

ADJUDICATION CASE DATA BASE



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| Insolvency | AB & MA Chick (Vic) P/L (In Liq) v 526 Olive Street P/L [2001] NSWSC 575 Application for summary judgment in respect of balance of Progress Claim withheld by agreement. - Whether interlocutory mandatory injunction should be granted where no undertaking as to damages proffered and a lack of capacity to reinstate guarantee. Plaintiff in liquidation prior to calling upon guarantee. | Bergin J | 2001.07.09 | Equity Div. Supreme Court of New South Wales |
| Certiorari | Abacus Funds Management Ltd v Davenport [2003] NSWSC 935 Prerogative Writs and Orders - Whether certiorari lies against an adjudicator's determination under the BCISPA 1999 - Whether interlocutory relief should be granted. | Gzell,J | 2003.10.20 | Equity Div. Supreme Court of New South Wales. |
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| Jurisdiction – excluded contracts | Acclaim Building Management PL v Loewenthal [2006] NSWDC 29 Strike out : Three unsuccessful challenges to adjudication decisions. In the absence of assertions in withholding notice, there is no requirement for the adjudicator to determine the validity of claims for progress payments. | Johnstone DCJ | 2006.06.21 | District Court. New South Wales |
| Adjudicator's qualifications | Accrete Constructions P/L v Kinsley Constructions P/L [2005] NSWLC 14 Procedure - Motion to set aside judgment - Whether judgment entered under Building and Construction Industry Security of Payment Act (BCISP Act) irregularly - Whether BCISP Act requires qualifications of adjudicators to be prescribed by regulation - Whether adjudicators to be prescribed by regulation - Whether adjudicator acted within the scope of authority in dealing with contract and progress payment claim - Whether assessed claim on its merits | Dillon H Magistrate | 2006.02.10 | Local Court Downing Centre New South Wales |
| Adjudicator – accreditation : authority | Accrete Constructions v Kinsley Constructions [2005] NSWLC 14 Procedure - Motion to set aside judgment - Whether judgment entered under BCISPA - irregularly - Whether BCISP Act requires qualifications of adjudicators to be prescribed by regulation - Whether adjudicators to be prescribed by regulation - Whether adjudicator acted within the scope of authority in dealing with contract and progress payment claim - Whether assessed claim on its merits. | Magistrate H Dillon. | 2006.10.02 | Downing Centre Local Court. New South Wales |

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| Set aside application | ACN 001 891 103 Pty Ltd v Reiby Street Apartments Pty Ltd [2007] NSWSC 1345. Statutory demand – Portion of debt owed a judgment debt – Appeal from judgment pending – Application to set aside under s 459J(1)(b) for “some other reason” – Where Court of Appeal granted stay of execution of judgment on terms that plaintiff provide security within 21 days and plaintiff did not comply with terms – Held no sufficient “other reason” within meaning of s 459J(1)(b) – Application dismissed. | White J | 2007.11.13 | Equity Division. Supreme Court of New South Wales |
| Set aside – default judgement | Adelaide Bank Limited v BMG Poseidon Corp Pty Limited [2008] NSWSC 68. Default judgment, application to set aside, whether arguable defence to judgment debt, promisory representation, reliance | McCallum J | 2008.02.12 | Equity Division. Supreme Court of New South Wales |
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| Challenge : Declaration | Air Dynamics Control & Services Contracting v Durham [2005] NSWSC 366 Failed application for a declaration that an adjudication decision was void. | Studdert J | 2005.04.22 | Common Law Div Supreme Court of New South Wales. |
| Claim – single or multiple | Alan Conolly & Co v Commercial Indemnity [2005] NSWSC 339 Contract - Statutory Construction. - Whether three invoices served in the same facsimile can constitute one payment claim under the BCISPA 1999. - Held that this did constitute one payment. | Macready Master | 2005.04.29 | Equity Div. T&C Supreme Court of New South Wales. |
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| Application time limit | Amflo Constructions P/L v Anthony Jefferies [2003] NSWSC 856 Interpretation - BCISPA 1999 - time within which application for adjudication must be made – Contracts – building, engineering & related contracts - remuneration - BCISPA 1999 - time within which application for adjudication must be made. | Campbell J | 2003.09.17 | Supreme Court of New South Wales. |
| Insolvency | Arpic P/L v Austin Australia P/L [2004] NSWSC 83 Corporation - voluntary administration - leave to proceed against defendant Co. in administration - whether plaintiff's application to amend summons is caught by s.440D - whether leave to proceed should be granted in respect of amendment application and summary judgment application for restitution on basis of conduct declared by statute to be "unlawful". | Barrett J | 2004.02.24 | Equity Div. T&C Supreme Court of New South Wales. |
| Appointment challenge : jurisdiction | Australian Remediation Services Pty Ltd v Earth Tech Engineering Pty Ltd [2005] NSWSC 362 BCISPA - adjudication application - where plaintiff sought to restrain appointment of adjudicator - where plaintiff sought to restrain defendant from proceeding with adjudication application - whether adjudicator able to determine whether payment claims in adjudication application can be awarded - discretionary considerations. | McDougall J | 2005.04.14 | Equity Div. T&C Supreme Court of New South Wales. |

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| Appointment dispute - costs | Australian Remediation Services v Earth Tech Engineering [2005] NSWSC 805 Practice & procedure - Costs - Dispute arising from appointment of arbitrator - Where action settled - No trial on the merits - Where communication between solicitors should have resolved the issue - Failure to agree due largely to plaintiff imposing unreasonable conditions - Held that proceedings were unreasonably brought by the plaintiff - Plaintiff to pay defendant's costs. | White J | 2005.08.05 | Equity Div. T&C Supreme Court of New South Wales. |
| Adjudication certificate | Australian Remediation Services v Earth Tech Engineering [2005] NSWSC 715 Adjudication certificate under BCISPA 1999 issued - application for injunction to restrain appointing authority from issuing certificate relating to the determination, and to restrain recipient of the determination from filing any such certificate - balance of convenience - provision of bank guarantee - form of orders. | Campbell J | 2005.07.15 | Equity Div. T&C Supreme Court of New South Wales. |
| Insolvency : contract : quantum meruit | Australian Securities Investment Commission v Edwards [2005] NSWSC 831 Whether or not a formal construction contract : Whether Contract Payment Due or whether quantum meruit. | Barrett J | 2005.08.24 | Equity Division Supreme Court of New South Wales. |
| Slip rule | Austruc v ACA; ACA v Sarlos [2004] NSWSC 131 BCISPA 1999 - adjudication determination - slip rule - judgment entered under incorrect case number - slip rule : meaning of "forms part of" s7(2)(a) - whether contract part of loan agreement - certiorari - jurisdictional error of law - procedural fairness - whether adjudicator permitted to consider statutory declaration attached to adjudication application / must give notice of intention to rely upon statutory declaration & give respondent opportunity to respond : | McDougall J | 2004.03.11 | Equity Division Supreme Court of New South Wales. |
| Stay of enforcement | Barclay Mowlem Construction Ltd v Estate Property Holdings P/L [2004] NSWSC 658 BCISPA 1999 (NSW) - Entry of summary judgment - Stay of judgment in part - Statutory scheme considered in relation to pending appeal | Einstein J | 2004.07.20 | Equity Div. T&C Supreme Court of New South Wales |
| Progress claim : validity | Barclay Mowlem Construction Ltd v Estate Property Holdings P/L [2004] NSWSC 649 Contract - Proper construction of S.13(4)(b) of BCISPA 1999 (NSW) - Validity of payment claim.: | Einstein J | 2004.07.19 | Equity Div. T&C Supreme Court of New South Wales |
| Supporting powers of court | Barclay Mowlem Construction Ltd v Tesrol Walsh Bay P/L [2005] NSWSC 944 Procedure - subpoenas - power of court to issue a subpoena in aid of enforcement of a judgment - Procedure - costs of motion which settles : Application for costs of two interlocutory proceedings | Campbell J | 2005.09.16 | Equity Div. T&C Supreme Court of New South Wales |
| Payment schedule : content | Barclay Mowlem Construction v Tesrol Walsh Bay [2004] NSWSC 716 BCISP 1999 (NSW) - application for summary judgment - whether defendant has arguable defence against summary judgment where payment schedule did not indicate defendant's intended - whether a payment schedule for purposes of s 14 - requirements of payment schedules. | McDougall J : | 2004.08.13 | Equity Division Supreme Court of New South Wales |
| Payment schedule : format | Barclay Mowlem v Tesrol Walsh Bay [2004] NSWSC 1232 BCISPA 1999 - whether letter in law sufficient to be payment schedule - s 14(2)(b), (3) - whether "nothing" an amount for purposes of s 14(2)(b) - whether letter "provided" within meaning of s 14(1). | McDougall J : | 2004.12.09 | Equity Division Supreme Court of New South Wales |
| Stay pending appeal | Baseline Constructions v Classic Group Painting Services [2006] NSWCA 123 Procedure - Appeal - Whether relief in nature of a stay would be granted because of strength of appellant's case on appeal. | Hodgson JA : | 2006.05.15 | New South Wales Court of Appeal. |

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| Double jeopardy : Successive progress claims | Baseline Constructions v Classic Group Painting Services [2006] NSWSC 397 Entitlement to make 2nd payment claim - Determination of reference dates - S22(4) of BCISPA (NSW) 1999 requires a subsequent adjudicator to treat an attempt [by an earlier adjudicator to determine the value of construction work] as having been successful and compliant with s.10 - value of work changing since previous determination. | Einstein J | 2006.05.09 | Equity Div. T&C Supreme Court of New South Wales |
| Summary judgment : validity of process | Boulderstone Hornibrook P/L v HBO+DC P/L [2001] NSWSC 821 Summary Judgment applications in the Construction List - Practice Notes - Administration of List - Application to refer Motion for Summary Judgment to call over - Whether referral is consistent with the just, quick and cheap resolution of the litigation | Bergin J | 2001.09.14 | Equity Div. T&C Supreme Court of New South Wales |
| Payment schedule : requirements : fiduciary duties | Boulderstone Hornibrook P/L v Queensland Investment Corp [2006] NSWSC 522 Whether payment schedule was provided by respondent to claimant - Question of fact - Contractual requirement that Principals representative be appointed - Obligation of Principals representative when exercising functions termed as 'fiduciary duties' - Challenge to activities of Principals representative in assembling folders of documents served as part of payment schedule - held - outside prescribed functions. Einstein J. 7th June 2006 | Einstein J | 2006.06.07 | Equity Division. T&C : Supreme Court of New South Wales |
| Payment schedule : requirements : agency | Boulderstone Hornibrook P/L v Queensland Investment Corp [2007] NSWCA 9 Payment schedules under s 14 BCISPA 1999 — Whether a payment schedule is properly provided if it is not referred to in a cover letter — Whether a payment schedule prepared & signed by an agent without express authority can be said to have been provided by the principal - Authority of agents — construction and extent of authority. Appeal failed. | Giles JA; Tobias JA; Basten JA. | 2007.02.14 | Court of Appeal. Supreme Court of New South Wales |
| Set aside : offsetting claim | BBB Constructions P/L v Frankpile Australia P/L [2008] NSWSC 982 Creditor's statutory demand – application to set aside demand – where debt arose under BCISPA 1999 – offsetting claim – where parties are head contractor and sub-contractor – test for determining whether there is a genuine offsetting claim – where plaintiff alleges that defendant is liable under contract for damage to neighbouring properties due to inadequate construction work – where preliminary expert evidence suggests that defendant may have caused the damage – whether the claim is bona fide and truly existing – whether plaintiff's financial position relevant to whether offsetting claim made in good faith – whether offsetting claim needs to be particularised as an exact amount – whether condition should be imposed that the plaintiff nonetheless pay into court the amount claimed by defendant on setting aside of statutory demand. | Brereton J | 2008.08.14 | Equity Division. Supreme Court of New South Wales |
| Damages – availability under Scheme | Beckhaus v Brewarrina 2 [2004] NSWSC 1160 Liquidated damages – Whether defendant entitled to liquidated damages under the contract in circumstances where plaintiff did not achieve practical completion - Whether leave should be allowed for claim for liquidated damages - Held - Entitlement to liquidated damages will only arise following upon some other facts which lead to a termination of the contract after the present time - Leave to plead any claim for liquidated damages refused. | Macready. Master | 2004.12.07 | Equity Div. T&C : Supreme Court of New South Wales |
| Payment claim : validity | Beckhaus v Brewarrina 1 [2004] NSWSC 840 Claim for payment under contract to build earthwork levees - Whether payment claim valid - Cross-claim - Whether lump sum contract - variations - Whether practical completion achieved - Whether contractual requirements for progress claim met - Breach of contract ? - Whether BCISPA 1999 (NSW) applies. | Macready. Master | 2004.09.16 | Equity Div T&C Supreme Court of New South Wales |

