

Friday, 8 May 2015

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

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### Executive Summary (1 minute read)

**Burbank Australia Pty Ltd v Owners Corporation** (VSC) - *Domestic Building Contracts Act 1995* (Vic) applied to multi-apartment development - VCAT proceedings stayed until owners corporation authorised by special resolution to bring proceedings (I C G)

**TJ King v Qld Building and Construction Commission** (QSC) - judicial review - power to require rectification - 'building work' - multiple directions - consequential damage (C G)

### Summaries With Link (Five Minute Read)

**Burbank Australia Pty Ltd v Owners Corporation [2015] VSC 160**

Supreme Court of Victoria

McDonald J

Administrative law - appellant was builder of residential apartment development - respondent owners corporation owned common areas of development - owners corporation commenced proceedings against builder in Victorian Civil and Administrative Tribunal (VCAT) alleging defective construction works in common property - owners corporation alleged work undertaken by builder subject to implied warranties under s8 *Domestic Building Contracts Act 1995* and that it was entitled to benefit of warranties under s9 - builder sought to strike out proceedings - VCAT dismissed application - builder appealed - held: Act applied to multi-apartment development - whether or not Act applied to developers depended on nature of works subject of contract to which developer was party - no valid special resolution by owners corporation authorising commencement of proceedings in VCAT - absence of valid special resolution was procedural



irregularity which could be cured - proceedings stayed until owners corporation authorised by special resolution to bring proceedings against builder.

[Burbank](#) (I C G)

[From Benchmark Monday, 4 May 2015]

## **TJ King v Qld Building and Construction Commission [2015] QSC 79**

Supreme Court of Queensland

Dalton J

Judicial review - applicant had relocated a house - applicant directed by respondent to rectify works associated with relocation on two occasions - applicant submitted work carried out was not 'building work' under *Queensland Building Services Authority Act 1991* (Qld), and that respondent's discretion to give direction pursuant to s72 could only be exercised once - whether power to rectify consequential damage caused by carrying out building work should be implied under s72 - held: work pursuant to contract with house owner was building work - respondent had power to issue second direction - where no power to order rectification of consequential damage specifically given by legislation, respondent did not have power to order rectification of consequential damage.

[TJKing](#) (C G)

[From Benchmark Wednesday, 6 May 2015]

### **Interim**

By Lola Ridge

The earth is motionless  
And poised in space ...  
A great bird resting in its flight  
Between the alleys of the stars.  
It is the wind's hour off ....  
The wind has nestled down among the corn ....  
The two speak privately together,  
Awaiting the whirr of wing

[Lola Ridge](#)

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