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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)

In the matter of Stamford Bridge SW6 Pty Ltd (NSWSC) - service of a statutory demand on an email address the company used during business dealings and in an adjudication under the *Building and Construction Industry Security of Payment Act 1999* (NSW) was valid

McCarthy & Chatterton v ACT Property Inspections Pty Limited (ACTSC) - Court considered that some, but not all, impugned paragraphs in a statement of claim were embarrassing and should be struck out with leave to replead

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Summaries With Link (Five Minute Read)

In the matter of Stamford Bridge SW6 Pty Ltd [2024] NSWSC 486

Supreme Court of New South Wales

Williams J

Insolvency - two directors incorporated a company for the sole purpose of a property development at Mascot - the company entered into building contracts for the construction of two homes on that property - disputes arose between the company and its builder in relation to the builder's payment claims and alleged defects in the building works - the company engaged Cox to prepare an expert report to be used in proceedings that were then on foot between the company and the builder - Cox issued an invoice to the company for this work, the company responded by issuing a payment schedule under the *Building and Construction Industry Security of Payment Act 1999* (NSW), and an adjudication under that Act resulted in a determination in favour of Cox in the sum of about \$85,000 - judgment for the adjudicated sum was entered in favour of Cox in the Local Court - Cox purportedly served a statutory demand on the company in respect of that judgment debt, by sending it to the email address of one of the directors, which was the email address the company had nominated as its address for communications in the adjudication - the company sought an order pursuant to s459G and s459H of the *Corporations Act 2001* (Cth) that the statutory demand be set aside - the Court answered two questions as separate questions: (1) whether the statutory demand was served for the purposes of s600G of the *Corporations Act*, having regard to the definition of "nominated electronic address" in s9 of the Act, or by way of informal effective service; and (2) whether, if the demand was served, the application to set it aside was filed and served within 21 days - held: by the emails sent to Cox by the director on behalf of the Company from his email address as a reply to Cox's invoice and sending the payment schedule in response, the company had nominated this email address to Cox as the electronic address for the company to receive electronic communications within the meaning of s9(a) - the director had never communicated to him that, notwithstanding his use of his email address to send emails on behalf of the company, his email address was not an address at which the company would receive emails - even if this were not the case, on the evidence, the email address was an electronic address that Cox believed on reasonable grounds to be a current electronic address for the Company for receiving electronic communication and therefore was the company's nominated electronic address within the meaning of s9(b) - a statutory demand may be served by electronic communication, provided that the requirements of s600G(4) are satisfied - the statutory demand had been validly served by the email - the company had failed to discharge its onus of establishing that its application to set aside the statutory demand, together with an affidavit in support of that application, was filed and served within the 21-day statutory period after service - proceedings dismissed.

[View Decision](#)

McCarthy & Chatterton v ACT Property Inspections Pty Limited [2024] ACTSC 131

Supreme Court of the Australian Capital Territory

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Taylor J

Civil procedure - the plaintiffs purchased a home in Kambah - as part of the process of the sale of the property the defendant authored a Building and Compliance Inspection Report, which was a required document in contracts for the sale of residential property under the *Civil Law (Sale of Residential Property) Act 2003 (ACT)* - the plaintiffs alleged that there was significant active and historical termite damage to the property, discovered after the purchase of the property was finalised, which was not disclosed or referred to within the Report - the plaintiffs commenced proceedings, claiming a breach of statutory duty and that the defendant was liable under s19(1)(a) of the Act, or alternatively breach of duty of care - the plaintiffs claimed the cost of demolishing and rebuilding the property, the cost of alternative accommodation during this, the cost of the Report, and interest and costs - the defendant sought to strike out certain paragraphs of the statement of claim - held: the starting point is the originating claim, which must state briefly and specifically the nature of the claim made and relief sought - the purpose of a pleading is to expose the case the party intends to run, and properly exposing the case to be pursued falls within a party's obligations under s5A of the *Court Procedures Act 2004 (ACT)* - an "embarrassing" pleading is one that cannot serve the function of a pleading, namely, in succinct fashion, to put the defendant properly on notice of the real substance of the claim made against it and to know what case it is that the defendant has to meet - a pleading that, on a certain date, the plaintiffs observed significant damage caused by active and historical termite activity at the property lacked clarity about the nature and extent of the "significant damage" alleged - however, the Court was satisfied that the particulars given made clear to the defendant the extent of the "significant" termite damage referred to, and was satisfied that the defendant was on notice about the substance of the claim with respect to the extent of the termite damage said to exist in the property at the time the Report was completed, observed by the plaintiffs - certain other paragraphs also not struck out as they were adequately explained by the particulars - certain paragraphs that were legal conclusions that failed to plead the material facts relied upon to found those conclusions were embarrassing, and were struck out with leave to replead.

[McCarthy & Chatterton](#)

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