

Friday, 13 October 2017

Weekly Construction Law Review Selected from our Daily Bulletins covering Construction

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Executive Summary (1 minute read)

John Edward Thornton v State of New South Wales (NSWCA) - battery - assault - dismissal of claim against State arising from appellant's arrest - appeal dismissed

Northern Sydney Local Health District v Amaca Pty Ltd (under NSW administered winding up) (NSWCA) - damages - dust diseases - apportionment - joint tortfeasors - appellants liable to contribute sum to amount paid by first respondent to plaintiff - appeal dismissed

Qube Holdings Ltd v Residents Against Intermodal Development Moorebank Inc (NSWCA) - standing - voluntary associations - planning and environment - appeal against interlocutory decision that first respondent had standing to appeal - appeal dismissed

JP Property Services Pty Limited v Chief Commissioner of State Revenue (NSWSC) - taxation - payroll tax - contracts were not employment agency contracts - plaintiff not obliged to pay payroll tax on payments made to Subcontractors - assessments revoked

Al Azhari v 27 Scott Street Pty Ltd & Ors (VSC) - contract - preliminary question - parties did not intend to be bound by mediation terms contained in signed handwritten document - preliminary question answered 'no'

Brisbane Bears – Fitzroy Football Club Limited v Commissioner of State Revenue (QCA) - taxation - payroll tax - payments appellant made to players and coaches for use of images were liable to payroll tax - appeal dismissed

Summaries With Link (Five Minute Read)

John Edward Thornton v State of New South Wales [2017] NSWCA 248

Court of Appeal of New South Wales

Meagher & Gleeson JJA; Fagan J

Battery - assault - appellant and another arrested by police - appellant injured in arrest in which 'significant force' was used - appellant sued State for assault and battery - appellant also alleged his arrest was wrongful - primary judge dismissed claim - whether officers complied with s201 *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (LEPRA) - whether excessive force used - ss230 & 231 LEPRA - competing accounts of witnesses - challenge to findings that officers 'identified themselves at the outset as police officers' - whether failure to provide adequate reasons - whether erroneous preference of evidence of police over appellant's evidence - held: grounds of appeal failed - appeal dismissed.

[View Decision](#)

[From Benchmark Monday, 9 October 2017]

Northern Sydney Local Health District v Amaca Pty Ltd (under NSW administered winding up) [2017] NSWCA 251

Court of Appeal of New South Wales

McColl JA & Basten JA; Sackville AJA

Damages - dust diseases - apportionment - joint tortfeasors - plaintiff contracted mesothelioma by exposure to asbestos during employment - appellants appealed against decision in which primary judge found them liable to contribute sum to an amount paid by first respondent to plaintiff in respect of its liability to plaintiff - whether plaintiff would be overcompensated by appellants' contribution - defence of satisfaction - 'just and equitable' test - prohibition on double recovery - s5(1)(c) *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) - 207B *Workers' Compensation and Rehabilitation Act 2003* (Qld) - held: grounds of appeal failed - appeal dismissed.

[View Decision](#)

[From Benchmark Wednesday, 11 October 2017]

Qube Holdings Ltd v Residents Against Intermodal Development Moorebank Inc [2017] NSWCA 250

Court of Appeal of New South Wales

Macfarlan JA; Meagher & Payne JJA

Standing - voluntary associations - planning and environment - applicant sought to appeal against interlocutory decision in which primary judge found that first respondent had standing to pursue appeal to Land and Environment Court against decision of Planning Assessment Commission - operation of *Associations Incorporation Act 2009* (NSW) (AI Act) - meaning of 'special resolution' - whether primary judge erred in finding first respondent's predecessor was an 'unincorporated body' - whether first respondent acquired right to appeal from 'predecessor unincorporated body' - *Environmental Planning and Assessment Act 1979* (NSW) - held:

primary judge correct to find that first respondent's predecessor was an 'unincorporated body', whose right of appeal as to Planning Assessment Commission of New South Wales's decision passed to first respondent under Sch 2 AI Act - appeal dismissed.

[View Decision](#)

[From Benchmark Thursday, 12 October 2017]

JP Property Services Pty Limited v Chief Commissioner of State Revenue [2017] NSWSC 1391

Supreme Court of New South Wales

Kunc J

Taxation - payroll tax - plaintiff provided services to clients including to supermarkets operated by company (Franklins) - plaintiff used own employees or third parties (Subcontractors) to provide the services - defendant conducted audit of plaintiff - defendant formed view that contracts between plaintiff and Subcontractors were employment agency contracts (EACs) such that JP was obliged to pay payroll tax on payments it made to the Subcontractors- plaintiff sought review of defendant's decision - whether any or all of three different types of contract were EACs: the consecutive contracts between plaintiff and Franklins; the contracts between plaintiff and clients other than Franklins; the contracts between plaintiff and Subcontractors - s37(1) *Payroll Tax Act 2007* (NSW) - whether Subcontractors' services were 'for a client' of employment agent - held: Court not satisfied any of the three types of contracts were EACs - assessments revoked - judgment for plaintiff.

[View Decision](#)

[From Benchmark Friday, 13 October 2017]

Al Azhari v 27 Scott Street Pty Ltd & Ors [2017] VSC 600

Supreme Court of Victoria

Almond J

Contract - preliminary question - parties in proceedings attended mediation together with their legal advisers - at mediation's conclusion handwritten document (mediation terms) was signed by parties' legal practitioners - preliminary question was whether parties intended to be bound by signing mediation terms or to be bound only when formal terms executed - *Masters v Cameron* [1954] HCA 72 held: Court concluded mediation terms were not enforceable - parties' objective intention was not to be bound 'unless and until a formal contract was executed' - answer to preliminary question was 'no'.

[Al Azhari](#)

[From Benchmark Monday, 9 October 2017]

Brisbane Bears – Fitzroy Football Club Limited v Commissioner of State Revenue [2017] QCA 223

Court of Appeal of Queensland

Sofronoff P; Philippides JA & Atkinson J

Taxation - appellant was member of Australian Football League (AFL) - appellant's team



subject to payroll tax under *Payroll Tax Act 1971* (Qld) on wages of players and coaches - appellant appealed against primary judge's dismissal of its application for review of respondent's disallowance of objections against reassessment of payroll tax - whether erroneous finding that payments appellant made to players and coaches for use of images were liable to payroll tax under ss9 & 10 - whether the payments made pursuant to agreements were 'wages for the purposes of the Act' - held: Court concluded payments were 'wages' as defined by the Act, and 'taxable wages' - payments liable to payroll tax - appeal dismissed.

[Brisbane Bears](#)

[From Benchmark Tuesday, 10 October 2017]



Benchmark

Shakespeare

BY HENRY WADSWORTH LONGFELLOW

A vision as of crowded city streets,
With human life in endless overflow;
Thunder of thoroughfares; trumpets that blow
To battle; clamor, in obscure retreats, Of sailors landed
from their anchored fleets;
Tolling of bells in turrets, and below
Voices of children, and bright flowers that throw
O'er garden-walls their intermingled sweets!
This vision comes to me when I unfold
The volume of the Poet paramount,
Whom all the Muses loved, not one alone; — Into his
hands they put the lyre of gold,
And, crowned with sacred laurel at their fount,
Placed him as Musagetes on their throne.

https://en.wikipedia.org/wiki/William_Shakespeare

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