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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)

**Concrete Mining Structures Pty Ltd v Cellcrete Australia Pty Ltd (No 2)** (FCA) - security for costs - applications for security for costs by parties against each other - all applications dismissed

**Richtoll Pty Ltd v WW Lawyers (in Liquidation) Pty Ltd** (NSWSC) - professional negligence - contract - solicitors' duties - failure to conduct further ASIC search just before draw down of loan was breach of duty/retainer - causation not established

**Tenney v Matthews** (SASC) - contract - joint venture - no breach of settlement agreement - breach of loan agreement - judgment for defendants

## Summaries With Link (Five Minute Read)

### **Concrete Mining Structures Pty Ltd v Cellcrete Australia Pty Ltd (No 2) [2016] FCA 360**

Federal Court of Australia

Edelman J

Security for costs - fiduciary duties - duties of confidence - copyright - unjust enrichment - *Barnes v Addy* - principal claim arising out of development of pump for mining industry - company (CMS) sued its former director and company of which former director was sole director (Cellcrete) - Cellcrete and former director brought cross-claim - parties sought security for costs against each other - ss1335 & 1335(1) *Corporations Act 2001* (Cth) - s56 *Federal Court of Australia Act 1976* (Cth) - r19.01 *Federal Court Rules 2011* (Cth) - held: applications dismissed - Court did not doubt Cellcrete and CMS had funds to meet costs order - even if Cellcrete and CMS did not have sufficient funds difference not significant and Court would not exercise discretion to order security.

[Concrete Mining](#)

### **Richtoll Pty Ltd v WW Lawyers (in Liquidation) Pty Ltd [2016] NSWSC 438**

Supreme Court of New South Wales

Hoeben CJ at CL

Professional negligence - contract - solicitors' duties - plaintiffs in business of lending money secured by property - plaintiffs were former clients who sued incorporated legal practice for professional negligence and breach of contract in relation to provision of services concerning loans - ss5B, 5D, 5E & 5O *Civil Liability Act 2002* (NSW) - held: plaintiffs made out case for breach of duty/retainer in relation to loan for failure to conduct further ASIC search just before draw down of loan - no defence established under s5O - however causation not established - judgment for defendant.

[Richtoll](#)

### **Tenney v Matthews [2016] SASC 34**

Supreme Court of South Australia

Bampton J

Contract - joint venture - plaintiff and defendants were joint venturers - following mediation parties executed agreements settling matters in dispute and separating interests - plaintiff alleged breaches of settlement agreement seeking damages from defendants - defendants denied breach of settlement agreement and counterclaimed concerning alleged breaches of vendor loan agreement - defendants sought damages in amount of loan and enforcement of security over plaintiffs mining lease - ss6, 9, 9AA, 20, 21, 22, 26, 34, 35, 39, 73A & 73B *Mining Act 1971* (SA) - regs12 & 29 *Mining Regulations 2012* (SA) - held: no breach of settlement agreement - defendants established breach of loan agreement - defendants entitled to damages - judgment for defendants.

[Tenney](#)



# Benchmark

## **The Late Worm**

By Kay Ryan

The worms  
which had been  
thick are thin  
upon the ground  
now that it's gotten  
later. They stick  
against the path,  
their pink chapped  
and their inching  
labored. It's a  
matter of moisture  
isn't it? Time, a  
measure of wet,  
shrinking, the  
drier you get.

[Kay Ryan](#)

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