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| Statutory & contractual progress claim compatible | Beckhaus v Brewarrina Council [2002] NSWSC 960 Summary judgment application in respect of a progress claim. Superintendent fails to deal with claims within time. Contractor fails to supply statutory declaration as to payment of subcontractor. Held amount of progress claim due. Progress claim also made under the BCISPA 1999. Held claim under statutory scheme and under contract can be made at same time in one document. | Macready Acting Justice | 2002.10.18 | Equity Division Construction Supreme Court of New South Wales |
| Summary judgement : magistrates court | Bell Partners v Kann Finch [2004] NSWSC Appeal decision of Local Court Magistrate - summary judgment - Building Construction Industry Security of Payment Act 1999 (NSW). | Harrison Master | 2004.11.08 | Common Law Div Supreme Court of New South Wales |
| Double Jeopardy : CT&TT | Bell v Pearce (Home Building) [2005] NSWCTTT 433 Post adjudication where contract held to be determined. Claims for oral variations and cross claims for non-completion. Held variations payable on quantum meruit basis. | Durie G.J. Senior Member | 2005.06.23 | Consumer Trader & Tenancy Tribunal. New South Wales |
| Slip Rule – dates for applications | Bell v Pearce (Home Building) [2006] NSWCTTT 274 Slip Rule : Application for amendment of date. Consumer, Trader and Tenancy Tribunal. 19th May 2006 | Durie, GJ Senior Member, | 2006.05.19 | Consumer, Trader and Tenancy Tribunal. New South Wales |
| Costs – Calderbank offers | Bell v Pearce (Home Building) [2006] NSWCTTT 407 Costs – parties each have some success – Calderbank letters – reasonableness of rejection – inability to settle | Durie. GJ Deputy Chairperson | 2006.07.28 | Consumer, Trader and Tenancy Tribunal. New South Wales |
| Construction contract absent - invalidity | Berem Interiors Pty Limited v Shaya Constructions (NSW) Pty Limited [2007] NSWSC 1340. Whether determination issued by adjudicator void - Whether jurisdictional error due to absence of construction contract between plaintiff and first defendant. Decision: Determination void. | Bergin J | 2007.11.21 | Equity Division. Supreme Court of New South Wales |
| Stay of execution | Biseja P/L v NSI Group P/L No1 [2007] NSWSC 283 Procedure – stay of execution – BCISPA - where writs recorded on land under Real Property Act – whether recording should be removed – Real Property – Torrens Title – effect of recording a writ on title. | Brereton J | 2007.01.30 | Equity Division. Supreme Court of New South Wales |
| Stay of execution | Biseja P/L v NSI Group P/L No2 [2007] NSWSC 294 BCISPA – Adjudications – Enforcement – stay of execution – where judgment creditor moves to discharge stay granted by consent – where proceedings in which issues will be finally determined are part-heard – where those proceedings have been adjourned because of default by judgment creditor – where judgment debtor has bona fide arguable case that no amount properly due – where judgment debt can be fully secured by deposit of title deeds in court. | Brereton J | 2007.04.02 | Equity Division. Supreme Court of New South Wales |
| Jurisdiction – management contract fees | Biseja v NSI Group [2006] NSWSC 835 Adjudicator found project management services were "related goods or services" under the BCISPA 1999 & that a project management fee might be discharged by transfer in specie of real estate - whether s 7(2)(c) of Act applicable - whether consideration assessable by value of services - whether open to adjudicator to reach factual conclusion - whether reviewable error - application of Brodyn v Davenport . | McDougall J | 2006.07.04 | Common Law Division. T&C : Supreme Court of New South Wales |

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| Progress payment & good faith | Bitannia P/L v Parkline Construction P/L [2006] NSWCA 238 Progress payments - BCISPA 1999 (NSW) s 13 & 15 – whether bona fide belief in entitlements claimed required for valid payment claim - whether a breach of s 52 TPA 1974 can be relied on as a defence – whether BPA s 15(4)(b)(ii) precluded such defence - whether BPA s 15(4)(b) invalid to the extent that it prevents the raising of a cross claim in reliance on s 52 of the Trade Practices Act.. | Hodgson JA; Tobias JA; Basten JA | 2006.08.28 | Court of Appeal. Supreme Court New South Wales |
| Restitution following appeal | Bitannia P/L v Parkline Constructions P/L (NO. 2) [2006] NSWCA 255 Restitution – prior to the appeal Appellant agreed to pay the amount of the judgment debt to the Respondent on certain conditions – appeal successful – order made to repay money in terms not inconsistent with the agreement. 18th September 2006 | Hodgson JA; Tobias JA; Basten JA. | 2006.09.18 | Court of Appeal. Supreme Court New South Wales |
| Insolvency : winding up | Bourke Road P/L v Boxster Constructions P/L [2001] NSWSC 717 Winding up- statutory demand- Defective- Point not taken in time- Other invalid attacks made on demand- Giver of demand now in liquidation- Whether demand can or should be set aside. 13th August 2001 | Young CJ in Eq | 2001.08.13 | Equity Division Corporations List Supreme Court of New South Wales |
| Jurisdiction adjudicator's call : expert reports in aid of litigation | Boutique Developments Ltd v Construction & Contract Services P/L [2007] NSWSC 1042 Administrative Law - Injunction sought to restrain the determination of an adjudication application under the BCISPA 1999 - Whether expert reports in aid of an action against a third party insurer for defects in construction fall within the definition of construction work in s 5(1) or related goods or services in s 6(1) - Whether the jurisdiction law entitlement question should be decided by the Court. | Gzell. | 2007.08.31 | Equity Division. Supreme Court of New South Wales |
| Small claims procedure | Bower v Goth [2006] NSWSC 805 Appeal - Local Court Small Claims Division - outstanding architect's fees. Oral contract. | Harrison Associate Judge | 2006.07.17 | Common Law Division. Supreme Court of New South Wales |
| Certiorari | Brambles Australia Ltd v Philip Davenport [2004] NSWSC 120 Progress payments claimed under the BCISPA 1999 (NSW) - determination made by adjudicator - whether, and if so to what extent, judicial review of adjudications made pursuant to the Act is available - scope of relief available in the nature of a writ of certiorari - grounds upon which judicial review is available : Natural justice & costs. Proper construction of section 7(2)(c). | Einstein J : | 2004.03.12 | Supreme Court of New South Wales |
| S8 BCISPA application | Brewarrina Shire Council v Beckhaus Civil P.L [2006] NSWCA 361 Building, engineering and related contracts – alleged non-compliance with contract specifications – payment claimed under s8 BCISPA 1999 – whether breach of contract – measure of damages – assessment of expert evidence. | Giles JA, Tobias JA, McColl JA | 2006.12.15 | Court of Appeal. Supreme Court of New South Wales |
| Progress claim : evidence | Brewarrina Shire Council v Beckhaus Civil P/L [2003] NSWCA 4 Contract - Superintendent's obligation under AS2124 - 1992 to issue a payment certificate is subject to a condition precedent that contractor support payment claims with evidence and information - Requirement of contractor to provide evidence and information constitutes a condition precedent on either of two bases: a non-promissory condition or an obligation imposed on the contractor, which conditions the superintendent's obligation to issue payment certificate - Requirement of contractor to provide evidence and information is comparable to purchaser's obligation to service notice to complete - Meaning of term "monthly". | Mason P; Ipp JA ; Young CJ in EQ | 2003.02.17 | Court of Appeal, New South Wales |

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| Damages under scheme/contract Payment entitlement and guarantee | Brewarrina Shire Council v Beckhaus Civil P/L [2005] NSWCA 248 Defective or incomplete work - no damage for defective or incomplete work sustained while contract is on foot and contractor is required to complete the work - termination by agreement - implied term that the parties' rights are governed by provisions in the contract - s 27 of the BCISPA 1999 (NSW) - no suspension if payment under s 15(1)(b) of the Act is conditional upon the payment of a bank guarantee. | Hodgson JA ; Ipp JA ; McColl JA. | 2005.08.04 | Court of Appeal. Supreme Court of New South Wales |
| Construction Contract | Brian Leigh Smith v Coastivity P/L [2008] NSWSC 313 BCISPA 1999 – adjudication determination – whether a construction contract to which the Act applied existed – definition of “related goods and services” – whether consideration for related goods and services was calculated other than by reference to the value of the goods and services supplied – whether discretionary grounds exist to warrant withholding the grant of declaratory and injunctive relief. | McDougall J | 2008.04.11 | Equity Division. Supreme Court of New South Wales |
| Costs follow the event | Brian Leigh Smith v Coastivity P/Ld [No.2] [2008] NSWSC 450 Costs – follow the event – no question of principle. BCISPA 1999. | McDougall J | 2008.05.09 | Equity Division. Supreme Court of New South Wales |
| Due process | Broad Construction Services (NSW) P/L v Michael Vadasz [2008] NSWSC 1057 BCISPA 1999 - adjudication determination - adjudicator did not consider expert's report - whether denial of procedural fairness - whether report constituted a submission 'duly made' in support of payment schedule. | McDougall J | 2008.08.21 | Equity Division. Supreme Court of New South Wales |
| Certiorari | Brodyn P/L t/a Time Cost & Quality v Philip Davenport [2003] NSWSC 1019 Progress payments claim - BCISPA 1999 - determination made by adjudicator - Administrative law - whether, and if so to what extent, judicial review of is available - scope of relief available - certiorari - grounds upon which judicial review is available. | Einstein J : | 2003.11.06 | Supreme Court of New South Wales |
| Claimant – eligibility to claim | Brodyn P/L v Y A Welding P/L [2006] NSWLC 25 Notice of Motion - Is the plaintiff a person who is entitled to make a claim for payment against the defendant under the Act - Construction of the Act - Whether the plaintiff is a person who has "undertaken" to do "construction work" - Progress payments | Magistrate J Orchiston. | 2006.06.16 | Downing Centre Local Court. |
| Insolvency | Brodyn Pty Ltd v Dasein Constructions Pty Ltd [2004] NSWSC 1230 Administration under deed of company arrangement- Company in administration secured provisional judgment under BCISPA 1999- Judgment debtor seeking to prove in DOCA- Set-off under s 553C of Corporations Act claimed- How proof dealt with. | Young CJ in Eq | 2004.12.15 | Equity Div. Supreme Court of New South Wales |
| Certiorari LEADING CASE | Brodyn Pty Ltd v Davenport & Anor [2004] NSWSC 254 Prerogative Writs and Orders - Whether an order in the nature of certiorari lies against an adjudicator's determination under the BCISPA 1999 - Whether certiorari should be granted when judgment had been entered for the adjudicated amount - Whether s 25 of the Act rendered an order in the nature of certiorari futile. | Gzell J. | 2004.04.02 | Equity Div. Supreme Court of New South Wales |
| Certiorari not available : Grounds for stay of execution | Brodyn Pty. Ltd. t/as Time Cost and Quality v. Davenport [2004] NSWCA 394 Progress payments - BCISPA - Adjudicator's determination - Adjudication certificate - Consequent judgment - Grounds for judicial intervention - Whether certiorari available - Grounds on which purported determination void - Natural justice - Error of law - Reference dates - Effect of termination of contract or cessation of work - Home Building Act - Effect of absence of licence - Exercise of discretion - Whether other relief available including stay of execution. | Mason P ; Giles JA ; Hodgson JA | 2004.11.03 | Court of Appeal New South Wales. |

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| Costs : Calderbank | Brookhollow P/L v R&R Consultants P/L & Philip Davenport [2006] NSWSC 200 Indemnity Costs – whether Calderbank offer of compromise unreasonably rejected – whether letter offering compromise should disclose the winning point in offeror’s case. | Palmer J | 2006.01.30 | Equity Div T&C Supreme Court of New South Wales |
| Reasons : undefended claim | Brookhollow P/L v R&R Consultants P/L & Philip Davenport [2006] NSWSC 1 When is a payment claim invalid for purposes of the BCISPA 1999 authorities and principles discussed – what are the requirements of s.22(2) – what must an adjudicator show in reasons for determination when adjudication process is undefended. | Palmer J | 2006.01.30 | Equity Div T&C Supreme Court of New South Wales |
| Payment schedule : delivery | Bucklands Convalescent Hospital v Taylor Projects Group [2007] NSWSC 1514 Question whether delivery or not of a payment schedule is for court or adjudicator to determine – Delivery challenged on basis that Superintendent under contract who delivered it had no authority to do so – Whether Superintendent can be so authorised – Question whether it was is a matter for adjudicator | Hammerschlag J | 2007.12.13 | Equity Division. Supreme Court of New South Wales |
| Costs | Calsun v Lovton (No 2) [2008] NSWDC 133 Security of payment - costs of partially successful application. | Sidis DCJ. | 2008.06.11 | District Court New South Wales |
| Defects period - claim | Calsun v Lovton [2008] NSWDC 74 Security of payment - payment claim for construction work - whether properly categorised as one for damages for breach of contract - claim for work undertaken during defects liability period - whether permitted by the contract. | Sidis DCJ. | 2008.05.16 | District Court New South Wales |
| Liquidation : set off | Cashgain P/L v Excell Building Corporation P/L [2007] NSWSC 196 Corporations - winding up - statutory demand - application for order setting aside statutory demand based on judgment debt - offsetting claim asserted being claim for damages for defective work by proprietor against builder of home units - whether such claim genuine and of substance - contention that such claim unavailable because of (a) issue of various certificates indicating completion of work (b) expiration of defects rectification period or (c) sale of most units by plaintiff - claim held to be genuine offsetting claim. | Barrett J. | 2007.03.09 | Equity Division. Corporations List : Supreme Court of New South Wales |
| Statutory demand post adjudication – set aside | CCD v Drywall [2006] NSWSC 1012 Corporations Law. Application under 459G of the Corporations Act 2001 to set aside statutory demand arising out of a construction adjudication. Formal defects in the affidavit in support a reason for setting aside the demand. Genuine dispute and off-setting claim established. Demand set aside. | Macready Associate Justice | 2006.09.29 | Equity Division. Supreme Court of New South Wales |
| Insolvency : winding up | Chadah P/ L v Kubota Tractor Australia P/L [2003] NSWSC 456 Corporations - winding up - statutory demand - whether bona fide dispute exists - whether offsetting claim raised by affidavit filed within 21 days - whether affidavit accompanying statutory demand adequately "verifies that the debt ... is due and payable by the company" - meaning of "verify". | Campbell J | 2003.06.06 | Equity Division Equity List. Supreme Court of New South Wales |
| Progress claim : content : identification of work | Clarence Street P/L v Isis Project P/L [2005] NSWCA 391 Payment claims to progress payments – payment schedules – ss 13, 14, 15 BCISPA 1999 – statutory debt – failure to identify the construction work to which the claimed progress payment relates – function of a payment claim – interpretation of s13(2)(a) – due date for progress payments – reference date – express provision – whether payment claim must meet contractual requirements for payment to be due – prohibition in s15(4)(b)(ii). | Mason P ; Giles JA ; Santow JA | 2005.11.16 | New South Wales Court of Appeal |

