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

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### Executive Summary (One Minute Read)

**Hallett Concrete Pty Ltd v Adelaide Brighton Cement Ltd & Ors** (SASCA) - plaintiff in concrete supply case where trial was about to commence was permitted to amend its pleading, based on fresh evidence it was permitted to lead on this issue

**Makland Constructions Pty Ltd v Page Steel Fabrications Pty Ltd** (VSCA) - steel supplier had not repudiated contract where it had been prevented from performing under the contract by the other party, and was no longer putting an unjustified condition on its performance at the time of alleged repudiation

## Summaries With Link (Five Minute Read)

### **Hallett Concrete Pty Ltd v Adelaide Brighton Cement Ltd & Ors [2024] SASCA 80**

Court of Appeal of South Australia

Livesey CJ, Doyle, & Bleby JJA

Pleadings - Hallett sought leave from a refusal of leave to amend its pleading to introduce allegations of breach of contract arising from supplies of cement made by Adelaide Brighton to Boral, pursuant to a swap arrangement - Hallett also filed an interlocutory application to adduce fresh evidence obtained from Adelaide Brighton that supported its claim that there was a swap arrangement between Adelaide Brighton and Boral, in breach of the agreement between Hallett and Adelaide Brighton - held: the fresh evidence was capable of supporting an inference that there was a swap arrangement between Adelaide Brighton and Boral at the relevant time - the Court should not engage in fact-finding at this stage to determine the meaning and effect of the relevant documents, as that would be a matter for trial - sometimes it might appropriate, if not preferable, for the issue of leave concerning a revised plea based on newly discovered documents to be remitted to the primary judge - however, in this case, the imminent trial date and the preparations being made for trial combined to support the conclusion that the Court should address the issue, both for practical reasons and because the questions of leave to appeal and leave to amend were so closely connected - it was therefore strictly unnecessary to determine whether the primary judge was correct to find that the earlier proposed pleading comprised an abuse of process because the foundation for the claim was speculative - it is generally desirable that the Court facilitate the litigation of all disputes between the parties, ensuring efficiency in the conduct of litigation, so as to avoid a multiplicity of proceedings - were the amendment to be disallowed and new proceedings commenced, there would be some scope for dispute about the operation of *Anshun* estoppel - based on the fresh evidence, the appeal should be allowed, and leave to amend granted.

[Hallett Concrete Pty Ltd](#)

### **Makland Constructions Pty Ltd v Page Steel Fabrications Pty Ltd [2024] VSCA 142**

Court of Appeal of Victoria

Beach, Kennedy, & Lyons JJ

Construction contracts - Makland and Page Steel contracted for Page Steel to supply and erect steel framework for two warehouses, including offices and canopies - in due course, Makland and the site owners sued Page Steel seeking damages for alleged repudiation of the contract, said to be constituted by Page Steel's refusal to deliver steel for the canopies until such time as Makland provided a deed of release - the primary judge found that Page Steel had not repudiated the agreement - Makland and the site owners appealed - held: the test for repudiation is whether the conduct of one party is such as to convey to a reasonable person, in the situation of the other party, renunciation either of the contract as a whole or of a fundamental obligation under it - repudiation is not ascertained by an inquiry into the subjective state of the mind of the party in default - the whole circumstances of the case must be examined - in some circumstance, mere honest misapprehension, especially if open to correction, will not



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justify a charge of repudiation - the primary judge had not erred in finding that Page Steel was prevented from performing the contract by Makland seeking performance other than in accordance with the contract by seeking to use its own riggers and ordering Page Steel's employees and contractors off the site, and that, by the relevant time, Page Steel was no longer pressing for a release as a condition of supplying the canopies - appeal dismissed.

[Makland Constructions Pty Ltd](#)

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