



Friday, 11 October 2024

## Weekly Business Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Business Law

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### Executive Summary (One Minute Read)

**Fredon Infrastructure Pty Ltd v Hitachi Rail GTS Australia Pty Ltd** (NSWSC) - payment claims under the *Building and Construction Industry Security of Payment Act 1999* (NSW) had been validly served by email to officers who had actual and apparent authority to receive them



## HABEAS CANEM

Before the puppy ears finally dropped

## Summaries With Link (Five Minute Read)

### **Fredon Infrastructure Pty Ltd v Hitachi Rail GTS Australia Pty Ltd [2024] NSWSC 1244**

Supreme Court of New South Wales

Stevenson J

Agency - Fredon and Hitachi were parties to two construction contracts in the same terms for carrying out of work by Fredon in respect of the Victoria Cross and Crows Nest Metro Station - Fredon sent to officers of Hitachi two payment claims under the *Building and Construction Industry Security of Payment Act 1999* (NSW) - Hitachi said the payment claims were not validly served, as the contracts req required Fredon to serve the payment claims on a particular nominated representative, and, if they were validly served, they were served the following day (which would mean that Hitachi's payment schedule was served within time) - held: under the terms of her contract of employment, the Hitachi officer who was one of the recipients of the payment claims had actual authority to receive payment claims generally, and did, with that actual authority, receive on behalf of Hitachi the payment claims in question - as to apparent authority, if a principal represents to a contractor that the principal's agent has authority to receive a document, and the contractor serves a document on that agent in reliance on that representation, the agent will be taken to have apparent authority to receive the document - Hitachi's predecessor had made such a representation regarding the officers who received the payment claims - delivery to these officers had been delivery to Hitachi - the correct inference on the evidence was that both of these officers had received the payment claims by email while they were at work - the payment claims had been effectively served on the day Fredon sent them, and Hitachi's payment schedule was served out of time - Hitachi was therefore liable to Fredon for the amount of the payment claims.

[View Decision](#)

[From Benchmark Wednesday, 9 October 2024]

# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**Paki Nikora v Tamati Kruger (NZSC)** - The Maori Land Court had jurisdiction to review the election of trustees to the Tuhoe - Te Uru Tamatua Trust inasmuch as the Trust, among other functions, held land as a post-settlement governance entity

### Summaries With Link (Five Minute Read)

#### **Paki Nikora v Tamati Kruger [2024] NZSC 130**

Supreme Court of New Zealand

Winkelmann, CJ, Glazebrook, Williams, O'Regan, & Collins JJ

Paki Nikora contended that two of the trustees of the Tuhoe - Te Uru Taumatua Trust (TUT) had not been selected in accordance with the terms of the trust. Nikora commenced proceedings in the Maori Land Court and the Court ordered fresh elections. TUT refused to acknowledge the jurisdiction of the Land Court and declined to participate in the proceedings. The matter was appealed to the Maori Appellate Court that upheld the decision of the Land Court. However on subsequent review by the Court of Appeal, the decisions of the Maori Land Court and Appellate Court were overturned. The Court of Appeal found that, inasmuch as TUT had authority over a wide range of matters and was not constituted in respect of land and its primary purpose did not relate to land, the Maori Land Court lacked jurisdiction with respect to trust activities. On further review, the Supreme Court determined that the Court of Appeal was in error and concluded that the Maori Land Court had jurisdiction to hear the matter because, from its outset, TUT was established to hold parcels of land regardless of its holdings at the time of its inception. The Court also noted that the Maori Land Court by long experience was sensitive to the challenges of communal asset management and that Maori Land Court judges had special knowledge and expertise and had proceeded with due care to resolve the issues despite the lack of participation by one of the parties.

[Paki Nikora](#)

## Poem for Friday

### Risk

**By** Anaïs Nin (1903-1977)

And then the day came,  
when the risk  
to remain tight  
in a bud  
was more painful  
than the risk  
it took  
to blossom.

**Anaïs Nin**, (Angela Anaïs Juana Antolina Rosa Edelmira Nin y Culmell), was born in 1903, outside Paris, of Cuban parents. Her father was the composer, Joaquin Nin. Nin was a French Cuban American who wrote essays, novels and short stories. *The Diary of Anaïs Nin* was written initially as a letter to her father, who had left the family some years before Anaïs Nin wrote, starting at the age of 11 in 1914. The diary of Anaïs Nin was published over 7 volumes, in expurgated and unexpurgated volumes. She was a close friend of Henry Miller. She died in Los Angeles, USA, of cancer.

Reading by **Patricia Conolly**. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world's leading theatrical centres. She has worked extensively in her native Australia, in London's West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada. Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love's Labour's Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

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Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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