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| Security of costs : costs of application | Clarence Street P/L v ISIS Projects P/L No2 [2007] NSWSC 509 COSTS - of application for further security for costs and other relief - no question of principle. | McDougall J | 2007.05.23 | Equity Division. T&C : Supreme Court of New South Wales |
| Security of Costs | Clarence Street v ISIS Projects No1 [2007] NSWSC 380 Security for costs - whether security given earlier without prejudice to defendant's entitlement to seek further security - whether delay a bar to further security. | McDougall J. | 2007.03.26 | Equity Division. T&C : Supreme Court of New South Wales |
| Construction contract "forms part of" | Consolidated Constructions Pty Ltd v Ettamogah Pub [2004] NSWSC 110 BCISPA 1999 - whether s 7(2)(a) applicable - meaning of "forms part of" in s 7(2)(a) - legislative purpose of s 7 - whether plaintiff may serve a progress claim under s 13 - whether "progress payment" has same meaning in Act as it does under the construction contract - effect of amendments to (inter alia) s 13 by Act No. 133 of 2002. | McDougall J | 2004.03.11 | Equity Div T&C Supreme Court of New South Wales |
| Jurisdiction : CTTT | Cooper v Home Productions P/L (General) [2004] NSWCTTT 597 Jurisdiction- CTTT. Whether an adjudication under the BCISPA 1999 ousts the jurisdiction of the Tribunal under the Consumer Claims Act 1998. | Sheehan.D. Member | 2004.10.20 | Consumer Trader & Tenancy Tribunal. New South Wales |
| Payment into court : appeal | Cooper v Veghelvi [2005] NSWSC 227 Payment of judgment sum - s 25(4) BCISP Act - whether on appeal money is to be paid into court. | Harrison Master | 2005.03.23 | Common Law Div Admin List Supreme Court of New South Wales |
| Trader & Tenancy Tribunal | Cooper v Veghelyi [2005] NSWSC 602 Successful application for a declaration that the Adjudication Determination made by the First Defendant in favour of the Second Defendant against the Plaintiff under the BCISPA 1999 (NSW) (BCISP Act) is null and void and of no effect. Role of Trader and Tenancy Tribunal examined. | Patten AJ | 2005.06.28 | Common Law Div Common Law List Supreme Court of New South Wales |
| Certificate : injunction : damages claim | Co-ordinated Construction Co P/L v Climatech (Canberra) P/L [2005] NSWSC 312 Application for permanent injunction to restrain the obtaining of a certificate under the BCISPA 1999 (NSW) - Whether the claims under the contract as a result of the awarding of extensions of time were "variation" claims under the contract - Whether claims for delay damages consequent upon extensions of time are able to be claimed in a payment claim under the Act and awarded in a determination under the Act | Bergin J | 2005.04.13 | Equity Div T&C Supreme Court of New South Wales |
| Adjudication certificate : injunction | Coordinated Construction Co Pty Ltd v J.M. Hargreaves Pty Ltd [2004] NSWSC 1206 Progress payments - BCISPA - ex parte application to restrain filing of adjudication certificate - application brought at last possible moment - discretion to refuse application and leave applicant to apply to set aside judgment - policy of Court to refuse last minute ex part applications. | Palmer J. | 2004.11.30 | Equity Div. Supreme Court of New South Wales |
| Adjudication : basic requirements | Coordinated Construction Co v J M Hargreaves [2005] NSWSC 77 Progress payment - adjudicator's determination - basic and essential requirements of a valid determination - whether determination void because adjudicated amount included amounts assumed (but not decided) not to be "for" construction work - whether determination in breach of the BCISPA 1999 is unlawful - whether payment claim served on or from reference date. | McDougall J | 2005.02.22 | Supreme Court of New South Wales |

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| Damages for delay | Coordinated Construction Co. P/L v Climatech (Canberra) P/L [2005] NSWCA 229 Progress payments - Building & Construction Industry Security of Payment Act - Adjudicator's determination - Whether "delay damages" under contract are "for" construction work or related goods and services - Whether delay damages can be included in payment claims under the Act. | Hodgson JA ; Ipp JA ; Basten JA. | 2005.07.13 | Court of Appeal. Supreme Court of New South Wales |
| Damages for delay | Coordinated Construction Co. P/L v J.M. Hargreaves (NSW) P/L [2005] NSWCA 228 Progress payments - Building & Construction Industry Security of Payment Act - Adjudicator's determination - Whether "delay damages" under contract are "for" construction work or related goods and services - Whether delay damages can be included in payment claims under the Act. | Hodgson JA 1; Ipp JA ; Basten JA | 2005.07.13 | Court of Appeal Supreme Court of New South Wales |
| Loans : deeds | Corbett Court v Quasar [2004] NSWSC 1174 BISPA 1999 - S 7(2)(a) - whether tripartite deed a loan agreement within s 7(2)(a)(i) of Act - no question of principle.: | McDougall J | 2004.11.25 | Supreme Court of New South Wales |
| Security of costs : CT&TT | Da Silva and Da Silva Constructions P/L v Bresond P/L [2008] NSWSC 158 Consumer Trader & Tenancy Tribunal has no jurisdiction to order corporate plaintiff to provide security for costs - Tribunal not a court under Corporations Act 2001 (Cth) and not otherwise authorised | Smart AJ | 2008.02.29 | Common Law Division. Supreme Court of New South Wales |
| Admissible material in adjudication | David Hurst Constructions P/L v Helen Durham [2008] NSWSC 318 BCISPA 1999 – adjudication determination – whether adjudicator considered material in breach of s20(2B) of the Act – whether adjudicator failed to comply with s22(2) of the Act – whether adjudicator misunderstood terms of contract, or their application – whether any such error invalidates determination – denial of procedural fairness – whether s21(4) of the Act imposes mandatory requirement on adjudicators if they are unable to make a determination on evidence before them – no evidentiary onus or presumption imposed by the Act. | McDougall J | 2008.02.28 | Equity Division. Supreme Court of New South Wales |
| Summary judgment on adjudication | David Hurst Constructions Pty Ltd v Shorten [2008] NSWSC 164 . Whether BCISPA 1999 applies; whether construction contract within s 7(2)(b) – whether claimant entitled to payment claim – claimant’s application for summary judgment under Uniform Civil Procedure Rules 2005, Pt 13, r 13.1 | Nicholas J | 2008.03.04 | Equity Division. Supreme Court of New South Wales |
| Insolvency : Final certificate : injunction | De Martin & Gasparini P/L v Energy Australia P/L [2004] NSWSC 336 Application to discharge injunction - changed circumstances alleged - Service of final certificate under construction contract - Whether serious issue to be tried in relation to validity of final certificate - Balance of convenience - Applicant placed into liquidation after injunction granted. Supreme Court New South Wales. 21st April 2004 | Bergin J. | 2004.04.21 | Equity div. Supreme Court of New South Wales |
| Contractors Debts Act | De Martin & Gasparini v Energy Australia [2002] NSWCA 330 Statutory construction - s14(3) Contractors Debts Act 1997 - attachment order - two stage process - whether the court is required to first assess the claim on the face of the application and then exercise a discretion of whether to make the order after considering other relevant evidence. | Hodgson JA : Santow JA : Pearlman AJA | 2002.09.13 | Court of Appeal New South Wales |
| Jurisdiction : non contested issues | De Martin & Gasparini v State Concrete [2006] NSWSC 31 Where adjudicator without notice to the parties reinvestigates matters agreed upon by the parties and determines value inconsistently with that agreement - where adjudicator without notice to the parties determines value of prior work inconsistently with determination of prior adjudicator - whether denial of natural justice. | McDougall J | 2006.01.11 | Supreme Court of New South Wales |

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| Insolvency : winding up | Demir Pty Ltd v Graf Plumbing Pty Ltd [2004] NSWSC 553 Corporations - winding up - statutory demand - application to set aside or vary on basis of offsetting claim - statutory demand based on judgment debt arising from determination under BCISPA Act 1999 - whether judgment debt arising from adjudication under that Act can be subject of an "offsetting claim" for purposes of section 459H(5) Corporations Act 2001. | Campbell J | 2004.06.11 | Supreme Court of New South Wales |
| Stay of adjudication | Digital City v QX Australia [2004] NSWSC 933 BCISPA 1999 - whether interlocutory injunction against advancing of adjudication process, pending determination of whether adjudicator has jurisdiction, should be on terms of requiring payment into Court of amount claimed. | Campbell J | 2004.10.07 | Supreme Court of New South Wales |
| Notice – validity - address | Downer Construction (Australia) P/L v Energy Australia [2007] NSWCA 49 BCISPA 1999 s 17 - Applications for Adjudication of Payment Claims - Whether identifying the payment claim and payment schedule to which an Application for Adjudication relates is sufficient where the claim addressed in the accompanying submissions is different in substance to the payment claim so identified. Adjudication of Payment Claims - Determination of parameters of adjudication - Whether a reasonable but erroneous decision by the adjudicator invalidates the adjudication. | Giles JA; Santow JA; Tobias JA. | 2007.03.19 | Court of Appeal. Supreme Court New South Wales |
| Multiple payment claims : selective adjudication | Downsouth Constructions v Jigsaw Corporate Childcare [2007] NSWSC 597 Payment claims relating to 4 different construction contracts served at once - whether plaintiff can selectively pursue applications to avoid set off defences - where adjudicator concluded that the defence of set-off is not available by reason of s 20(2B) BCISPA 1999 - whether denial of natural justice - whether failure to exercise powers in good faith. | McDougall J | 2007.06.15 | Equity Division. T&C : Supreme Court of New South Wales |
| Costs assessment – costs agreements | Doyle v. Hall Chadwick [2007] NSWCA 159 Costs - Assessment - Certificate taking effect as judgment - Whether appeal against assessment still available - Whether costs assessor can determine questions of construction of a costs agreement - Whether condition of conditional costs agreement, depending on recovery of monies, satisfied. | Mason P; Hodgson JA; Campbell JA; | 2007.07.09 | Court of Appeal. Supreme Court New South Wales |
| Part payment of progress payment | EFI Construction Pty Ltd v Gee Ha Pty Ltd [2007] NSWLC 17. Building & engineering Contracts -- Progress claims & payments – Whether defendant liable for “unpaid portion” of progress claim – Whether moneys set aside as “deposit” or appropriated by plaintiff – Whether credit note extinguishes original debt ab initio | Magistrate H Dillon | 2007.06.15 | Downing Centre Local Court |
| Slip rule : judgement | Emag Constructions P/L v Highrise Concrete Contractors (Aust) P/L [2003] NSWSC 988 Slip Rule - sought to be invoked to delete sections of Judgment. | Einstein J | 2003.10.29 | Supreme Court of New South Wales |
| Service : meaning of : validity | Emag Constructions P/L v Highrise Concrete Contractors (Aust) P/L [2003] NSWSC 903 Payment claim : non-payment : BCISPA 1999 (NSW) : progress payment claim : payment schedule of \$Nil : adjudication : attempted service of adjudication application : appointment of adjudicator : failure to provide response : validity of acceptance of appointment & jurisdiction of adjudicator : validity of determination : s13, 14, 17, 19-21, 31 : meaning & validity of "service" : ostensible authority in solicitors to receive service. | Einstein J | 2003.09.26 | Supreme Court of New South Wales |
| Natural Justice : failure to consider submissions | Emergency Services Superannuation Board v Davenport [2004] NSWSC 697 BCISPA 1999 (NSW) - Whether adjudication determination should be quashed - alleged adjudicator determined claim on basis explicitly disavowed by 2nd defendant - natural justice - alleged failure to consider relevant provision of contract and plaintiff's submissions thereon - s22(2)(b) - Whether payment claim compiled with s 13(2)(a) of the Act - Whether discretion to grant prerogative relief should be exercised. | McDougall J | 2004.07.07 | Equity Div. Supreme Court of New South Wales |

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| Certiorari | Emergency Services Superannuation Board v Robert Sundercombe [2004] NSWSC 405 Whether jurisdictional error by adjudicator justifying the quashing of the adjudicator's determination - Whether circumstances in which a determination is quashed is a circumstance that fits within s. 26(1)(b) of the BCISPA 1999 allowing the withdrawal of the adjudication application - Whether events which occurred after quashing of first determination precluded the further adjudication application.: | Bergin J | 2004.09.09 | Supreme Court of New South Wales |
| Adjudication claim : injunction | Energetech Australia v Sides Engineering [2005] NSWSC 1143 Payment claim under BCISPA 1999 – application for declarations & injunction to prevent payment claim from being submitted to adjudication on basis that payment claim was not made with respect to a reference date under the contract, or was made with respect to a reference date concerning which another payment claim had already been adjudicated – consumer protection – whether submission of payment claim to adjudicator would be misleading and deceptive – whether submission of payment claim to adjudicator would be in trade and commerce. | Campbell J | 2005.11.25 | Supreme Court of New South Wales |
| Service of claim : time requirements | Energetech v Sides Engineering [2005] NSWSC 801 Where alleged that referee incorrectly calculated reference date under s 13(4) - whether basic and essential requirement of service of payment claim includes compliance with s 13(4) - whether failure to comply with s 13(4) renders adjudication determination void. | McDougall J | 2005.08.05 | Supreme Court of New South Wales |
| Injunction pending application for declaration | Energy Australia v Downer Construction (Australia) P/L [2005] NSWSC 1042 Progress payments - BCISPA - claim for interlocutory injunction pending hearing of claim for declarations that purported adjudication void and of no effect - serious question to be tried - plaintiff's ability to seek setting aside of any judgment obtained under the Act not prejudiced - balance of convenience favours defendant - interlocutory injunction refused. | Barrett J | 2005.10.14 | Supreme Court of New South Wales |
| Adjudication appointment : challenge | Energy Australia v Downer Construction (Australia) P/L [2006] NSWSC 52 Payment claims – Adjudication – Challenge to validity of adjudication application and adjudication determination – Basic and essential requirements – Whether differences between payment claim and adjudication application rendered application invalid – Whether adjudicator determined claim substantially different to payment claim – Whether failure to determine payment claim rendered determination void – BCISPA 1999 ss 13, 14, 17, 20, 22, 25. – Judicial Review – Jurisdictional error – Whether determination a bona fide exercise of power – natural justice. | Nicholas J. | 2006.02.15 | Equity Div. T&C. Supreme Court of New South Wales |
| Concurrence of notice & claim | | | | |
| Insolvency : winding up | Equipped Constructions v Form Architects [2006] NSWSC 500 Corporations - winding up - creditor's statutory demand - genuine dispute - dispute arising out of conflicting evidence of oral construction contract - substantiated amount below statutory minimum - whether indemnity costs appropriate - no issue of general principle. Austin J. Equity. 17th May 2006 | Austin J | 2006.05.17 | Equity Division. Supreme Court of New South Wales |
| Natural justice | Errol Investments P/L v Taylor Projects Group P/L [2005] NSWSC 1125 Adjudication under s22 BCISPA 1999 - challenge to adjudicator's decision on grounds of denial of natural justice - whether inference should be drawn of failure to consider relevant material. | Windeyer J | 2005.11.04 | Supreme Court of New South Wales |
| Construction work : meaning of | Estate Property Holdings P/L v Barclay Mowlem Construction Ltd [2004] NSWCA 393 Progress payments - BCISPA - Progress claim - Meaning of "construction work to which the claim relates" - Whether it is the work required by the contract, the work for which payment is claimed, or each item of work for which payment is claimed. | Mason P ; Giles JA ; Hodgson JA | 2004.11.03 | New South Wales Court of Appeal |

