



Friday, 18 October 2024

Weekly Environmental Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Environmental Law

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Executive Summary (One Minute Read)

Summit Rural (WA) Pty Limited v Lenane Holdings Pty Ltd (WASCA) - appeal dismissed against judgment that held the hirer of a loader liable for breach of contract and in negligence for a fire that had destroyed the loader

HABEAS CANEM

Peace



Summaries With Link (Five Minute Read)

Summit Rural (WA) Pty Limited v Lenane Holdings Pty Ltd [2024] WASCA 122

Court of Appeal of Western Australia

Quinlan CJ, Buss P, & Lundberg J

Contracts - the respondent entered into a written contract to hire a loader from the appellant for four years for use at its fertiliser plant - it was an express term of the contract that the appellant would turn off the master key every night, which would isolate the battery - an employee of the appellant failed to turn off the master key, as a result of which the loader caught fire and the premises were destroyed - the respondent sued the appellant in contract and negligence - the primary judge found the appellant had breached the contract, and that this breach had caused the fire and the destruction of the loader - the primary judge also found that the appellant had owed a duty of care, had breached that duty of care, and that this breach caused the fire and the destruction of the loader - the appellant appealed - held: an appellant is bound by the conduct of its case at trial - remoteness of contractual damages was not in issue at the trial and was not litigated between the parties - although remoteness of damage is related to causation, they are separate and distinct concepts - although a plaintiff bears the legal burden of proving loss or damage arising from a breach of contract, including that the loss or damage caused by the breach of contract was not too remote, the plaintiff will not be obliged to discharge the legal burden unless remoteness is put in issue by the defendant, either in its defence or by the manner in which the defendant conducts its case at the trial - the appellant should not now be permitted to make a case regarding remoteness of damage - the primary judge had not erred in concluding that the appellant's failure to turn the master key off was a cause of the fire - even if the purpose of the installation of the master key was not to prevent fires, but merely to prevent battery drainage, turning the master key off was connected to the risk of a fire occurring - the application of the 'but for' test, in the circumstances of the present case did not produce an unacceptable result - the primary judge did not err in finding that the appellant breached its duty of care to the respondent by failing to turn the master key off - it was foreseeable that, if the appellant failed to store the loader with the master key in the 'off' position when the loader was parked each night, there was a risk of an electrical fault occurring, igniting a fire, and damaging the loader - appeal dismissed.

[Summit Rural \(WA\) Pty Limited](#)

[From Benchmark Tuesday, 15 October 2024]

Benchmark

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Aquino v Bondfield Construction Co (SCC) - The fraudulent intent of a senior employee, found to be the directing mind of companies, can be attributed to the companies in a bankruptcy proceeding

Summaries With Link (Five Minute Read)

Aquino v Bondfield Construction Co 2024 SCC 31

Supreme Court of Canada

Wagner CJ, Karakatsanis, Côté, Rowe, Martin, Jamal, & O'Bonsawin JJ

The President of two family-owned construction companies had for years fraudulently taken tens of millions of dollars from the companies through a false invoicing scheme. In subsequent bankruptcy proceedings against the companies, the payments made under the invoicing scheme were challenged under the *Bankruptcy and Insolvency Act*. Under the Act, money paid by the debtor can be recovered if the transfers were made at undervalue with the intent to defraud creditors. The lower court concluded that these were payments made at undervalue with fraudulent intent. The bankrupt entities contended that the payments were made to creditors and that fraudulent intent was not present. The Court held that the executive's fraudulent intent could be attributed to the bankrupt companies and that the money should be paid back. The Supreme Court (Jamal J, joined by Wagner CJ, Karakatsanis, Côté, Rowe, Martin, O'Bonsawin JJ) dismissed the appeal and held that the courts could find that a debtor intended to defraud creditors even if the debtor was not insolvent at the time of the undervalue transfers. Specifically, the executive's fraudulent intent should be attributed to the debtor companies because he was their directing mind. The Supreme Court stated that the test for corporate attribution is simply whether the executive was the directing mind of the business and whether the actions were performed within the corporate responsibility assigned to him. If so, the fraudulent intent of the executive could be attributed to the corporation.

[Aquino](#)



Poem for Friday

In My Craft or Sullen Art

By Dylan Thomas (1914-1953)

In my craft or sullen art
Exercised in the still night
When only the moon rages
And the lovers lie abed
With all their griefs in their arms,
I labour by singing light
Not for ambition or bread
Or the strut and trade of charms
On the ivory stages
But for the common wages
Of their most secret heart.
Not for the proud man apart
From the raging moon I write
On these spindrift pages
Nor for the towering dead
With their nightingales and psalms
But for the lovers, their arms
Round the griefs of the ages,
Who pay no praise or wages
Nor heed my craft or art.

Dylan Marlais Thomas, poet, writer and broadcaster, was born on 27 October 1914 in Swansea, Glamorgan, Wales. His well-known works include *Under Milk Wood*, "a play for voices", *Do not go gentle into that good night*, and, *And death shall have no dominion*. He loved Wales but was not a Welsh nationalist. His father wrote that he was "*afraid Dylan isn't much of a Welshman*". Robert Lowell, wrote of criticism of Thomas' greatness as a poet, "Nothing could be more wrongheaded than the English disputes about Dylan Thomas's greatness...He is a dazzling obscure writer who can be enjoyed without understanding." The Welsh Academy Encyclopedia of Wales described him, and particularly his life in New York City before his death as a "roistering, drunken and doomed poet."

Dylan Thomas reads "In My Craft or Sullen Art"

<https://www.youtube.com/watch?v=Tiw3uOT2eUc>

Read by **Colin McPhillamy**, actor and playwright. Colin was born in London to Australian



parents. He trained at the Royal Central School of Speech and Drama in London. In the UK he worked in the West End, at the Royal National Theatre for five seasons, and extensively in British regional theatre. In the USA he has appeared on Broadway, Off-Broadway and at regional centres across the country. Colin has acted in Australia, China, New Zealand, and across Europe. Colin is married to Alan Conolly's cousin Patricia Conolly, the renowned actor and stage

actress: https://en.wikipedia.org/wiki/Patricia_Conolly and <https://trove.nla.gov.au/newspaper/article/47250992>.

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