

Friday, 15 April 2016

Weekly Construction Law Review Selected from our Daily Bulletins covering Construction

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Executive Summary (1 minute read)

Small v K & R Fabrications (W'gong) Pty Ltd (NSWCA) - negligence - workplace injury - inadequate evidence to support claimant's case - appeal dismissed

Hassoun v Wesfarmers General Insurance Ltd t/a Lumley General (NSWCA) - security for costs - want of prosecution - no error in refusal to discharge order for security or dismissal of statement of claim - leave to appeal refused

Duffy Kennedy Pty Ltd v Lainson Holdings Pty Ltd (NSWSC) - security of payments - claims served contrary to s13(7) *Building and Construction Industry Security of Payment Act 1999* (NSW) - summary judgment refused

Zhang v Popovic (NSWSC) - negligence - insurance - plaintiff injured when metal ramp attached to trailer fell on him - determination of action against parties connected with trailer and insurers joined as defendants

John Urquhart t/as Hart Renovations v Partington (QCA) - security of payments - completion of "enclosed stage" of works - error by Appeal Tribunal of Queensland Civil & Administrative Tribunal - appeal allowed

Denham Constructions Pty Ltd v Islamic Republic of Pakistan (ACTSC) - construction dispute - defences that certain claims were not payment claims under the Building and Construction Industry (Security of Payment) Act were weak but arguable - summary judgment refused



Summaries With Link (Five Minute Read)

Small v K & R Fabrications (W'gong) Pty Ltd [2016] NSWCA 70

Court of Appeal of New South Wales

McColl, Basten & Simpson JJA

Negligence - workplace injury - appellant claimant suffered workplace injury - claimant failed to satisfy trial judge that respondent breached duty of care - claimant contended primary judge erred by not accepting account of circumstances in which injury arose - adequacy of reasons - *Jones v Dunkel* - held: trial judge had not been satisfied by claimant's evidence as to how injury occurred - Court could not be satisfied of breach of duty of care without knowing how breach occurred - trial judge's reasoning not fallacious, erroneous or inadequate - evidence inadequate to support claimant's case - appeal dismissed.

[Small](#)

[From Benchmark Monday, 11 April 2016]

Hassoun v Wesfarmers General Insurance Ltd t/a Lumley General [2016] NSWCA 76

Court of Appeal of New South Wales

Ward JA; Sackville & Barrett AJJA

Security for costs - want of prosecution - primary judge dismissed applicant's application to vacate order that he provide security for costs - primary judge also dismissed applicant's statement of claim against insurer in relation to destruction of premises by deliberately lit fire for want of prosecution or failure to comply with Court's orders - applicant sought leave to appeal - s127(2)(a) *District Court Act 1973* (NSW) - ss56, 61 *Civil Procedure Act 2005* (NSW) - rr12.7(1) & 42.21(3) *Uniform Civil Procedure Rules 2005* (NSW) - held: no error in primary judge's dismissal of statement of claim or in refusal to discharge order for security - leave to appeal refused.

[Hassoun](#)

[From Benchmark Thursday, 14 April 2016]

Duffy Kennedy Pty Ltd v Lainson Holdings Pty Ltd [2016] NSWSC 371

Supreme Court of New South Wales

Meagher JA

Security of payments - summary judgment - plaintiff head contractor contracted with defendant property owner for construction of units - plaintiff sought judgment for unpaid progress payments pursuant to Pt 3, Div 1 *Building and Construction Industry Security of Payment Act 1999* (NSW) - held: evidence established claims served without supporting statement as required by s13(7) - defendant permitted to withdraw contrary admission with costs consequences - summary judgment refused.

[Duffy](#)

[From Benchmark Monday, 11 April 2016]

Zhang v Popovic [2016] NSWSC 407

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Supreme Court of New South Wales

Adamson J

Negligence - insurance - plaintiff injured when metal ramp attached to trailer behind truck fell on top of him - plaintiff sued parties connected with trailer - plaintiff joined compulsory third party insurer of trailer, and insurer of first four defendants, as fifth and sixth defendants - first defendant was truck driver, second defendant was registered owner of trailer - third defendant was driver's employer and used truck and trailer in freight business - fourth defendant was company associated with driver - ss5B, 5C, 5D Civil Liability Act 2002 (NSW) - ss11 & 46 *Insurance Contracts Act 1984* (Cth) - ss3, 3A, 10 & 16 *Motor Accidents Compensation Act 1999* (NSW) - Sch 1, cl 38 *Motor Accidents Compensation Amendment Act 2010* (NSW) - s4A *Motor Accidents (Compensation) Act 1979* (NT) - ss4, 5 & 23(1) *Motor Accident Insurance Act 1994* (Qld) - s74 *Trade Practices Act 1974* (Cth) - held: plaintiff granted judgment against first, second and sixth defendants - seventh defendant granted judgment on plaintiff's claim, second and fourth cross-claims - first and second defendants granted judgment on first cross-claim.