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| Insolvency – set off | Ettamogah Pub (Rouse Hill) P/L v Consolidated Constructions P/L (in liq) [2006] NSWSC 1450 Winding-up in insolvency –Application to set aside statutory demand – Genuine dispute as to indebtedness – Set off - building contract – Defendant lodged payment claims pursuant to s 13 BCISPA 1999 (NSW) – Plaintiff liable to pay defendant pursuant to s 14(4) BCISPA – Defendant commenced proceedings and obtained judgment in its favour – Defendant served plaintiff with statutory demand - Whether plaintiff entitled to relief pursuant to s 32 BCISPA – Whether plaintiff entitled to damages for defendant’s failure to complete building works on time & damages for cost of rectifying defects in building works – s 459H Corporations Act 2001 (Cth) considered – Whether failure of plaintiff to lodge proofs of debt against defendant, now in liquidation, precludes plaintiff from raising alleged offsetting claims – Application granted. | White J | 2006.11.17 | Equity Division. Corporations List. Supreme Court of New South Wales |
| Stay pending appeal | Facade Innovations Pty. Ltd. v. Timwin Constructions Pty. Ltd. [2005] NSWCA 197 1. Ordered that order three made by McDougall J on 1 June 2005 in proceedings 55035/05 for payment out to Timwin of money paid into court be stayed until the judgment entered in favour of Facade in 11729/05 is set aside. 2. Ordered that the costs of this motion be costs in the appeal. 3. Ordered that the appeal be expedited, but not so as to displace matters already fixed for hearing. | Hodgson JA | 2005.06.08 | Supreme Court of New South Wales |
| Progress Payments & payment Claims | Falgat Constructions P/L v Equity Australia Corp P/L [2006] NSWCA 259 Whether successive payment claims, claiming the same amount, can be served - Payment schedules - Time limit for provision of payment schedules - Whether adjudication application can be made if payment schedule provided outside the time limit - Whether s.109X Corporations Act 2001 applies - Effect of s.29 Interpretation Act 1901 - Whether "provide" same as "serve" in the BCISPA and by s.31. | Handley JA, Hodgson JA, Hunt AJA | 2006.09.19 | Court of Appeal. Supreme Court New South Wales |
| Concurrent statutory & common law claims | Falgat Constructions P/L v Equity Australia Corporation P/L [2005] NSWCA 49 Effect of statutory remedies under BCISPA - Statutory remedies of builder - whether concurrent pursuit of statutory and common law remedies permissible - Injunctions - anti-suit - whether concurrent pursuit of statutory and common law remedies permissible under statute - whether vexatious or oppressive. | Handley JA ; Santow JA ; Pearlman AJA. | 2005.03.03 | New South Wales Court of Appeal |
| Insolvency : set aside | Falgat Constructions v Masterform [2005] NSWSC 525 Corporations - application to set aside judgment debt under s 459G of the Corporations Act. Judgment debt following on adjudication under the Building & Construction Industry Security of Payment Act. Whether such judgment was on the merits and created a res judicata sufficient to prevent the raising of a genuine dispute. Held genuine dispute could be raised. | Macready Associate Justice | 2005.06.23 | Supreme Court of New South Wales |
| Payment claim : meaning of : natural justice : crystallisation | Falgate v Masterform [2005] NSWSC 728 Whether the claim was a payment claim, whether failure to allow the time required before applying for adjudication was a substantial breach of natural justice, whether failure to serve application for adjudication was a breach of natural justice, and whether ceasing action in one jurisdiction indicates abandonment of rights at general law. - The claim set out all the requirements under the BCISPA 1999, thus it was a payment claim. Failure to allow time required was a substantial breach of natural justice. - Held: Adjudication Determination set aside. | Macready Associate Justice | 2005.08.03 | Supreme Court of New South Wales |
| Payment claim – tax invoice | Fernandes Constructions v Tahmoor Coal (t/as Centennial Coal) [2007] NSWSC 381 BCISPA 1999 - payment claim - where tax invoice states that it "is prepared under" the Act - whether tax invoice complies with s 13(2)(c). | McDougall J. | 2007.04.27 | Equity Division. T&C : Supreme Court of New South Wales |

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| Judicial review : basic requirements | Fifty Property Investments P/L v Barry J O'Mara & Impero Stone [2006] NSWSC 428 Adjudication – Determinations – Judicial Review – basic requirements – construction contract – whether jurisdictional fact – held, it is and can be reviewed by court – natural justice – failure to give party opportunity to comment on additional submissions from other party : Held - procedural unfairness. | Brereton J | 2006.04.18 | Supreme Court of New South Wales |
| Temporary finality | Filipe v. Inscope Solutions Pty. Limited [2004] NSWCA 417 Progress payments - Judgment - Does not determine final rights of parties. | Hodgson JA 1; Bryson JA. | 2004.11.11 | Court of Appeal Supreme Court of New South Wales |
| Payment schedule - service | Firedam Civil Engineering v KJP Construction [2007] NSWSC 1162. Progress payments - BCISPA - service of payment schedule - service under Corporations Act - relevance of evidence of non-receipt by director of claimant - adjudicator disregards adjudication response on ground that payment schedule was not provided because not received by claimant's director - errors of law - denial of natural justice - whether relief should be by declarations and injunctions or orders in nature of certiorari | Austin J | 2007.10.25 | Equity Division. Supreme Court of New South Wales |
| Security of Costs | FPM Constructions P/L v The Council of the City of Blue Mountains [2005] NSWCA 147 Security for costs - no question of principle : Notice of motion of 16 March 2005 be dismissed with costs. | Handley JA | 2005.05.06 | New South Wales Court of Appeal |
| False claim | FPM Constructions v Council of the City of Blue Mountains [2005] NSWCA 340 Interpretation of building contract AS4300-1995 - whether statutory declaration in support of progress claim was false - effect of falsity - whether power of superintendent to certify progress claim extends beyond termination - right to progress payment - Costs - personal costs order against company director and shareholder under s148B DCA 1973 (NSW) - factors relevant to discretion to make costs order against a non-party. | Beazley JA ; Giles JA ; Basten JA | 2005.10.10 | New South Wales Court of Appeal |
| Claims for work done outside progress period. | Fyntray Constructions Pty Ltd v Macind Drainage & Hydraulic Services Pty Ltd [2002] NSWCA 238 BSPA Act 1999 (NSW) : a person entitled to a progress payment under a construction contract can serve a payment claim even though the claim relates to work done in periods prior to the month in which the payment claim is served. Valid claim. | Heydon JA : Hodgson JA : Ipp AJA | 2002.07.26 | New South Wales Court of Appeal |
| Set off | Galaxy Construction & Dev. Group P/L v Clarke & Sons Plumbing (Home Building) [2006] NSWCTTT 422 Whether Tribunal has jurisdiction to set-off Adjudicator's determination against applicant's claims; whether work claimed by the respondent as extra work was encompassed in contract or bona fide additional work; whether the respondent breached the contract and whether the respondent performed defective work. Breach of contract; defective work; overpayment; res judicata; Adjudicator's determination. Consumer, Trader and Tenancy Tribunal. | O'Keeffe G.G. Member | 2006.09.03 | Consumer, Trader and Tenancy Tribunal. New South Wales |
| Oral variations : enforceability | Gateway Fence Installation P/L v Amstruct P/L (Home Building) [2006] NSWCTTT 450 Oral variations to home building contract. Impact on application for payment. Consumer, Trader & Tenancy Tribunal. | Williams. L.E. Member | 2006.09.14 | Consumer, Trader and Tenancy Tribunal. New South Wales |
| Insolvency | General Homes v Jonathon B & Leanne A Caelli trading as JC Electrical [2007] NSWSC 463 Insolvency post adjudication award and enforcement order : order to pay monies into court or a floating charge : enforcement stayed - during interim employer went into administration but did not file defence etc as ordered. Deed of Company Arrangement followed : Could the contractor enforce the payment in or was he reduced to unsecured creditor status. Held : Enforcement of payment in pending hearing on defence (if any). | Bergin J | 2007.05.11 | Equity Division. T&C : Supreme Court of New South Wales |

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| Injunction : breach of trust fund | Glen Eight v Home Building [2005] NSWSC 309 Injunction - application to restrain breach of alleged trust fund - where moneys deposited by principal into contractor's bank account - where principal is a signatory to the bank account - where contractor in administration - where funds held by administrator - whether principal entitled to relief on the entire amount held by administrator - whether allowance ought to be made for the legal costs.: New South Wales Supreme Court : 31st March 2005. | McDougall J | 2005.03.31 | Supreme Court of New South Wales |
| Injunction against certificate application : security | Glen Eight v Home Building [2005] NSWSC 907 Adjudication certificate under BCISPA 1999 issued - application for injunction to restrain builder from applying for certificate relating to the determination - balance of convenience - terms upon which injunction to be issued - whether security to be provided for payment of amount of adjudication determination plus interest - whether security to be provided for amount of adjudicator's fees not paid by proprietor. | Campbell J | 2005.09.06 | Supreme Court of New South Wales |
| Stay to arbitration | Grant Constructions Pty Ltd v Claron Constructions Pty Ltd [2006] NSWSC 369 Application for stay of arbitration proceedings - Respondent to judgment entered under BCISPA fails to pay judgment debt but pursues arbitration - Suggested oppressive conduct. | Einstein J | 2006.04.28 | Supreme Court of New South Wales |
| Insolvency : winding up | Greenaways Australia P/L v CBC Management P/L [2004] NSWSC 1186 Winding up - application for order setting aside statutory demand - whether genuine offsetting claim - interaction between statutory demand procedure and legislative progress payments procedures - whether order setting aside statutory demand should be subject to condition. | Barrett J | 2004.12.10 | Supreme Court of New South Wales |
| Insolvency : stay of enforcement | Grosvenor Constructions (NSW) P/L (in administration) v Musico [2004] NSWSC 344 Stay of judgment debt - Progress payments claimed under the BCISPA 1999 - Plaintiff obtains & files adjudication certificate pursuant to s24 & s25 - Plaintiff placed under external administration-Defendants seek stay of proceedings - Evidence that defendants, if successful in final proceedings, would suffer irreparable prejudice as payment pursuant to the judgment debt could never be recouped. | Einstein J | 2004.04.27 | Supreme Court of New South Wales |
| Double jeopardy : 2nd adjudication : No1 void. | Halkat Electrical Contractors P/L v Holmwood Holdings P/L [2006] NSWCA 125 Procedure - Appeal - Declaration that adjudication determination void - Contractor appeals, and also issues further payment claim including the same work and obtains an adjudication determination on that claim - Whether appeal an abuse of process - Whether it should be struck out or stayed. | Hodgson JA | 2006.05.15 | New South Wales Court of Appeal |
| Relevant matters | Halkat Electrical Contractors P/L v Holmwood Holdings P/L [2007] NSWCA 32 BCISPA 1999 s 22 — Adjudication — Determination based on matters wholly unrelated to the matters in s 22 — Essential precondition to the existence of a valid determination not met. Appeal dismissed with costs. | Giles JA; Santow JA; Tobias JA.. | 2007.02.28 | Court of Appeal. Supreme Court New South Wales |
| Payment claim : requirements | Hawkins Construction (Australia) Pty Ltd v Mac's Industrial Pipework Pty Ltd [2002] NSWCA 136 Contracts - whether BCISPA 1999 applied to contract entered into after commencement of the Act - whether payment claim satisfied requirement of the Act - Corporations - whether employed solicitor may sign a statutory demand on behalf of client. | Handley JA : Stein JA : Davies AJA | 2002.05.07 | Court of Appeal, New South Wales |
| Pre-act M/C – post act S/C. | Hawkins Construction v Mac's Industrial Pipework [2001] NSWSC 815 Statutory Interpretation - BCISPA 1999 NSW - whether Act applies to sub-contracts when head contracts precedes the Act - statutory demands - demand signed by employed solicitor of firm acting for creditors - whether effective. | Windeyer J | 2001.09.18 | Supreme Court of New South Wales |

