidated damages clause operated when there had been breach of obligation to achieve Practical Completion by relevant date - it applied only to breach of that obligation, not to any breach of many obligations under contract - any delay in Practical Completion would have been expected by parties to have prevented defendant from settling contracts of sale - liquidated damages clause was not affected by penalty doctrine - liquidated damages clause should be regarded as genuine pre-estimate by parties to that contract of damages likely to be suffered should there be delay in Practical Completion.

[Grocon](#)

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