[Zhang](#)

[From Benchmark Wednesday, 13 April 2016]

John Urquhart t/as Hart Renovations v Partington [2016] QCA 87

Court of Appeal of Queensland

M McMurdo P, Morrison JA & Henry J

Security of payments - applicant builder performed work on respondents' residence - dispute arose concerning payment of progress payment for building to work's "enclosed stage" - builder sought to appeal against decision of Appeal Tribunal of Queensland Civil & Administrative Tribunal that Magistrate erred in finding "enclosed stage" reached and to matter to QCAT for re-hearing - whether definition of "enclosed stage" met - Sch 2 *Domestic Building Contracts Act 2000* (Qld) - ss142 & 150(3) *Queensland Civil and Administrative Tribunal Act 2009* (Qld) - held: Appeal Panel erred in interpretation of "structural flooring" - appeal allowed - matter remitted for determination according to law.

[John Urquhart](#)

[From Benchmark Tuesday, 12 April 2016]

Denham Constructions Pty Ltd v Islamic Republic of Pakistan [2016] ACTSC 67

Supreme Court of the Australia Capital Territory

Mossop AsJ

Building and construction - Denham brought proceedings for debt arising out of a payment claim under the Building and Construction Industry (Security of Payment) Act 2009 - Pakistan pleaded defences that the claim was not a payment claim within the meaning of the Act - that a communication by Pakistan's architect was sufficient to constitute a payment schedule under the Act - that the Act did not apply to land that was subject to the exclusive law-making power of the Commonwealth Parliament under s52, Constitution - Denham sought summary judgment - held: the plaintiff had to demonstrate that the defence was so obviously untenable that it could not possibly succeed - this is a high threshold - Pakistan's case that the claim was not a



payment claim was not strong, but was arguable - not necessary to address other defences - summary judgment refused.

[Denham](#)

[From Benchmark Friday, 15 April 2016]

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MULGA BILL'S BICYCLE

by A.B. "Banjo" Paterson

'Twas Mulga Bill, from Eaglehawk, that caught the cycling
craze;

He turned away the good old horse that served him many
days;

He dressed himself in cycling clothes, resplendent to be
seen;

He hurried off to town and bought a shining new machine;
And as he wheeled it through the door, with air of lordly
pride,

The grinning shop assistant said, "Excuse me, can you
ride?"

"See here, young man," said Mulga Bill, "from Walgett to the
sea,

From Conroy's Gap to Castlereagh, there's none can ride
like me.

I'm good all round at everything as everybody knows,
Although I'm not the one to talk - I hate a man that blows.

But riding is my special gift, my chiefest, sole delight;
Just ask a wild duck can it swim, a wildcat can it fight.

There's nothing clothed in hair or hide, or built of flesh or
steel,

There's nothing walks or jumps, or runs, on axle, hoof, or
wheel,

But what I'll sit, while hide will hold and girths and straps are
tight:

I'll ride this here two-wheeled concern right straight away at
sight."

'Twas Mulga Bill, from Eaglehawk, that sought his own
abode,

That perched above Dead Man's Creek, beside the
mountain road.

He turned the cycle down the hill and mounted for the fray,
But 'ere he'd gone a dozen yards it bolted clean away.

It left the track, and through the trees, just like a silver steak,



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It whistled down the awful slope towards the Dead Man's Creek.

It shaved a stump by half an inch, it dodged a big white-box:
The very wallaroos in fright went scrambling up the rocks,
The wombats hiding in their caves dug deeper underground,
As Mulga Bill, as white as chalk, sat tight to every bound.
It struck a stone and gave a spring that cleared a fallen tree,
It raced beside a precipice as close as close could be;
And then as Mulga Bill let out one last despairing shriek
It made a leap of twenty feet into the Dean Man's Creek.

'Twas Mulga Bill, from Eaglehawk, that slowly swam ashore:
He said, "I've had some narrer shaves and lively rides before;
I've rode a wild bull round a yard to win a five-pound bet,
But this was the most awful ride that I've encountered yet.
I'll give that two-wheeled outlaw best; it's shaken all my nerve
To feel it whistle through the air and plunge and buck and swerve.
It's safe at rest in Dead Man's Creek, we'll leave it lying still;
A horse's back is good enough henceforth for Mulga Bill."

[A.B. "Banjo" Paterson](#)

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