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| Stay of enforcement : prejudice | Herscho v Expile P/L [2004] NSWCA 468 Procedure - Appeal - Stay of judgment - Judgment under Building & Construction Industry Security of Payment Act - Need for more than real risk of prejudice. | Hodgson JA | 2004.12.13 | New South Wales Court of Appeal |
| Payment : Construction contract or restitution & quantum meruit | Hogan v Allan (Home Building) [2005] NSWCTTT 255 Whether the contractor represented himself to the homeowner as a building contractor? Whether this contract on a "fixed price" or ongoing "costs plus" basis? Whether works completed to specifications : standard of workmanship? Whether homeowner and/or contractor terminated or repudiated the contract? Whether payment for work completed lawfully withheld? Whether claim founded in contract or restitution & quantum meruit? | Noone M. Member | 2005.04.06 | Consumer, Trader and Tenancy Tribunal. New South Wales |
| Good faith : Judicial review : grounds | Holdmark Developers v G J Formwork [2004] NSWSC 905 BCISPA 1999 (NSW) - whether adjudication determination should be quashed - jurisdictional error of law - s 14(5) of Act - reference date - final payment claim - whether more than one payment claim made in respect of the one reference date - whether payment claims could only be made during currency of contract - effect of termination or cessation of work but within relevant limitation period - discretion to withhold relief. | McDougall J | 2004.09.24 | Supreme Court of New South Wales |
| Good faith : judicial review : grounds | Holmwood Holdings P/L v Halkat Electrical Contractors P/L [2005] NSWSC 1129 BCISPA 1999 –grounds for judicial review – grounds on which purported determination may be void – effect of failing to advert to relevant term of contract - failure to have regard to relevant considerations – content of good faith not limited to dishonesty malice or personal interest – effect of deciding adjudication on questions of credit where credit irrelevant etc | Brereton J | 2005.11.08 | Supreme Court of New South Wales |
| Payment schedule - sufficiency | Hutchinson J P/L v Auslat Properties P/L [2006] NSWDC 126 Building and Construction - No payment schedule served - Whether payment schedule sufficient and valid - Whether the building works were sufficiently identified. | Johnstone DCJ. | 2006.12.20 | District Court. New South Wales |
| Insolvency : Winding Up – BCISPA Claim | Independent Civil Contractors P/L v JGE Earthmoving P/L [2007] NSWSC 132 Winding up - creditors voluntary winding up - application for leave to proceed with cross-claim against company in Local Court proceedings - where company was plaintiff in those proceedings but assigned cause of action after commencement of winding up - assignee substituted as plaintiff in Local Court - whether set-off pursuant to s.553C had occurred - because it had not, no need for applicant's claim to be pursued in existing proceedings. | Barrett J | 2007.02.27 | Equity Division. Corporations List : Supreme Court of New South Wales |
| Natural Justice right to respond on jurisdiction finding | Inten Constructions v Refine Electrical Services [2006] NSWSC 1282 Where plaintiff's payment schedule & adjudication response asserted that no contract provision supported 1st defendant's claim - whether adjudicator was entitled or required to consider the relevant provisions of the contract under s 22(2)(b),(d) BCISPA 1999 where adjudicator found claim to be supported by the contract - whether natural justice required adjudicator to provide the plaintiff with an opportunity to respond - where adjudicator considered plaintiff's adjudication response - where adjudicator did not expressly state reasons for rejecting plaintiff's approach - impartiality & good faith - application of <i>Brodyn v Davenport</i> [2004] NSWCA 394 - whether adjudication determination void. | McDougall J | 2006.12.01 | Equity Division. Supreme Court of New South Wales |
| Personality : officer of company | Isak Constructions v Faress [2003] NSWSC 784 Corporations - statutory derivative action - meaning of "an officer or former officer of the company" - unresolved question whether director removed from office - whether appropriate to grant leave when notice requirement in s.237(2)(e)(i) not satisfied. | Barrett J | 2003.08.27 | Supreme Court of New South Wales |

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| Objections to claim : requirements : withholding notice | Isis Projects P/L v Clarence Street Ltd [2004] NSWSC 222 BCISPA 1999 (NSW) - Amendments - BCISPAA 2002 - Whether the Act now requires the respondent upon receiving a payment claim to set out any objection it may have to the claim in a payment schedule, failing which the respondent is liable to pay the claim irrespective of entitlement - Application for summary judgment - Whether General Steel principles apply where the parties final rights are reserved. | Einstein J | 2004.03.29 | Supreme Court of New South Wales |
| Part payment : debt : claim requirements | Isis Projects v Clarence Street [2004] NSWSC 714 BCISPA 1999 (NSW) - where defendant paid part of one progress claim and none of another - whether plaintiff entitled to recover amounts unpaid as a debt - where progress claims identified work by single line item references - whether progress claims identified the construction work to which they related - waiver etc. | McDougall J | 2004.08.13 | Supreme Court of New South Wales |
| Insolvency : trustees. | Isis Projects v Clarence Street [2006] NSWSC 190 Costs – Dispute resolved without hearing on merits – No capitulation – Whether any party had substantial success - Whether plaintiff acted reasonably in bringing proceedings – Whether any party was almost certain to have succeeded – Whether orders as to costs are appropriate. - Trusts & trustees – Judgment creditor claiming to be subrogated to trustee’s right of indemnity out of trust assets – Whether creditor could have priority over purchasers of trust assets from trustee. | White J. | 2006.03.29 | Equity Div. Supreme Court of New South Wales |
| Progress claim post practical completion & pre defects liability period | Isis v Clarence [2004] NSWSC 73 Summary judgment application pursuant to Pt 15 r 2 SCR - motion dismissed. - Contract Law - Construction contract - progress claims issued pursuant to BCISPA. Whether payment claims could be made between practical completion and the expiration of the defects liability period. No triable issue. Whether progress claims were supported by the evidence : Triable issue - whether progress claims made in contravention of s13(5) of the Act. No triable issue | Macready Master | 2004.02.23 | Supreme Court of New South Wales |
| Good faith | J & Q Investments P/L v ZS Constructions (NSW) P/L [2008] NSWSC 838 BCISPA 1999 – whether adjudicator denied party natural justice by failing to consider portions of adjudication response – whether failure to exercise powers in good faith – whether adequate reasons given for valuation of claim. | McDougall J. | 2008.07.30 | Equity Division. Supreme Court of New South Wales |
| Stay pending appeal | J & Q Investments P/L v ZS Constructions (NSW) P/L [2008] NSWCA 203 Stay pending appeal - BCISPA 1999. Failed application. | Bell JA | 2008.08.20 | Court of Appeal. Supreme Court of New South Wales |
| Service : Corporations Act & s31 BCISPA | JAR Developments P/L v Castleplex P/L [2007] NSWSC 737 Service in accordance with s 109X Corporations Act 2001 (Cth) and s 31 Building and Construction Industry Security of Payment Act 1999 - effect - whether determination of adjudicator void. | Rein J | 2007.07.10 | Equity Division. T&C : Supreme Court of New South Wales |
| Strike out : Payment notice validity of claim | JBK Engineering P/L v Brick & Block Co P/L [2006] NSWSC 1192 Strike out : Three unsuccessful challenges to adjudication decisions. In the absence of assertions in withholding notice, there is no requirement for the adjudicator to determine the validity of claims for progress payments. | Einstein J | 2006.11.14 | Equity Division. Supreme Court of New South Wales |
| Re-examination of interim payment in orders | JBK Engineering P/L v Brick & Block Co P/L [2007] NSWSC 163 Preliminary application to refuse leave to re-open interlocutory order refused. Objective of reopening order was to examine special circumstances whereby interim orders for monies to be paid into court be re-examined by the court. | Einstein J. | 2007.03.01 | Equity Division. T&C : Supreme Court of New South Wales |

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| Final Determination of proceedings | JBK Engineering, Design & Construction P/L v Brick & Block Co P/L [2006] NSWSC 1301 Building & Construction Industry Security of Payment Act 1999 (NSW) - Proper construction of words "final determination of the proceedings" as used in s 25(4)(b) | Einstein J | 2006.11.24 | Equity Division. Supreme Court of New South Wales |
| Set aside : commencement of proceedings | Jem Developments P/L v Hansen Yuncken P/L [2006] NSWSC 1087 Act 1999, Proper construction of s 25 (4) of BCISPA, Meaning of words "commences proceedings to have the judgment set aside", Whether a respondent to an application under the Act against whom a judgment debt following a determination has been entered, may albeit eschewing making an application to have the judgment set aside, seek any and if so what form of declaratory and associated relief challenging the validity of the determination. | Einstein J | 2006.10.18 | Equity Division. Supreme Court of New South Wales |
| Statutory demand – set aside | Jem v St Hilliers [2007] NSWSC 245 Application to set aside statutory demands under s459G of the Corporations Act. Demands relate to adjudication under BCISPA 1999 (NSW). Consideration of offsetting claims based upon Superintendent's certificate issued under contract. - Demand set aside. | Macready Associate Judge | 2007.02.28 | Equity Division. Supreme Court of New South Wales |
| Progress claim : set off | Jemzone v Trytan [2002] NSWSC 395 Corporation - statutory demand - genuine dispute and offsetting claim - proprietor claims variation credits & compensation for delay - genuine dispute or offsetting claim established –Building & Construction - statutory entitlement to make payment claim for progress payment - invoice for final account held not to be claim for progress payment - requirements for valid payment claim under BCISPA 1999 (NSW). | Austin J | 2002.05.07 | Supreme Court of New South Wales |
| Jurisdiction – double jeopardy ; good faith | John Goss Projects v Leighton Contractors [2006] NSWSC 798 An adjudicator valued construction work - whether subsequent adjudicator bound by s 22(4) BCISPA 1999 to value that work accordingly - adjudicator decided that obiter dicta in Supreme Court judgment incorrect - issue not advanced by either party - no notice to parties - whether material to adjudicator's determination - natural justice - good faith - application of Brodyn v Davenport - double jeopardy & abuse of process - notice as precondition of claims - declaration - whether clause conflicts with s13(4) & void. | McDougall J | 2006.07.14 | Common Law Division. T&C : Supreme Court of New South Wales |
| Natural Justice | John Holland P/L Ltd v RTA No2 [2006] NSWSC 1202 Particular Tribunals or bodies - BCISPA 1999 - Adjudicator's determination - Whether adjudicator failed to consider a submission in an adjudication application - Whether a denial of natural justice - Whether determination void. | Gzell J | 2006.11.17 | Equity Division. Supreme Court of New South Wales |
| Withdrawal of adjudication application | John Holland P/L v Made Contracting P/L [2008] NSWSC 374 Procedure for adjudication under BCISPA 1999 – whether withdrawal of adjudication application valid – whether adjudicator failed to determine adjudication application – whether entitlement to make new adjudication application established – whether claimant estopped from making new application – whether adjudicator's determination of new application void – statutory construction. | Nicholas J | 2008.04.28 | Equity Division. Supreme Court of New South Wales |
| Retention : disputed adjudication decision : partial release of retention monies | John Holland P/L v Roads & Traffic Authority of New South Wales [2007] NSWCA 140 Retention mechanism - in course of works adjudicated amounts (BCISPA 1999) paid - principal disputed adjudicator's determinations - claimed to recover the adjudicated amounts - decision that partial release not just and equitable because of outstanding dispute over adjudicated amounts - whether retention for a purpose not within contractual purposes of holding security - contractual mechanisms could result in contractor having to pay to principal amounts of the adjudicated amounts - was within purpose of securing satisfaction of contractor's obligations - no inconsistency with BCISPA. | Giles JA; Tobia JA; McColl J.A. | 2007.06.18 | Court of Appeal. Supreme Court New South Wales |

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| Good faith | John Holland P/L v Roads & Traffic Authority of New South Wales [2007] NSWCA 19 Progress payments - Claim under Building and Construction Security of Payment Act 1999 - Adjudication - Whether submissions of respondent "duly made" - Whether adjudicator was required to consider them - Whether determination of adjudicator invalid because of failure to comply with s.22 of the Act, lack of good faith or denial of natural justice. | Beazley JA; Hodgson JA; Basten JA. | 2007.02.26 | Court of Appeal. Supreme Court New South Wales |
| Withholding limited to reasons in payment schedule | John Holland Pty Ltd v Cardno MBK (NSW) Pty Ltd [2004] NSWSC 258 Challenge to determination of adjudicator under the BCISPA Act 1999 : scheme dictates that the adjudication response cannot include any reasons for withholding payment unless included in the payment schedule - S20(2B): Adjudicator does not have the power to consider materials supplied by a claimant in its adjudication application which go outside the materials provided in the payment claim. | Einstein J | 2004.04.20 | Supreme Court of New South Wales |
| Security – retention pending full & final payment | John Holland v RTA No1 [2006] NSWSC 874 Practical completion achieved - contract provides for partial release of security at principal's discretion - whether principal entitled to retain all security until amount owing in final payment schedule paid - principals duty to act in good faith or reasonably - whether compliance - relationship between superintendent's assessment of final claims at expiration of defects liability period & s34 BCISPA 1999. | McDougall J | 2006.09.05 | Equity Division. Supreme Court of New South Wales |
| Error on face of record | Joseph Musico v Philip Davenport [2003] No. 30067 of 2003 Contrax. Whether adjudicator in making that adjudication erred in law on the face of the record or, otherwise, so acted as to give rise to quasi-prerogative relief. | Greg James J. | 2003.08.07 | Common Law Div. Supreme Court of New South Wales |
| Progress payment : requirements : Damages | Kane Constructions P/L v Sopov [2005] VSC 237 Progress certificates - Claims for payment - Evidence in support of claims -- Whether material condition precedent to issue of a payment certificate - Validity of late progress claims & certificates - Assessment procedures -- Estoppel - Delay - EOT- Liquidated damages - superintendent's role- Undue influence - Suspension of works - retention moneys - Substantial breach -- Repudiation - Termination -- Quantum meruit : DBCA 1995 : TPA 1974. | Warren CJ | 2005.06.30 | Melbourne. Supreme Court of Victoria. |
| Insolvency : winding up | Karimbla Construction v Alliance Group Building [2003] NSWSC 617 Corporations - winding up - statutory demand - application to set aside - genuine dispute based on BCISPA shown - allegation of such dispute not shown in any way by s.459G(3) affidavit - offsetting claim also alleged - widely differing amounts attached by serving party to claims for unliquidated damages - whether precise amount necessary when all asserted figures greatly exceed debt claimed by statutory demand. | Barrett J | 2003.07.09 | Supreme Court of New South Wales |
| Enforcement - unconscionable | Katherine Pty Limited v The CCD Group Pty Ltd [2008] NSWSC 131. BCISPA 1999 – adjudication determination – judgment founded on adjudication certificate – restraint of enforcement of determination or judgment where unconscionability – Trade Practices Act 1974 (Cth), s51AA and s51AC | McDougall J | 2008.02.18 | Equity Division. Supreme Court of New South Wales |
| HBA & BCISPA judgment relationship | Kell & Rigby P/L v Flurrie P/L [2006] NSWSC 906 Land under Torrens Title – Residential Building Contracts – when can residential building contract create caveatable interest - HBA 1989, whether s 7D(3)(c) defines terms of permissible charge or event precedent to enforceability – whether judgments BCISPA registered judgment certificates are judgments within s 7D(3)(c) – interest by estoppel. Brereton J. | Brereton J | 2006.09.22 | Equity Division. Supreme Court of New South Wales |
| Notice requirements s17(2) | Kell & Rigby P/L v Guardian International Properties P/L [2007] NSWSC 554 BCISPA : consequence of failure to provide a notice under s 17(2) of the Act before filing adjudication application - whether filing adjudication application without providing notice under s 17(2) of the Act amounts to an election under s 15(2)(a)(ii) of the Act - whether the plaintiff is precluded from bringing proceedings. | Bergin J | 2007.05.30 | Equity Division. T&C : Supreme Court of New South Wales |

