

Friday, 6 November 2015

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

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Executive Summary (1 minute read)

Mitic v OZ Minerals Ltd (FCA) - legal professional privilege - representative proceedings - claim to legal professional privilege over redacted parts of contested documents upheld

Samadi Developments Pty Ltd v SX Projects Pty Ltd (NSWSC) - stay - security of payments - proceedings challenging underlying contractual issues - stay of proceedings pending payment of judgment debt refused - security for costs granted

Regreen Asset Holdings Pty Ltd v Castricum Brothers Australia Pty Ltd (VSCA) - contract - implied term - dismissal of claim for damages for conversion - appeal dismissed

Wandel v Halloran (SASCFC) - contract - primary judge's findings as to contract supported by evidence - disconformity between pleaded cases and accepted evidence did not lead to procedural fairness or miscarriage of justice - appeal dismissed

Summaries With Link (Five Minute Read)

Mitic v OZ Minerals Ltd [2015] FCA 1152

Federal Court of Australia

Edelman J

Legal professional privilege - representative proceedings - company (Zinifex) merged with another company (Oxiana) - merged entity was company (OZ Minerals) - Mitic brought proceeding on behalf of former shareholders of Zinifex claiming damages from OZ Minerals for

loss and damage arising from breaches of duty by OZ Minerals arising from its failure to disclose information relevant to merger - OZ Minerals and Zinifex claimed legal professional privilege over documents discovered by OZ Minerals - OZ Minerals claimed legal professional privilege over documents discovered by law firm (Clayton Utz) - Zinifex claimed legal professional privilege over documents discovered by another law firm (Allens) - numerous claims conceded or challenges not pressed - seven representative documents remained subject of contested claim - held: Court upheld claim to legal professional privilege over all redacted parts of contested documents except passage in documents over which OZ Minerals did not seek to maintain claim.

[Mitic](#)

[From Benchmark Tuesday, 3 November 2015]

Samadi Developments Pty Ltd v SX Projects Pty Ltd [2015] NSWSC 1576

Supreme Court of New South Wales

Ball J

Stay - security of payments - defendant obtained judgment against plaintiff in sum for progress claims under contract based on adjudication determination - plaintiff sought to litigate underlying contractual issues - defendant sought stay of proceeding until plaintiff paid judgment sum to it - alternatively defendant sought security for its costs of proceeding and stay if security not provided - whether contrary to policy of *Building and Construction Industry Security of Payment Act 1999* (NSW) to fail to grant stay of proceedings - held: defendant failed on application for stay but succeeded on application for security for costs - orders made.

[Samadi](#)

[From Benchmark Friday, 30 October 2015]

Regreen Asset Holdings Pty Ltd v Castricum Brothers Australia Pty Ltd [2015] VSCA 286

Court of Appeal of Victoria

Warren CJ, Kyrou & McLeish JJA

Contract - implied term - applicant sought leave to appeal from trial judge's dismissal of its claim for damages for conversion of rendering equipment it purchased from respondent - trial judge held there was implied term of agreement for sale that 'completion was subject to settlement' of separate agreement for sale of land on which equipment situated (implied term), that implied term was contingent condition not fulfilled, and respondent was obliged to refund entire purchase price to applicant - whether trial judge erred in making finding about implied term - held: ground of appeal rejected that trial judge erred by finding there was implied term and thereby misapplied principles in *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977) 180 CLR 266 - applicant did not specify evidence of pre-contractual conduct allegedly wrongly taken into account by trial judge or principle in *Codelfa* allegedly infringed - trial judge correct in concluding that even if evidence of parties' post-contractual conduct was admissible, conditions in 'BP Test' would still be satisfied - appeal dismissed.

[Regreen](#)

[From Benchmark Friday, 30 October 2015]



Wandel v Halloran [2015] SASCFC 155

Full Court of the Supreme Court of South Australia

Nicholson J; Bampton & Parker JJ

Contract - primary judge found respondents entitled to amounts due under contracts for repair to river crossing and water supply made orally between parties - appellant contended contract claims as found by primary judge were not pleaded and evidence insufficient to establish them - held: primary judge's findings as to contracts were supported by evidence - disconformity between respondents' pleaded cases and evidence accepted by primary judge did not give rise to procedural unfairness or miscarriage of justice - appeal dismissed.

[Wandel](#)

[From Benchmark Thursday, 29 October 2015]



Benchmark

I dwell in Possibility – (466)

By Emily Dickinson

I dwell in Possibility –
A fairer House than Prose –
More numerous of Windows –
Superior – for Doors –

Of Chambers as the Cedars –
Impregnable of eye –
And for an everlasting Roof
The Gambrels of the Sky –

Of Visitors – the fairest –
For Occupation – This –
The spreading wide my narrow Hands
To gather Paradise –

[Emily Dickinson](#)

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