



Friday, 1 November 2024

Weekly Construction Law Review Selected from our Daily Bulletins covering Construction

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Executive Summary (One Minute Read)

Rogers Construction Group Pty Ltd v Mirage Interiors & Construction Pty Ltd (NSWSC) - Court rejected judicial review application where an adjudicator under the *Building and Construction Industry Security of Payment Act 1999* (NSW) found there was an oral contract that superseded an earlier written contract

HABEAS CANEM

Pig, Dog and Bougainvillea



Summaries With Link (Five Minute Read)

Rogers Construction Group Pty Ltd v Mirage Interiors & Construction Pty Ltd [2024] NSWSC 1344

Supreme Court of New South Wales
Stevenson J

Security of payments - Rogers Construction engaged Mirage to provide services involving the supply and installation of walls, ceilings and partitions at the Busby Fire Station under a lump sum contract - Mirage contended there was a further oral contract, which Rogers denied - Mirage served a payment claim under the *Building and Construction Industry Security of Payment Act 1999* (NSW) for an amount it said was owing under the oral contract which was on a costs plus basis - an adjudicator under that Act found that there was an oral contract as alleged by Mirage, and that contract was separate and distinct from the earlier lump sum contract, and there was no overlapping scope of work - Rogers applied for judicial review of the adjudication decision, on the basis of lack of procedural fairness in that the adjudicator decided the matter on a basis not advocated by either party and which neither party, particularly Rogers, could reasonably have contemplated - held: there will rarely be a basis for quashing an adjudication determination for want of procedural fairness - the adjudicator had found that the agreement was that all work done from a particular date was to be on a cost plus basis and under the oral contract - this is what Mirage had contended - Rogers' adjudication response showed that it was alive to the "scope overlap" point, and had made a submission about it - the adjudicator appeared to have included, perhaps as an alternative finding, that the oral contract constituted a variation of the original contract, which neither party had contended - however, Rogers had anticipated such an argument in its adjudication response - the challenge to the adjudication decision failed.

[View Decision](#)

[From Benchmark Tuesday, 29 October 2024]

Benchmark

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Case of Kobaliya v Russia (EUHRTS) - European Court of Justice found that, in its overly broad definition of 'foreign agents', Russia committed multiple violations of the *European Convention on Human Rights*

Summaries With Link (Five Minute Read)

Case of Kobaliya v Russia, No 39446/16

European Court of Human Rights

Pastor Vilanova P, Schukking, Serghides, Roosma, Ktistakis, Mjöll Arnardóttir, & Kovatcheva JJ
Prior to its exclusion from the Council of Europe in 2022, Russia was bound by the *European Convention on Human Rights* and subject to the jurisdiction of the European Court of Human Rights. Here the activity in question occurred between 2012 and 2022 and related to fundamental rights to freedom of expression and assembly as guaranteed by the Convention. Under Russian law, non-governmental organisations (NGOs), media organisations, and individuals who received any foreign support were required to register as 'foreign agents' and conform to restrictions placed on persons so designated. The complainants alleged that the statutory definition was so overly broad as to impinge on rights to freedom of expression and freedom of assembly guaranteed by Articles 10 and 11 of the *European Convention*. The European Court found that the Russian legislation was unlawful because it was overly broad and employed the stigmatising term 'foreign agent' to a very wide universe of parties that could not all be lumped together as 'foreign agents'. Under Russian law, once designated as a foreign agent, substantial regulatory legislation attached curtailing the political rights of the parties so classified. By casting such a wide net, the term 'foreign agent' was used to circumvent basic *European Convention* rights.

[Case of Kobaliya](#)

Poem for Friday

Echo

By Christina Rossetti (1830-1894)

Come to me in the silence of the night;
Come in the speaking silence of a dream;
Come with soft rounded cheeks and eyes as bright
As sunlight on a stream;
Come back in tears,
O memory, hope, love of finished years.

Oh dream how sweet, too sweet, too bitter sweet,
Whose waking should have been in Paradise,
Where souls brimfull of love abide and meet;
Where thirsting longing eyes
Watch the slow door
That opening, letting in, lets out no more.

Yet come to me in dreams, that I may live
My very life again tho' cold in death:
Come back to me in dreams, that I may give
Pulse for pulse, breath for breath:
Speak low, lean low,
As long ago, my love, how long ago.

Christina Georgina Rossetti, born on 5 December, 1830, was one of the foremost poets of her era. Her father, Gabrielle, was an Italian Poet, and later chair of Italian at King's College, in London. Her mother Frances Polidor, an Anglo-Italian, home schooled her children in a climate of intellectual excellence. From 1845 Christina, by then a prolific poet, suffered an illness, that some consider was at least influenced by mental illness. She continued to have bouts of serious illness throughout her life. Rossetti's poetry, included the collections *Goblin Market and other Poems* (1862), *The Prince's Progress* (1866), *A Pageant* (1881), and *The Face of the Deep* (1882). Christina Rossetti died on 29 December, 1894.

Stanford Chamber Chorale, conductor, Stephen M Sano, with Laura Dahl, pianist, sing Norman Dello Joio's **Come to Me, My Love**, a setting of Christina Rossetti's "Echo"

<https://www.youtube.com/watch?v=NyJs5oqyygs>

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.

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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