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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)

**CBP Centre Pty Ltd v VentureCrowd Pty Ltd** (QSC) - share buy-back agreement construed so as to require the company that had bought back its share to pay the purchase price when the shares were transferred, notwithstanding an ambiguous timing provision that may have nominated a later date for payment

**Castronova v Tjung & Ors** (NTSC) - vendor recovered damages for breach of contract where the sale of real property did not go through

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## Summaries With Link (Five Minute Read)

### **CBP Centre Pty Ltd v VentureCrowd Pty Ltd [2024] QSC 139**

Supreme Court of Queensland

Freeburn J

Contracts - a company bought back all of a shareholder's shares pursuant to a buy-back agreement - the former shareholder sought an order that the company pay the agreed contract price of about \$2.4million - the shareholder said the obligation to pay the purchase price arose on "completion" as defined in the contract to mean when the shares were transferred - the company said the obligation to pay the purchase price arose on the "completion date" as defined in the contract, which had not yet arrived, as it was fixed by reference to a future external capital raising by the company - held: the relevant clause in the contract was ambiguous, as it stated that completion must take place on the "completion date" (which had not yet arrived), but also specified that the price must be paid on completion (which had occurred, as defined) - ordinarily, the completion of a sale would occur when both parties received what they bargained for - whether and when the completion date arrives was completely in the hands of the company - the completion date may never occur, or it may not occur in the foreseeable future - the better interpretation of the provision relating to exchange is that what was contemplated was that both the transfer of the shares and the payment of the transfer price would occur on the same day and time, namely the completion date - that was the interpretation that is most likely to give effect to the objective intention of the parties - a reasonable businessperson could hardly have contemplated that the former shareholder would part with the shares but would have no reciprocal right to the transfer price - there was ambiguity between this provision and the provision relating to timing - that ambiguity should be resolved by giving priority to the provision relating to exchange rather than the timing provision - furthermore, words and even whole clauses may be rejected if they are inconsistent with the main object of the contract, as ascertained from a reading of it as a whole - here, it was clear what was intended, namely that the company had the ability to delay completion of the sale in order to secure funding via an external capital raising, but having decided to proceed with the transaction without such a capital raising, the company was obliged pay for the shares it acquired - judgment for the former shareholder.

[CBP Centre Pty Ltd](#)

### **Castronova v Tjung & Ors [2024] NTSC 55**

Supreme Court of Tasmania

Burns J

Contracts - the plaintiff contracted to sell real property to the first and third defendants, and gave them a licence to occupy the property before completion - an extended settlement period was negotiated to enable the defendants sell properties by the first and second defendant - the defendants were unable to complete on the appointed day, and the parties entered into a deed of variation extending the date for completion and granting the plaintiff a mortgage over the first defendant's property and a guarantee from the second defendant and a second ranking



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mortgage over the second defendant's property - the defendants again failed to complete and the plaintiff terminated the contract - the first defendant contracted to sell her property to a third party, but could not complete, allegedly because the plaintiff refused to discharge the mortgage - the plaintiff then sold its property for \$550,000 less than it had contracted to sell it to the defendants - the plaintiff demanded the amount owing under the mortgages - when the defendants failed to pay, the plaintiff commenced proceedings claiming damages for breach of the contract of sale as varied and under the second defendant's guarantee - held: the contract, the variation deed, the deed of guarantee, and the mortgages are not void as unfair contracts under the *Australian Consumer Law* - the first defendant's subjective misunderstanding of the effect of the variation and the mortgages was not relevant - the Court did not accept that the plaintiff refused to provide a discharge of the mortgage on the first defendant's property and that this was the reason for the first defendant's sale of that property not proceeding - there was no basis for a claim in law or equity for the plaintiff to reimburse the first and second defendants for the costs of renovations to the property - the plaintiff was entitled to \$550,000 plus interest and possession of the first defendant's property pursuant to the mortgage.

[Castronova](#)

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