

Friday, 3 July 2015

Weekly Construction Law Review A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Tarkine National Coalition v Minister for the Environment (FCAFC) - administrative law - approval of proposed action to develop and operate hematite mine in Tasmania - appeal dismissed

Williams v Pisano (NSWCA) - building and construction - misleading representations made in connection with sale of residential premises did not constitute conduct in trade or commerce - appeal allowed

Illawarra Retirement Trust v Denham Constructions Pty Ltd (NSWSC) - security of payments - payment claim was valid - claim for injunctive relief failed

M J Arthurs Pty Ltd v Heaysman (QCA) - building contract - valid withdrawal from building contract by notice of withdrawal by facsimile transmission - appeal dismissed

Summaries With Link (Five Minute Read)

Tarkine National Coalition v Minister for the Environment [2015] FCAFC 89

Full Court of the Federal Court of Australia

Kenny, Jessup & Middleton JJ

Administrative law - appellant challenged Minister's decision to approve proposed action by second respondent to develop and operate hematite mine in north-western Tasmania - 'controlled actions' - 'cumulative impacts' - ss3A, 18, 18A, 19, 20, 20A, 37B, 45, 47, 67, 67A,

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75, 82, 83, 130, 133, 134, 136, 139, 140, 145D, 146F & 527E *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC) - s25 *Environmental Management and Pollution Control Act 1994* (Tas) - held: s136 EPBC did not require Minister to consider 'cumulative impacts' of proposal - contention rejected that primary judge erred in not holding that s83 EPBC Act did not 'disapply' Pt 8 EPBC in respect of proposal - imposition of conditions by Minister on approval of proposal was within Minister's power under s134 EPBC - appeal dismissed.

[Tarkine](#)

[From Benchmark Wednesday, 1 July 2015]

Williams v Pisano [2015] NSWCA 177

Court of Appeal of New South Wales

Bathurst CJ; McColl & Emmett JJA

Building and construction - trade practices - negligence - plaintiffs purchased house from owner-builder and husband - house was profoundly defective in its construction - sale preceded by false information given by owner-builder and appellant husband to real estate agent which was then passed on with their authority to purchasers - information played significant part in purchasers' decision to buy - purchasers sought damages for reasonable cost of remedying defects - primary judge gave judgment for purchasers - primary judge satisfied sale was a transaction in trade or commerce and that conduct complained of was in trade or commerce - falsity of representations established - mis-statements made in advertising material direct and intended positively to influence reader to buy - misleading conduct induced purchasers to enter contract - reliance established - claim in negligence not made out - held: primary judge erred in concluding that representations constituted conduct engaged in by appellant in trade or commerce - no contravention on the part of appellant of either ss18 or 30 Australian Consumer Law - appeal allowed.

[Williams](#)

[From Benchmark Tuesday, 30 June 2015]

Illawarra Retirement Trust v Denham Constructions Pty Ltd [2015] NSWSC 823

Supreme Court of New South Wales

Darke J

Security of payments - plaintiff sought injunctive relief restraining defendant from acting upon two payment claims made under *Building and Construction Industry Security of Payment Act 1999* (NSW) - defendant withdrew one claim - other claim was for amount for work done up to 29 May 2015 - time of termination of contract - held: following issue of notice of termination parties agreed termination would not take effect until end of 29 May 2015 - 29 May 2015 being last business day of month became reference date under contract - on and from 29 May 2015 defendant entitled to progress payment under s8 of the Act and able to serve payment claim using 29 May 2015 as reference date - inclusion of 'cash held' item in payment claim did not invalidate it - plaintiff's claim for injunctive relief failed - summons dismissed.

[Illawarra](#)

[From Benchmark Friday, 26 June 2015]



M J Arthurs Pty Ltd v Heaysman [2015] QCA 113

Court of Appeal of Queensland

M McMurdo P; Holmes JA & Atkinson J

Building contract - service - appellant registered builder unsuccessfully sued respondents under building contract - trial judge held respondents had withdrawn from contract under s72 *Domestic Building Contracts Act 2000* by notice of withdrawal given by facsimile transmission - appellant contended trial judge erred in finding notice of withdrawal validly given because notice was not sent to its last known facsimile number, which was the form of service for which building contract provided - held: trial judge properly made findings that number in contract was last facsimile number for appellant known to respondents and that withdrawal notice was served on company by facsimile transmission to that number - appeal dismissed.

[MJArthurs](#)

[From Benchmark Thursday, 25 June 2015]



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from Beachy Head

By Charlotte Smith

On thy stupendous summit, rock sublime!
That o'er the channel reared, half way at sea
The mariner at early morning hails,
I would recline; while Fancy should go forth,
And represent the strange and awful hour
Of vast concussion; when the Omnipotent
Stretched forth his arm, and rent the solid hills,
Bidding the impetuous main flood rush between
The rifted shores, and from the continent
Eternally divided this green isle.
Imperial lord of the high southern coast!
From thy projecting head-land I would mark
Far in the east the shades of night disperse,
Melting and thinned, as from the dark blue wave
Emerging, brilliant rays of arrowy light
Dart from the horizon; when the glorious sun
Just lifts above it his resplendent orb.
Advances now, with feathery silver touched,
The rippling tide of flood; glisten the sands,
While, inmates of the chalky clefts that scar
Thy sides precipitous, with shrill harsh cry,
Their white wings glancing in the level beam,
The terns, and gulls, and tarrocks, seek their food,
And thy rough hollows echo to the voice
Of the gray choughs, and ever restless daws,
With clamor, not unlike the chiding hounds,
While the lone shepherd, and his baying dog,
Drive to thy turfy crest his bleating flock.

The high meridian of the day is past,
And Ocean now, reflecting the calm Heaven,
Is of cerulean hue; and murmurs low
The tide of ebb, upon the level sands.
The sloop, her angular canvas shifting still,
Catches the light and variable airs
That but a little crisp the summer sea,
Dimpling its tranquil surface.

[Charlotte Smith](#)



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