

Friday, 17 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)

Cook Building and Development Pty Ltd v Citicorp International Ltd (FCA) - pre-action discovery - prospective applicant granted leave to serve originating process and affidavits on prospective respondent in Hong Kong in People's Republic of China

Diploma Construction (WA) Pty Ltd v Best Bar Pty Ltd [No 2] (WASC) - contract - price increase - no breach of contract for supply of steel reinforcing bar - claims dismissed - counter-claim allowed

Summaries With Link (Five Minute Read)

Cook Building and Development Pty Ltd v Citicorp International Ltd [2015] FCA 703

Federal Court of Australia

White J

Pre-action discovery - service - prospective applicant construction company sought leave to serve originating process and affidavits on prospective respondent in Hong Kong in People's Republic of China - whether prima facie case for order for pre-action discovery - held: requirements of r10.43(3) *Federal Court Rules 2011* satisfied - no readily available alternative means by which applicant could serve proceedings - leave granted pursuant to rr10.42 & 10.43 leave to serve originating process and affidavits on prospective respondent in People's Republic of China in accordance with the Hague Convention

[Cook](#)

[From Benchmark Monday, 13 July 2015]



Diploma Construction (WA) Pty Ltd v Best Bar Pty Ltd [No 2] [2015] WASC 230

Supreme Court of Western Australia

Allanson J

Contract - plaintiff builder obtained steel reinforcing bar (rebar) for projects from defendant - defendant gave notice it was increasing price of rebar- plaintiff paid increased prices at least in part up to certain date - plaintiff gave notice to defendant of termination of two contracts on ground defendant breached them - plaintiff sought declarations contracts were for fixed price, that it validly terminated contracts for defendant's repudiation, and damages - whether parties contracted on terms and conditions advanced by plaintiff which precluded increase in price during term of contract - whether to extent plaintiff paid increased prices it did so under duress - held: plaintiff failed to prove it contracted in terms alleged - claims for declarations, rescission and avoidance of contract, and for refund of overpayments failed - claim for duress also failed - plaintiff's claim dismissed - counterclaim allowed.

[Diploma](#)

[From Benchmark Wednesday, 15 July 2015]



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Winter: A Dirge

By Robert Burns

The wintry west extends his blast,
And hail and rain does blow;
Or, the stormy north sends driving forth
The blinding sleet and snaw:
While tumbling brown, the burn comes down,
And roars frae bank to brae;
And bird and beast in covert rest,
And pass the heartless day.

The sweeping blast, the sky o'ercast,
The joyless winter-day,
Let others fear, to me more dear
Than all the pride of May:
The tempest's howl, it soothes my soul,
My griefs it seems to join;
The leafless trees my fancy please,
Their fate resembles mine!

Thou Pow'r Supreme, whose mighty scheme
These woes of mine fulfil,
Here, firm, I rest, they must be best,
Because they are Thy will!
Then all I want (O, do Thou grant
This one request of mine!)
Since to enjoy Thou dost deny,
Assist me to resign.

[Robert Burns](#)

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