

# 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)

**Aspect Contracts (Asbestos) Limited (Respondent) v Higgins Construction Plc (Appellant)** (UKSC) - construction contract - implied term - right to recover payment - restitution - appeal dismissed

**Gambaro Pty Ltd v Rohrig (Qld) Pty Ltd** (QSC) - summary judgment - pleadings - security of payments - restitution - applications dismissed

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## Summaries With Link (Five Minute Read)

### **Aspect Contracts (Asbestos) Limited (Respondent) v Higgins Construction Plc (Appellant) [2015] UKSC 38**

Supreme Court of the United Kingdom

Lord Mance, Lord Wilson, Lord Sumption, Lord Reed & Lord Toulson

Construction contract - limitations - respondent contracted with building contractor to carry out asbestos survey and report on blocks of maisonettes which building contractor was considering redeveloping - during redevelopment building contractor allegedly found asbestos containing materials not identified in report - adjudicator concluded respondent in breach of contractual and tortious duties causing loss to building contractor - parties did not agree to treat adjudicator's decision as final - building contractor did not commence proceedings and limitation period expired - respondent commenced proceedings to recover amount it paid to building contractor pursuant to adjudication - respondent contended no sum was due on examination of merits of original dispute - building contractor counterclaimed for balance of claim and interest - High Court rejected respondent's claim on basis there was no implied term for repayment or entitlement to restitution after expiry of limitation period in 2010 or 2011 - Court of Appeal found there was implied term and allowed appeal - effect of adjudication pursuant to provisions implied into construction contract under s108(5) *Housing Grants, Construction and Regeneration Act 1996*, read *Scheme for Construction Contracts (England and Wales) Regulations 1998* (SI 1998 No 649) - held: it was an implied contractual term that respondent would have directly enforceable right to recover payment if on final determination on merits of original dispute, sums shown not to have been due to building contractor - repayment could also be claimed by way of restitution - building contractor was time-barred from pursuing its counterclaim for the balance of its original claim - appeal dismissed

[Aspect](#)

### **Boriop Pty Ltd v Moussi [2015] VSC 345s**

Supreme Court of Victoria

Gardiner AsJ

Corporations - statutory demand - plaintiff sought to set aside statutory demand served on it by defendant for debt described in schedule as 'moneys lent by the creditor to the company on 8 March 2012 and evidenced by a Loan Agreement deed dated 8 March 2012' - plaintiff contended was genuine dispute in respect of demand - plaintiff asserted that debt subject of demand was not owed by it, but by its director - ss459G & 459H *Corporations Act 2001* (Cth) - held: plaintiff failed to discharge onus to establish dispute on which it relied was genuine - dispute alleged was spurious - proceeding dismissed.

[Boriop](#)

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