



Wednesday, 5 August 2015

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

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Illawarra Retirement Trust v Denham Constructions Pty Ltd (No.2) (NSWSC) - costs - both parties achieved roughly equivalent degree of success - each party to bear own costs

BRB Modular Pty Ltd v AWX Constructions Pty Ltd (QSC) - security of payments - contractual precondition did not prevent reference date for payment claim arising under *Building and Construction Industry Payments Act 2004* (Qld) - application dismissed



Summaries With Link (Five Minute Read)

Illawarra Retirement Trust v Denham Constructions Pty Ltd (No.2) [2015] NSWSC 1032

Supreme Court of New South Wales

Darke J

Costs - plaintiff's summons dismissed - plaintiff sought that each party pay its own costs or order for indemnity costs - defendant sought that plaintiff pay its costs from certain date - held: after commencement of proceedings defendant had made concessions which narrowed issues - defendant successful on the remaining issues - defendant had made offer to plaintiff which was not accepted - plaintiff was well justified in commencing proceedings - Court concluded that in all circumstances most appropriate order was that each party bear own costs of proceedings in reflection of Court's view that both parties had achieved a roughly equivalent degree of success and there was no conduct that seemed to warrant making award of indemnity costs.

[Illawarra](#)

BRB Modular Pty Ltd v AWX Constructions Pty Ltd [2015] QSC 218

Supreme Court of Queensland

Applegarth J

Security of payments - applicant and first respondent were parties to a construction contract - applicant claimed first respondent's payment claim not made from valid reference date - adjudicator decided contract provided for working out of reference date and that by application of s99 *Building and Construction Industry Payments Act 2004* (Qld) the contractual precondition did not affect a reference date arising for purpose of making payment claim - applicant sought to quash decision on basis no reference date for making of payment claim under the Act arose - contractual precondition to reference date arising under contract was provision of statutory declaration - precondition not complied with by first respondent - held: applicant's argument that no reference date for making of payment claim arose due to non-compliance with precondition not established - contractual provision impeded the objects of the Act - application dismissed.

[BRB](#)

[Click Here to access our Benchmark Search Engine](#)