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| Certiorari : jurisdictional error | Kembla Coal & Coke v Select Civil [2004] NSWSC 628 BCISPA 1999 - whether adjudication determination should be quashed - jurisdictional error - jurisdictional fact - whether adjudicator in jurisdictional error by determining amount due where no reference date to which payment claim related - whether defects liability period commenced "on" date of practical completion or "from" date of practical completion. etc. | McDougall J | 2004.07.23 | Supreme Court of New South Wales |
| Slip rule | Kevin Lucas & KDL Building P/L v Robert Montgomery [2008] NSWDC 207 Slip rule - Can joint judgment against two defendants be corrected to separate judgments against each? - Stay pending appeal - Capacity of defendant to pay. | Cogswell J | 2008.07.15 | District Court of New South Wales |
| Lump sum or hourly job / day rates | Kidnie v Wolfies Plumbing Services P/L [2007] NSWCTTT 205 Adjudication or tribunal. Attempt to recover monies paid out in compliance with adjudication decision. Held : In absence of written contract burden of proof fell on home owner to prove existence of a lump sum contract - evidence pointed to day rates. Adjudication decision intact – application failed. | J Bordon : Senior Member: | 2007.04.04 | Consumer, Trader and Tenancy Tribunal. New South Wales |
| Good faith : failure to consider submissions | Lanskey v Noxequin [2005] NSWSC 963 Determination under the BCISPA 1999. Failure of Adjudicator to consider submissions of plaintiff. Adjudication determining part of the matter on a basis not presented by the parties for determination. Adjudicator's failure to engage in a bona fide exercise of power and to accord the parties natural justice. Determination declared void. | Macready Associate Justice | 2005.11.03 | Supreme Court of New South Wales |
| Summary judgement : other proceedings | Leighton Contractors Pty Ltd v Campbelltown Catholic Club Ltd [2003] NSWSC 1103 BCISPA 1999 (NSW) : Consideration of interrelationship of sundry provisions & analysis of principal's claimed entitlement to commence separate proceedings and/or to avoid summary judgment by invoking discretionary considerations. | Einstein J | 2003.12.03 | Supreme Court of New South Wales |
| Post claim adjudication | Lifese P/L v Adelaide Brighton Cement Limited [2008] NSWDC 38 Contracts - Building Contract - Builder's claim for unpaid money - Effect of subsequent adjudication. | Goldring DCJ | 2008.02.13 | District Court New South Wales |
| Injunction : alleged invalidity | Lifestyle Retirement Projects No 2 P/L v Parisi Homes P/L [2005] NSWSC 411 Plaintiff alleges facts which, if proved, would result in invalidity of adjudication under BCISPA 1999 - Plaintiff seeks interlocutory injunction restraining any further step in adjudication process until final hearing of question of validity. | Palmer J | 2005.04.22 | Supreme Court of New South Wales |
| Insolvency : winding up | Lifestyle Retirement Projects No 2 v Parisi Homes [2005] NSWSC 705 Winding up - whether bona fide dispute exists as to existence of debt - appropriateness of deciding legal question on which the alleged dispute depends - remuneration - payment claim under BCISPA 1999 - whether service of Payment Claim within 12 months after construction work was last carried out is a "basic and essential requirement" to validity of an adjudication determination. | Campbell J | 2005.07.11 | Supreme Court of New South Wales |
| Summary judgment : payment schedule late | Lucas Stuart P/L v Council of the City of Sydney [2005] NSWSC 840 BCISPA 1999 - Purpose of the Act - Plaintiff builder and defendant local government council - Builder serves payment claim on council - Council fails to serve a payment schedule on builder within specified time - Builder seeks summary judgment - Council claims payment claim served in context of misleading and deceptive conduct - Council claims builder estopped from relying on payment claim - No arguable case - Summary judgment awarded. | Einstein J | 2005.08.23 | Supreme Court of New South Wales |
| Stay : appeal | Lucas Stuart P/L v Council of the City of Sydney [2005] NSWSC 925 Practice & procedure – Stay of execution - Whether judge at first instance should exercise power to grant stay when Court of Appeal has refused stay upon terms. | Palmer J | 2005.09.13 | Supreme Court of New South Wales |

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| Jurisdiction : Adjudicator or tribunal | Lucindole P/L v Homer & Jim's Painting Service [2006] NSWCTTT 544 Recovery of moneys by contractor against sub-contractor for incomplete and defective work. Adjudication claim commenced; cross action to tribunal. Jurisdiction. | LeCompte. Member. | 2006.09.29 | Consumer Trader & Tenancy Tribunal. |
| Appeal : leave : costs | M & L Watson Pty Ltd t/as BBR Designs v Rilsung Pty Ltd [2003] NSWCA 36 Leave to appeal - 1st instance discretionary costs judgment - trial judge did not follow ordinary rule that costs follow the event - whether novelty of BCSPA a relevant factor in exercising discretion to not make a costs order - no matter of principle involved in appeal- quantum of damages not yet ascertained but clearly significantly below the statutory threshold. | Meagher JA; Giles JA; Santow JA | 2003.02.23 | Court of Appeal, Supreme Court, New South Wales |
| Payment schedule | Majeed v Mahmud & 4 Ors [2007] NSWSC 1413 . Security of Payment – where no payment schedule – disallowance of amounts apparently not in respect of construction work or related services | Brereton J | 2007.12.13 | Equity Division. Supreme Court of New South Wales |
| Set aside | Majeed v Mahmud [2008] NSWSC 309 Procedure – judgments and orders – setting aside – where judgment given in absence of party. | Brereton J | 2008.01.30 | Equity Division. Supreme Court of New South Wales |
| Injunction : rescission : sale of unregistered property | Masterton Homes P/L v Executive Builders & Developers P/L [2003] NSWSC 908 Vendor & purchaser - sale off the plan - entitlement to rescind where not registered in time available - Purchaser obtained interlocutory injunction to restrain rescission where prima facie case that Vendor in breach of contractual obligation to do whatever is reasonably necessary: 2000 Edition cl.29. | Bryson J | 2003.10.10 | Supreme Court of New South Wales |
| Rectification – evidence - admissibility | Masterton Homes P/L v Palm Assets P/L [2008] NSWSC 274 Contract - Construction and interpretation of contracts - Equity - Rectification - General principles - Requirement of clear and convincing proof of a common intention inconsistent with the words deliberately employed - Evidence - Admissibility of post-contract communications - Admissibility of post-contract admissions - Distinction between evidence admissible upon construction of contract as opposed to rectification - Contract under consideration set out in undertaking given to the Court - Onus of proof. | Einstein J | 2008.04.01 | Equity Division. Supreme Court of New South Wales |
| Summary judgment : set off | Max Cooper v Booth [2003] NSWSC 929 Corporations Law. Application to set aside statutory demand. Demand based upon judgment pursuant to an adjudicator's determination under the BCISPA 1999. Whether a contractual off setting claim can be used to set aside the demand. Estoppel whether adjudicator's decision give rise to res judicata. | Macready Master | 2003.11.04 | Supreme Court of New South Wales |
| Payment schedule : late claim : construction work | McLaughlin's Family Restaurant v Cordukes Ltd [2004] NSWCA 447 Stay of execution of judgment pending an appeal - payment claim under BCISPA 1999 - no payment schedule - judgment obtained in District Court - appeal on ground payment claim served out of time because remedial work was not construction work to which the payment claim related - difficult argument on appeal - no evidence payment of judgment sum would cause, hardship - stay refused. | Giles JA. | 2004.12.20 | Court of Appeal. Supreme Court of New South Wales |
| Set aside : appeal. | MD Webster Constructions P/L v Rhinosteel P/L [2004] NSWSC 106 Appeal of local court registrar's decision - set aside default judgment : appeal dismissed : The plaintiff is to pay the defendant's costs as agreed or assessed. Master : New South Wales Supreme Court : 3rd March 2004. | Harrison Master | 2004.03.03 | Supreme Court of New South Wales |

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| Payment procedure : not complied with | Meyer v Brian Burston Building Design Consultant (General) [2005] NSWCTTT 235 Application of the BCISPA before the Consumer, Trader and Tenancy Tribunal of New South Wales. Held procedure to assert a claim / defence before a court etc not followed. Default non-payment sums not now due by virtue of the Act. | Tearle W J Member | 2005.04.20 | Consumer Trade & Tenancy Tribunal. New South Wales |
| Charge in contract invalid | Michael John Smith t/a Michael Smith Constructions v Avibe P/L : J & S Heddle P/L [2006] NSWSC 1402 Conveyancing - Caveat- Extension- Money owed to builder for work done- Building contract for residential building purported to create charge over property at moment of contract- Act generally avoiding creation of charges- Significance of "hereby charges", "subject to the Act"- Charge not valid- Extension of caveat refused. | Young CJ in Eq | 2006.12.08 | Equity Division. Supreme Court of New South Wales |
| Certiorari : error of law : discretionary relief | Minister for Commerce v Contrax Plumbing [2004] NSWSC 823 BCISPA 1999 (NSW) - whether adjudication determination should be quashed - whether adjudicator erred in law in his construction of s34 of the Act - failed to determine defendant's entitlement in accordance with the terms of the contract - erred in reaching his determination on a basis not advanced by defendant in its payment claim - committed jurisdictional error by not considering the plaintiff's response to matters advanced by defendant for 1st time - whether relief should be withheld on discretionary grounds. | McDougall J : | 2004.09.13 | Supreme Court of New South Wales |
| Error in construction of contract | Minister for Commerce v Contrax Plumbing [2005] NSWCA 142 Progress payments - BCISPA - Adjudicator's determination - Matters for consideration of adjudicator - Alleged error in construction of contract - Alleged error in application of s.34 of the Act - Whether such errors could invalidate determination. | Hodgson JA ; Bryson JA ; Brownie AJA | 2005.05.06 | New South Wales Court of Appeal |
| Late decision | MPM Constructions v Trepcha Constructions [2004] NSWSC 103 BCISPA 1999 - progress payment - adjudication application - adjudication determination made out of time - whether adjudication determination made out of time invalid. | McDougall J | 2004.02.18 | Supreme Court of New South Wales |
| Jurisdiction : judicial review : error of law | Multiplex Constructions Pty Ltd v Luikens [2003] NSWSC 1140 Whether the determination of an adjudicator under the BCISPA 1999 is open to judicial review - whether an adjudication may be reviewed for error of law on the face of the record - the extent of an adjudicator's jurisdiction - what must be disclosed by a payment schedule under the Act - whether there were errors of law going to jurisdiction - whether whole Determination must be quashed - discretionary considerations as to granting of relief - consequences where Determination quashed. | Palmer J | 2003.12.04 | Supreme Court of New South Wales |
| Jurisdiction – wrong question | Multipower v S & H Electrics [2006] NSWSC 757 Whether adjudicator addressed wrong question, failed to consider relevant material or considered irrelevant material - whether adjudication application made outside time as per s 17(3) BCISPA 1999 - whether time limit is "basic & essential" requirement - whether failure vitiates determination - <i>Brodyn v Davenport</i> [2004] NSWCA 394 - COSTS - whether costs follow event. McDougall J. 10th July 2006 | McDougall J | 2006.07.10 | Common Law Division. T&C : Supreme Court of New South Wales |
| Certiorari : grounds : jurisdictional error : Natural justice | Musico v Davenport [2003] NSWSC 977 Whether the determination of an adjudicator under the BCISPA 1999 is open to judicial review and upon what grounds - whether there were errors of law, jurisdictional errors or denial of natural justice - whether discretionary reasons for refusal of relief. | McDougall J | 2003.10.31 | Supreme Court of New South Wales |

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| Progress claim : identification of works | Nepean Engineering P/L v Total Process Services P/L (In Liquidation) [2005] NSWCA 409 Progress payments - BCISPA - Payment claims - Requirement of identification of work - Consequences of deficient identification - Whether payment claim a nullity - Whether, in absence of a payment schedule, a payment claim purporting to identify the work can support a cause of action under s.15 of the Act - Whether summary judgment available. | Hodgson JA ; Santow JA ; Ipp JA | 2005.05.05 | New South Wales Court of Appeal. |
| Fixed price & variable contracts : restitution | Nikolic v Oladaily P/L [2007] NSWCA 252 Construction and Interpretation - implication of terms - inconsistency with express terms - whether contract a "fixed price" or a "do and charge" contract - where variations occurred - whether extent and nature of work known with sufficient precision at time of contracting - contract for building work - Restitution - where valid contract exists - subsidiarity doctrine - no evidence that appellant paid for work done - where work done paid by company associated with appellants. | Mason P ; Campbell JA ; Handley AJA. | 2007.09.21 | Court of Appeal. Supreme Court New South Wales |
| Insolvency : winding up | No 96 Factory Bargains v Kershel Pty Ltd [2003] NSWSC 146 Corporations - winding up - application for order setting aside statutory demand - alleged genuine dispute - alleged offsetting claim for misleading or deceptive conduct. | Barrett J | 2003.03.13 | Supreme Court of New South Wales |
| Jurisdictional error : construction contract – meaning of | Okaroo P/L v Vos Construction and Joinery P/L [2005] NSWSC 45 BCISPA 1999 (NSW) - whether adjudication determination void - whether adjudicator made jurisdictional error in determining existence of a construction contract as defined in s 4 of the Act - whether there was an arrangement which was a construction contract - statutory scheme for entitlement to, liability for, and recovery of, a progress payment regardless of provision of relevant construction contract. | Nicholas J | 2005.02.11 | Supreme Court of New South Wales |
| Set aside judgment | Ontrac v BHCF (No 2) [2008] NSWDC 132 Security of payment - judgment set aside - costs - refund of monies paid under judgment. 11th June 2008 | Sidis DCJ. | 2008.06.11 | District Court New South Wales |
| Payment claim – validity - service | Ontrac v BHCF [2008] NSWDC 76 Security of payment - content of valid payment claim - service of payment claim. | Sidis DCJ. | 2008.05.16 | District Court New South Wales |
| Financiers – impact of adjudication decision | Over Fifty Mutual Friendly Society Ltd v Smithies [2007] NSWSC 291 BCISPA 1999 Act inappropriate to construction contracts [as defined] forming part of a loan agreement with a recognised financial institution, claim for interlocutory relief, whether statutory scheme can be outflanked by application for declaratory relief, challenge to adjudication determinations under the Act. No serious case shown to justify engaging of balance of convenience parameter. | Einstein J | 2007.04.03 | Equity Division. T&C : Supreme Court of New South Wales |
| Set aside statutory demand – some other reason | Ozy Homewares v Wesgordon [2007] NSWSC 982. Application under s 459G of the Corporations Act 2001 (Cth) to set aside statutory demand – Demand relates to summary judgment obtained in Local Court pursuant to s 15 BCISPA 1999 (NSW) which precluded applicant from bringing cross-claim or raising defence to claim – Applicant has appealed judgment and disputes debt – Whether debt is res judicata precluding genuine dispute as to existence of debt where applicant prevented from putting cross-claim or defence and s 32 of the Act allows for restitution following judgment – Whether “some other reason why the demand should be set aside” under s 459J(1)(b) of the Corporations Act given the circumstances – Whether money should be paid into Court under s 459M of the Corporations Act as pre-condition to setting aside demand – Statutory demand set aside without imposition of condition that money be paid into Court : Decision: Statutory demand set aside | Hammerschlag J | 2007.08.13 | Equity Division. Supreme Court of New South Wales |

