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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)

Karam Group Pty Ltd ATF The Karam (No. 1) Family Trust v HCA Queensland Pty Ltd & Ors (QSC) - part of an adjudication under the *Building and Construction Industry Payments Act 2004* (Qld) was affected by jurisdictional error and void, but the Court exercised its discretion to allow the only unaffected part of the decision to remain binding on the parties

Aurenne Mt Ida Pty Ltd v Central West Concrete Pty Ltd (WASC) - Court set aside statutory demand on the basis of a genuine dispute regarding a gold mining project

Summaries With Link (Five Minute Read)

Karam Group Pty Ltd ATF The Karam (No. 1) Family Trust v HCA Queensland Pty Ltd & Ors [2024] QSC 34

Supreme Court of Queensland

Bradley J

Security of payments - Karam and HCA contracted for HCA to design and construct the Maasra Apartments, a mixed-use development of residential apartments and commercial space located in the inner Brisbane suburb of Coorparoo - HCA was close to achieving practical completion under the contract and that most of the remaining work related to rectification of defects and preparation of as-built drawings - HCA served a payment claim under the *Building and Construction Industry Payments Act 2004* (Qld) in an amount of over \$15 million - the Superintendent then issued Karam with a payment certificate in the sum of nearly \$24 million - HCA lodged an adjudication application in respect of the payment claim and payment certificate, and said that the amount should be about \$4.6 million - the parties agreed HCA should be restrained from again agitating a part of the payment claim for a progress payment seeking the repayment of liquidated damages - Karam also challenged the adjudicator's decision - held: Karam and HCA agreed that the adjudicator made jurisdictional errors in the parts of the decision where the adjudicator: (a) expounded his own theory of the application of the prevention principle to the contract; (b) expressed his own views about what the role and the obligations of the superintendent should be under the contract; and (c) expressed views about whether the parties' amendments to the standard form contract amounted to an attempt to "contract out" of the Act - the Court was satisfied that these parts of the decision should be declared to be void - the Court should exercise the discretion to allow the only unaffected part of the decision to remain binding on the parties.

[Karam Group Pty Ltd ATF The Karam \(No. 1\) Family Trust](#)

Aurenne Mt Ida Pty Ltd v Central West Concrete Pty Ltd [2024] WASC 51

Supreme Court of Western Australia

Forrester J

Corporations law - the plaintiff owns a new mining operation at Mt Ida, which required the construction and development of a gold processing plant, associated mining operation, and a camp for workers - as part of the project, concrete works were required, and the defendant was contracted to provide those works - in due course the defendant served a statutory demand on the plaintiff - the plaintiff commenced proceedings, seeking that the statutory demand be set aside on the ground that there was a genuine dispute about the debt, or alternatively because the plaintiff had an offsetting claim - held: the Court's function was to determine whether there is a genuine dispute, and the Court was not expected to undertake an extended inquiry or attempt to weigh the merits of the dispute, and it was not part of the Court's function to resolve the dispute - it suffices if there is a 'plausible contention' requiring 'further investigation', or something that may be equated to the criterion of whether there is a 'serious question to be tried' - the applicant must establish that: (a) the dispute is bona fide and truly exists in fact; and



(b) the grounds alleging the existence of the dispute are real and not spurious, hypothetical, illusory or misconceived - the onus is on the recipient of the statutory demand to establish the offsetting claim - the expression 'genuine claim' connotes a plausible contention requiring investigation and raises similar considerations as 'the serious question to be tried' criterion on an interlocutory injunction - the Court was satisfied that a genuine dispute had been established as to whether the plaintiff was entitled to withhold the payment of the invoices on the basis of the relevant clause of the contract - were it necessary to do so, the Court would also have been satisfied that the plaintiff had established a genuine claim sufficiently quantified to give rise to an offsetting amount - statutory demand set aside.

[Aurenne Mt Ida Pty Ltd](#)

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