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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)

**Gosford City Council v Parbery (Liquidator); In the Matter of Lehman Brothers Australia Ltd (In Liq) (Scheme Administrators Appointed)** (FCA) - contract - claims resolution process deed construed according to its terms - liquidators' proof of debt upheld

**Davan Developments Pty Ltd v HLB Mann Judd (SE Qld) Pty Ltd** (QCA) - professional negligence - accountants who prepared tax returns showing property sales liable to GST not negligent or in breach of contract

**Denham Constructions Pty Ltd v Islamic Republic of Pakistan** (ACTSC) - construction dispute - defences that certain claims were not payment claims under the Building and Construction Industry (Security of Payment) Act were weak but arguable - summary judgment refused

## Summaries With Link (Five Minute Read)

### **Gosford City Council v Parbery (Liquidator); In the Matter of Lehman Brothers Australia Ltd (In Liq) [2016] FCA 353**

Federal Court of Australia

Foster J

Contract - Gosford Council lodged proof of debt in liquidation of Lehman Brothers - parties entered deed providing for claims resolution process to determine amount to be admitted - deed approved by Court - Adjudicator ruled debt should be only partly admitted - liquidators admitted debt for that amount - Council appealed to the Federal Court - held: deed should be construed objectively in the context of the surrounding circumstances and its purpose - language used in the deed was plain - loss should be calculated on the factual assumptions set out in the deed, notwithstanding the actual circumstances - Council's application dismissed.

[Gosford City Council](#)

### **Davan Developments Pty Ltd v HLB Mann Judd Pty Ltd [2016] QCA 90**

Court of Appeal of Queensland

Gotterson, Morrison & P McMurdo JJA

Professional negligence - development company retained accountants to prepare tax returns - development company acquired two adjoining lots, amalgamated them, and subdivided the land into three lots - sold two of the lots - paid GST on the sale on the basis of returns prepared by the accountants - development company claimed it had not been liable for GST on those sales as it held the land on trust and had merely transferred the property to the beneficiary of that trust - trial judge dismissed the development company's claim against the accountants - held: the development company had not owned the land as trustee - there had been no breach of contract or negligence - appeal dismissed.

[Davan](#)

### **Denham Constructions Pty Ltd v Islamic Republic of Pakistan [2016] ACTSC 67**

Supreme Court of the Australia Capital Territory

Mossop AsJ

Building and construction - Denham brought proceedings for debt arising out of a payment claim under the Building and Construction Industry (Security of Payment) Act 2009 - Pakistan pleaded defences that the claim was not a payment claim within the meaning of the Act - that a communication by Pakistan's architect was sufficient to constitute a payment schedule under the Act - that the Act did not apply to land that was subject to the exclusive law-making power of the Commonwealth Parliament under s52, Constitution - Denham sought summary judgment - held: the plaintiff had to demonstrate that the defence was so obviously untenable that it could not possibly succeed - this is a high threshold - Pakistan's case that the claim was not a payment claim was not strong, but was arguable - not necessary to address other defences - summary judgment refused.

[Denham](#)





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## **MULGA BILL'S BICYCLE**

by A.B. "Banjo" Paterson

'Twas Mulga Bill, from Eaglehawk, that caught the cycling  
craze;

He turned away the good old horse that served him many  
days;

He dressed himself in cycling clothes, resplendent to be  
seen;

He hurried off to town and bought a shining new machine;  
And as he wheeled it through the door, with air of lordly  
pride,

The grinning shop assistant said, "Excuse me, can you  
ride?"

"See here, young man," said Mulga Bill, "from Walgett to the  
sea,

From Conroy's Gap to Castlereagh, there's none can ride  
like me.

I'm good all round at everything as everybody knows,  
Although I'm not the one to talk - I hate a man that blows.

But riding is my special gift, my chiefest, sole delight;  
Just ask a wild duck can it swim, a wildcat can it fight.

There's nothing clothed in hair or hide, or built of flesh or  
steel,

There's nothing walks or jumps, or runs, on axle, hoof, or  
wheel,

But what I'll sit, while hide will hold and girths and straps are  
tight:

I'll ride this here two-wheeled concern right straight away at  
sight."

'Twas Mulga Bill, from Eaglehawk, that sought his own  
abode,

That perched above Dead Man's Creek, beside the  
mountain road.

He turned the cycle down the hill and mounted for the fray,  
But 'ere he'd gone a dozen yards it bolted clean away.

It left the track, and through the trees, just like a silver steak,



# Benchmark

It whistled down the awful slope towards the Dead Man's Creek.

It shaved a stump by half an inch, it dodged a big white-box:  
The very wallaroos in fright went scrambling up the rocks,  
The wombats hiding in their caves dug deeper underground,  
As Mulga Bill, as white as chalk, sat tight to every bound.  
It struck a stone and gave a spring that cleared a fallen tree,  
It raced beside a precipice as close as close could be;  
And then as Mulga Bill let out one last despairing shriek  
It made a leap of twenty feet into the Dean Man's Creek.

'Twas Mulga Bill, from Eaglehawk, that slowly swam ashore:  
He said, "I've had some narrer shaves and lively rides before;  
I've rode a wild bull round a yard to win a five-pound bet,  
But this was the most awful ride that I've encountered yet.  
I'll give that two-wheeled outlaw best; it's shaken all my nerve  
To feel it whistle through the air and plunge and buck and swerve.  
It's safe at rest in Dead Man's Creek, we'll leave it lying still;  
A horse's back is good enough henceforth for Mulga Bill."

[A.B. "Banjo" Paterson](#)

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