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| Adjudication : basic & essential requirements | Pacific General Securities Ltd v Soliman & Sons P/L [2005] NSWSC 378 BCISPA 1999 - Where injunction sought to restrain enforcement of adjudication determination - Whether failure to comply with basic and essential requirement of the Act - Whether denial of natural justice - Whether notice of acceptance of application served on plaintiffs - No question of principle. | McDougall J | 2005.04.14 | Supreme Court of New South Wales |
| Progress claim : time limits for submission | Pacific General Securities Ltd v Soliman & Sons Pty Ltd [2006] NSWSC 13 Adjudication – Determinations – Judicial review – minimum requirements for validity – whether 12-month limit for serving a claim is a basic and essential requirement non-compliance with which results in invalidity – held it is not : whether adjudicator failed to have regard to relevant submissions - held adjudicator rightly did not have regard to submissions. | Brereton J | 2006.01.31 | Supreme Court of New South Wales |
| Set aside application : insolvency | Pacific Islands Express P/Lv Empire Building Development P/L[2008] NSWSC 576 Corporation - winding up in insolvency - statutory demand - requirement for an affidavit supporting an application to set aside a demand - failure to satisfy "Graywinter principle" - whether court may extend period for compliance with demand. BCISPA 1999 (NSW), ss 23, 24, 25, 32. | Austin J. | 2008.06.12 | Equity Division. Supreme Court of New South Wales |
| Jurisdiction | Parist Holdings Pty Ltd v WT Partnership Australia Pty Ltd [2003] NSWSC 365 Adjudication. Whether Adjudicator acted ultra vires in adjudication and determination - whether Adjudicator's determination a nullity - whether payment claim is foundation of jurisdiction of Adjudicator - whether serious issues to be tried - whether Defendant entitled to declarations and summary judgment : HELD: Defendant entitled to recover adjudicated amount from Plaintiff as debt due to it and to summary judgment. | Nicholas J | 2003.05.05 | Supreme Court of New South Wales |
| Jurisdiction : injunction against enforcement | Pasquale Lucchitti t/a Palluc Enterprises v Tolco P/L [2003] NSWSC 1070 Injunctions - Whether the First Defendant should be restrained from taking any steps in relation to an adjudication determined by the Second Defendant in respect of a dispute between itself and the Plaintiffs - Whether adjudicator exceeded his jurisdiction in determining the dispute under the BCISPA Act 1999 (NSW). | Bergin J | 2003.11.07 | Supreme Court of New South Wales |
| Adjudication appointment : validity | Paynter Dixon Construction P/L v JF & CG Tilston P/L [2003] 003516/03 Contrax Plaintiff would rather have pursued the application for the declarations sought under the summons that the appointment of the 2nd defendant as adjudicator was invalid or null and void, and a declaration that the application made by the first defendant in relation to the adjudication was also null and void. The plaintiff seeks a permanent restraint on the first and second defendants. | Bergin J. | 2003.07.02 | Equity Div. Supreme Court of New South Wales |
| Jurisdiction : injunctions against adjudication | Paynter Dixon Constructions P/L v JF & CG Tilston P/L [2003] NSWSC 869 Statutory adjudication : progress payments - Application for injunction permanently restraining an adjudication - validity of adjudicator's appointment - Whether adjudicator has jurisdiction : claim conceded to be appropriately made under s13 BCISPA, but also included a contentious claim for damages or loss of profits for alleged wrongful repudiation of a contract. | Bergin J | 2003.09.25 | Supreme Court of New South Wales |
| Jurisdiction : deceptive conduct | Paynter Dixon v Tilston [2004] NSWSC 85 Administrative Law - decision of adjudicator appointed under the BCISPA 1999 (NSW) - order in the nature of certiorari sought - held no jurisdictional error on part of adjudicator. - Trade Practices - misleading or deceptive conduct - whether attachment to payment claim constituted misleading or deceptive conduct - held no misleading or deceptive conduct. | Macready. Master | 2004.02.26 | Equity Div. Supreme Court of New South Wales |

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| Power to extend time post termination | Peninsula Balmain P/L v Abigroup Contractors P/L [2002] NSWCA 211 Australian Standard General Conditions of Contract AS2124-1992 - Position of superintendent - Whether agent of principal - Whether power to extend time continues after termination of contract - Whether builder's entitlement to payment for variation depended on compliance with clause 40.2 : Misleading conduct - Must be apt to mislead in some non-trivial respect - Non-disclosure by principal of agreement with superintendent. | Mason P ; Stein JA ; Hodgson JA | 2002.07.03 | Court of Appeal, New South Wales |
| Terms : general conditions – express terms | Peninsula Balmain P/L v Abigroup Contractors P/L [2002] NSWCA 270 Contracts – Building, engineering and related contracts - Agreement that terms of General Conditions prevail over terms of Tender - Whether provision for "reasonable rates and prices" in General Conditions displaces quantification in Tender. | Mason P ; Stein JA ; Hodgson JA | 2002.08.19 | Court of Appeal : New South Wales |
| Payment schedule adequate reasons | Perform (NSW) P/L v Mev-Aus P/L t/a Novatec Construction Systems [2008] NSWSC 858 BCISPA 1999 - Whether s14(3) of the Act permits incorporation by reference into a payment schedule - Whether respondent's payment schedule indicated, within the meaning of s14(4) of the Act as reasons for withholding payment, the reasons contained in an anterior payment schedule - Whether the Adjudicator made an error of a character that was within his jurisdiction - Whether the Adjudicator's findings constitute a failure by the Adjudicator to comply with the requirements contained in s.22(2)(d) of the Act - Whether Adjudicator denied natural justice - Whether the Adjudicator failed in good faith to exercise the power to make an adjudication. | Einstein J. | 2008.08.19 | Equity Division. Supreme Court of New South Wales |
| Construction contract - meaning | Peter's of Kensington v Seersucker P/L [2008] NSWSC 897 Whether contract for provision of architectural services was a construction contract – whether payment claim complied with requirements of s13(2) BCISPA 1999 – whether adjudicator's decision on sufficiency of information in payment claim is open to review. | McDougall J | 2008.08.19 | Equity Division. Supreme Court of New South Wales |
| Calculation method of adjudicator differed to contract | Plaza West P/L v Simon's Earthworks (NSW) P/L [2008] NSWSC 753 BCISPA s9(a) - Requirement that progress payment be calculated in accordance with the terms of the contract - adjudicator determines amount to be calculated by reference to a provision which is a mechanics provision rather than according to criteria set by contract - approach to calculation a matter for adjudicator - adjudication determination not invalid even if adjudicator makes error of law provided he makes bona fide attempt to exercise the power conferred by the Act - no denial of natural justice by adjudicator in not dealing with further submissions of respondent where to do so is unnecessary by reason of acceptance of claimant's primary submission - adjudication valid - claimant obtains judgment in District Court based on adjudication - respondent seeks repayment of part alleged to be liability of claimant to sub-contractor where respondent alleges it paid sub-contractor directly - failure to establish fact of payment - properly matter for cross claim under s 32(3)(b) of the Act - or matter for District Court with respect to its own judgment. | Hammerschlag J. | 2008.07.15 | Equity Division. Supreme Court of New South Wales |
| Review : procedure | Plaza West P/L v Simon's Earthworks (NSW) P/L [2008] NSWCA 279 Payment claim – BCISPA 1999 ss 9, 13, 14, 17, 22, 32 - Adjudication – whether error of fact or law sufficient to vitiate adjudication – whether adjudicator fulfilled statutory task – whether denial of procedural fairness - Restitution – whether discharge of debt owed to third party. | Allsop P; Giles JA ; Hodgson JA. | 2008.10.31 | Court of Appeal Supreme Court of New South Wales |

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| Domestic : Construction contract – meaning of – oral contract | Plus 55 Village Management P/L v Parisi Homes P/L [2005] NSWSC 559 Application under s459G Corporations Act to set aside a statutory demand - Oral agreement for building - Adjudication in favour of the defendant filed as a D.Ct. judgment - Consumer Claims Tribunal declined to hear application due to lack of jurisdiction - Dispute as to basis for payment - Dispute as to whether work is a "dwelling" under H.B.Reggs - HBA ss 10, 91(1)(a), 92, 94 - BCISPA ss 32(2), (3) - CA s459G, s459H(1)(b) - Held : genuine dispute as to liability - Statutory demand set aside. | White J | 2005.06.02 | Supreme Court of New South Wales |
| Jurisdiction : Double Jeopardy | Precision Flooring P/L v Tricon Projects P/L (Home Building) [2005] NSWCTTT 250 Claim an action related to the <i>Ziade v Tricon [2004] NSWSC 1070</i> adjudication action : Was this the same issue - did this action amount to double jeopardy. Held : No - separate dispute : Jurisdiction to hear the dispute. Set down for 1 hour hearing. | Tearle W J. Member | 2005.04.02 | Consumer Trade & Tenancy Tribunal. New South Wales |
| Progress claim for variations | Probuild Pty Ltd v Blazevic Holdings Pty Ltd [2006] NSWSC 273 Progress payment claim for variations - no express provision with respect to reference date - no payment schedule - dispute as to month in which the construction work was first carried out - no error in point of law | Malpass Associate Justice | 2006.04.20 | Supreme Court of New South Wales |
| Security of Costs - appeal | Procorp Civil P/L v Napoli Excavations & Contracting P/L (No.2) [2006] NSWCA 147 Practice - appeal- Security for costs - Whether corporation challenging adjudication determination under Building & Construction Industry Security of Payment Act 1999 is in substance a plaintiff - Whether special circumstances need to be shown - Whether special circumstances shown. | Hodgson JA. | 2006.06.13 | Court of Appeal. Supreme Court of New South Wales |
| Security : payment in | Procorp Civil P/L v Napoli Excavations and Contracting P/L [2006] NSWSC 358 Practice and Procedure - BCISPA 1999 (NSW) - Moneys paid into Court as security - Interlocutory position pending appeal. | Einstein J. | 2006.04.21 | Equity Div. Supreme Court of New South Wales |
| Stay pending appeal | Procorp Civil P/L. v. Napoli Excavations & Contracting P/L [2006] NSWCA 118 Practice - appeal - Whether stay should be granted on late application and on incomplete material. | Hodgson JA. | 2006.05.09 | Court of Appeal. Supreme Court of New South Wales |
| Payment schedule : novel items | Procorp Civil Pty Ltd v Napoli Excavations & Contracting Pty Ltd [2006] NSWSC 205 Challenge to Adjudication Determination - Task of Adjudicator to determine the claimant's entitlement within the framework of the dispute propounded by the parties - Significance of provision preventing a respondent from including in the adjudication response, any reasons for withholding payment unless those reasons have already been included in payment schedule - Slip rule power of District Court. | Einstein J | 2006.03.29 | Supreme Court of New South Wales |
| Non-Disclosure | Project Architecture P/L v Peter's of Kensington P/L [2008] NSWDC 24 Claim under BCISPA 1999 - Application for Summary Judgment - Relevant principles - Whether triable issue of fact or law had been disclosed - Whether party raising triable issue of fact required to cross-examine opposing party. | Rolfe DCJ | 2008.03.05 | District Court New South Wales |
| Progress claim : time for service | Property & Equity Developments v Parnell [2004] NSWSC 1035 BCISPA 1999 - when payment claim may be served - time when "the construction work to which the claim relates was last carried out", within meaning of s13(4)(b). | Campbell J | 2004.11.12 | Supreme Court of New South Wales |
| Security : continuing proceedings | Prynew P/L v Piling Contractors (Qld) P/L [2005] NSWSC 1211 Adjudication determination under BCISPA 1999 (NSW) - security for payment - continuation of legal proceedings : Interpretation : - general rules of construction of instruments.: Supreme Court of New South Wales. 25th November 2005 | Lloyd AJ | 2005.11.25 | Supreme Court of New South Wales |

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| Court appointed referee's report | QBE Insurance (Australia) Ltd v Quasar Constructions (NSW) P/L [2007] NSWDC 162 Building and Construction - report of Referee - errors alleged in report, some conceded, others disputed - disputed findings open to Referee on the evidence - not demonstrated that Referee misapprehended the evidence, or made perverse findings - reasons of Referee adequate - Practice & Procedure - Court appointed Referee - procedure on delivery of report to Court - whether Referee's report should be adopted, rejected or varied. | Johnstone DCJ | 2007.06.08 | District Court. New South Wales |
| Insolvency – winding up | QBE Workers Compensation (NSW) Ltd v G J Formwork Pty Ltd [2006] NSWSC 98 Corporations - winding up - proposed compromise by liquidator - whether relevant claim "debt" - no need to determine precise nature of claim - compromise proposed on advice of lawyers - liquidator in any event without funds - approval granted and direction made. | Barrett J. | 2006.02.27 | Equity Div. Supreme Court of New South Wales |
| Good faith : consideration of relevant issues | Quasar Constructions v A J Stockman Pty Ltd [2004] NSWSC 117 Judicial review of determination of adjudicator under BCISPA - whether jurisdictional error of law - requirement that adjudicator have regard to contract price in assessing value of work - whether adjudicator exercised judgment. | Barrett J | 2004.03.04 | Supreme Court of New South Wales |
| Progress claim : termination : incomplete works | Quasar Constructions v Demtech P/L [2004] NSWSC 116 Judicial review of determination of adjudicator under BCISPA - whether jurisdictional error of law - unpaid balance of lump sum price awarded as progress payment where contract terminated and part of contracted work incomplete. | Barrett J | 2004.03.04 | Supreme Court of New South Wales |
| Post decision challenge to certificate | Rail Infrastructure Corporation v Veghelyi [2004] NSWSC 427 BCISPA 1999 - whether effect of s25(4)(a)(iii) is that once a judgment has been obtained, that judgment cannot be attacked on the basis of jurisdictional error in the certificate which led to the entry of the judgment. | Campbell J | 2004.05.11 | Supreme Court of New South Wales |
| Priority of enforcement judgement | Reed Constructions Australia Ltd v DM Fabrications Pty Ltd [2007] NSWSC 1190. Voluntary administration - deed of company arrangement - where deed refers to obviously incorrect date - whether correct date may be substituted as a matter of construction - statutory force and effect of deed indicate rectification by order under s.447A - CORPORATIONS - deed of company arrangement - substantive application for order terminating or avoiding deed - application for interlocutory injunction restraining enforcement of judgment against subject company - where company had judgment created by BCISPA - where judgment debtor asserted greater claim provable under deed of company arrangement - operation of s.553C | Barrett J | 2007.10.23 | Equity Division. Supreme Court of New South Wales |
| Good faith : failure to consider payment schedule | Reiby Street Apartments v Winterton Constructions [2006] NSWSC 375 2nd defendant (adjudicator) made adjudication determination pursuant to the BCISPA 1999 (NSW) –Whether adjudicator :- failed to consider plaintiff's payment schedule & adjudication response – & if so erred : committed jurisdictional error, failed to act bona fide, or failed to afford plaintiff natural justice – Whether adjudication determination void – S20(2B) & 22(2) BCISPA 1999 (NSW) considered – Brodyn considered. | White J | 2006.05.05 | Supreme Court of New South Wales |
| Adjudicator nomination : challenge : apprehended bias | Reiby Street v Winterton [2005] NSWSC 545 Adjudication determination - progress payment pursuant to the BCISPA 1999 – party requested a review of the Master Building Association's nomination of adjudicator on the basis of apprehended bias because of a previous "dispute" – whether there was apprehended bias – whether party is estopped from seeking an order of certiorari having made an election by continuing. Held : apprehended bias and that determination was void. | Macready Master | 2005.06.16 | Supreme Court of New South Wales |

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| Winding up | Remo Constructions P/L v Dualcorp P/L [2008] NSWSC 1172 Winding up - statutory demand - two demands by same alleged creditor - applications for orders setting aside demands - originating process contains claim for order in respect of one demand and claim for order in respect of other demand - single alleged offsetting claim advanced as ground for both orders - whether procedure regular. | Barrett J | 2008.11.06 | Equity Division Supreme Court of New South Wales |
| Construction contract – residence exception | Richard Shorten v David Hurst Constructions P/L [2008] NSWCA 134 Contract for construction of residential units, one of which was intended to be the developer’s residence – whether contract excluded under s 7(2)(b) from the operation of BCISPA 1999 (NSW) – Statutory interpretation – use of extrinsic material - Interpretation Act 1987 (NSW) ss 33, 34. Held : only that unit but not the rest. | Hodgson JA; Basten JA; Bell JA. | 2008.06.18 | Court of Appeal. Supreme Court New South Wales |
| Costs on indemnity basis | Richard Shorten v David Hurst Constructions P/L [2008] NSWSC 609 Practice and procedure - Principles - Claim for costs on indemnity basis - Calderbank letter containing no element of compromise - Principles. Claim for indemnity costs refused. First defendant ordered to pay plaintiffs costs as agreed or assessed. | Einstein J | 2008.06.17 | Equity Division. Supreme Court of New South Wales |
| Defective notice | Richard Shorten v David Hurst Constructions P/L; David Hurst Constructions v R.W. Shorten [2008] NSWSC 546 BCISPA 1999 - Natural justice - Whether denial of natural justice could not possibly have made a difference to the outcome - Materiality - Nullus commodum capere potest de injuria sua propria principle – no one can benefit from their own wrong. Plaintiff entitled to relief setting aside material adjudications determinations because of discrepancies in the notice of adjudication – viz several pages missing. | Einstein J. | 2008.06.05 | Equity Division. Supreme Court of New South Wales |
| Estoppel : interlocutory decision | Rojo Building P/L v Jillcris P/L [2007] NSWCA 68 Interlocutory decisions - Whether such as to give rise to estoppels - No order for determination of separate question - No order showing that separate question had been finally determined.. | Mason P; Hodgson JA; Ipp JA | 2007.03.23 | Court of Appeal. Supreme Court New South Wales |
| Election : if so – whether a right to withdraw | Rojo Building P/Lv Jillcris P/L [2007] NSWSC 880 Security of payment - Authority of solicitor to sign payment claim on behalf of claimant - Progress payments - Payment claim served on defendant - Failure of defendant to provide payment schedule within time limited by the Act - Plaintiff serves notice of intention to make adjudication application - Whether plaintiff thereby made any election - Whether open to plaintiff to withdraw any election made. | McDougall J. | 2007.07.12 | Equity Division. T&C : Supreme Court of New South Wales |
| Summary enforcement : payment schedule late | Rojo Building Pty Ltd v Jillcris Pty Ltd [2006] NSWSC 309 BCISPA 1999 - Application for summary judgment - Failure of respondent to serve payment schedule within time delimited by s14 - Applicant given election to proceed to obtain judgment or to proceed to adjudication - Having elected to proceed to adjudication, claimant has waived anterior right to obtain judgment - Application to reopen - Principles. | Einstein J | 2006.04.18 | Supreme Court of New South Wales |
| Estoppel | Rojo Building v Jillcris [2006] NSWSC 649 Where Court on hearing (including of application for summary judgment) found pleaded cause of action unsustainable, gave reasons and made orders - where plaintiff has not sought to amend summons to allege alternative cause of action - whether parties estopped from contending to the contrary of orders made - whether matter should be reopened pursuant to UCPR 36.16(1) or inherent power of Court. | McDougall J. | 2006.06.22 | Equity Division. T&C List : Supreme Court of New South Wales |

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| Adjudication : fundamental requirements | Rothnere v Quasar [2004] NSWSC 1151 BCISPA 1999 - whether adjudication determination void - s 22(4) - whether s 22(4) applicable - whether compliance with s 22(4) a fundamental requirement of Act - meaning of "valuation" of construction work in s 22(4) - application of Brodyn v Davenport [2004] NSWCA 394. | McDougall J | 2004.11.26 | Supreme Court of New South Wales |
| Service of Claim - fax | Royal Tiles Constructions P/L v Park View Constructions P/L [2006] NSWDC 182 BCISPA 1999 - Service of a Payment Claim by fax - Whether fax number was at the ordinary place of business - Practice and Procedure - Summary judgment - No genuine dispute raised by Defence. | Johnstone DCJ. | 2006.12.07 | District Court. New South Wales |
| Stay of payment out | RTA v John Holland [2006] NSWSC 567 BCISPA 1999 – Adjudication – Submissions made 1st time in Adjudication Response rejected s22(2)(d) – Whether failure rendered decision void – Whether submissions as to jurisdiction of Adjudicator under the Act must be considered pursuant to s22(2)(a) and (b) – Whether failure to consider submission vitiating error as per <i>Brodyn v Davenport (2004) 61 NSWLR 421</i> . - Jurisdiction of Adjudicator to hear payment EOT claim displacing superintendent – discretionary grounds for relief.. | Macready Associate Justice | 2006.07.03 | Equity Division. T&C : Supreme Court of New South Wales |
| Statutory demand – Service of documents | Scope Data Systems Pty Ltd v David Goman as Rep of the Partnership BDO Nelson Parkhill [2007] NSWSC 278 Application to set aside or vary statutory demand on grounds of offsetting claim by post – Whether application to set aside made within 21 days of service of statutory demand – Service of statutory demand under s 109X Corporations Act – Where mail addressed to registered office diverted to post office box - Where evidence rebuts presumption in s 29 of (CTH) Acts Interpretation Act that statutory demand served in the ordinary course of post – Applicability of s160 Evidence Act – S160 Evidence Act not displaced by s 109X Corporations Act and s 29 of the Acts Interpretation Act – No presumption that statutory demand received in post office box on fourth working day after posting where that was not the specified address – Whether receipt in post office box effective as service at registered office – Whether possible to rebut presumption of delivery in ordinary course of post if mail diverted to post office box - Held demand not served until taken to registered office after being collected from box – Plaintiff’s application to set aside statutory demand filed and served within time prescribed by s 459G Corporations Act – Offsetting claim genuine. | White J | 2007.04.18 | Equity Division. Corporations List : Supreme Court of New South Wales |
| Insolvency : winding up | Scope Data Systems v BDO Nelson Parkhill [2003] NSWSC 137 Corporation - Winding up - application for order setting aside statutory demand - judgment debt - steps taken to appeal - whether statutory stay of execution, if in force, gives rise to genuine dispute as to existence of debt - whether appeal of itself gives rise to genuine dispute - whether statutory stay of execution represents some other reason why demand should be set aside. | Barrett J | 2003.03.13 | Supreme Court of New South Wales |
| Adjudication : basic & essential requirements | Shell Refining (Australia) Pty Ltd v A J Mayr Engineering Pty Ltd [2006] NSWSC 94 Whether a determination should be declared void because the adjudicator failed to comply with basic and essential requirements of the BISPA 1999 (NSW): Whether adjudicators should include statements in determinations to the effect that it is not to be assumed that matters not mentioned in the determination have not been taken into account. Whether progress claims for goods and services in Victoria are able to be made under the BISPA in NSW. | Bergin J | 2006.03.06 | Supreme Court of New South Wales |

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| Stay : security : payment into court | Shell Refining (Australia) Pty Ltd v A J Mayr Pty Ltd; Mayr v Shell [2006] NSWSC 154 Application for revocation of orders made for the payment out of \$4,942,716.00 of \$11,228,898.63 paid into court pursuant to s25(4)b) BCISPA 1999 as a condition of the grant of a stay - whether the Court has jurisdiction to order stay on condition of payment out of part of the security paid into court - whether legislation intended to fetter the discretion of a judge where dictates of justice require payment out. | Bergin J | 2006.03.14 | Supreme Court of New South Wales |
| Adjudication : duty to consider material | Shellbridge P/L v Rider Hunt Sydney P/L [2005] NSWSC 1152 Progress payments - BCISPA - duty of adjudicator to consider submissions as incident of measure of natural justice required by the Act - whether duty discharged. | Barrett J | 2005.11.14 | Supreme Court of New South Wales |
| Natural justice – submission not dealt with | Siemens v Tolco : Tolco v Siemens [2007] NSWSC 257 Judicial review. BCISPA 1999 (NSW). Whether determination by an adjudicator was a bona fide exercise of power or a denial of natural justice. Held no consideration of submission and determination set aside. | Macready Associate Judge | 2007.04.04 | Equity Division. T&C : Supreme Court of New South Wales |
| Insolvency : set off against adjudication decision | Silvia & Dasein (in liq) v Brodyn P/L [2007] NSWCA 55 Administration under deed of company arrangement - Proof of debt - Requirement that administrator afford procedural fairness - Extent to which court, on appeal from administrator's decision, limited by particulars of debt given to administrator - Costs - Proceedings in which administrator or liquidator is a defendant - Ordinary rule or practice - Whether grounds existed for departing therefrom.. | Hodgson JA; Ipp JA; Basten JA | 2007.03.27 | Court of Appeal. Supreme Court New South Wales |
| Insolvency : winding up | Solarite v York [2002] NSWSC 411 Corporation - winding up - application to have statutory demand set aside - low thresh-hold applicable in such cases discussed - demand set aside. | Barrett J | 2002.05.14 | Supreme Court of New South Wales |
| Summary enforcement : payment in – payment out | Springs Golf Club P/L v Profile Golf P/L & William Donald Mawney Taylor [2006] NSWSC 395 BCISPA 1999 (NSW) - Requirement that unsuccessful party having paid unpaid portion of adjudicated amount into Court be ready to proceed if opposing payment out - Impermissible use of subpoena/notice to produce for purposes of fishing to establish whether a basis exists to oppose payment out. | Einstein J | 2006.05.05 | Supreme Court of New South Wales |
| Summary enforcement : validity of schedule | Springs Golf Club P/L v Profile Golf P/L [2006] NSWSC 344 Progress payments - BCISPA - Adjudicator's determination re payment schedule - Whether judicial review available - Whether valid adjudication application had been made - Whether valid payment schedule under the Act. | Rein AJ | 2006.04.28 | Supreme Court of New South Wales |
| Summary enforcement : validity of schedule | Springs Golf Club Pty Ltd v Profile Golf Pty Ltd [2006] NSWSC 344 Progress payments - BCISPA - Adjudicator's determination re payment schedule - Whether judicial review available - Whether valid adjudication application had been made - Whether valid payment schedule under the Act. | Rein AJ | 2006.04.28 | Supreme Court of New South Wales |
| Payment claim : time of service | Taylor Projects Group P/L v Brick Dept P/L [2005] NSWSC 439 Claims under BCISPA 1999 (NSW) - Date of service of Payment Claim - Suggested constructive resubmission of Payment Claim - Adjudication held not to have erred - Obiter consideration of whether Determination failed to satisfy one of the essential conditions laid down by the Act. | Einstein J | 2005.05.05 | Supreme Court of New South Wales |

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| Payment in : injunctive relief pending appeal | Taylor Projects Group P/L v Brick Dept. P/L [2005] NSWSC 571 Proceedings by head contractor against subcontractor seeking to impugn a BCISPA 1999 adjudication determination - Agreement that plaintiff would refrain from seeking injunctive relief to prevent determination registration and would pay funds into Court pending final determination – District Court proceedings - Decision of Supreme Court that adjudication determination valid - Plaintiff opposes release to defendant of funds. etc. | Einstein J | 2005.06.17 | Supreme Court of New South Wales |
| Notice period for schedule | Thiess P/L v Lane Cove Tunnel Nominee Co P/L [2008] NSWSC 729 BCISPA s14(4)(b)(i) & (ii) - whether relevant construction contract requires different time for provision of payment schedule from 10 business days otherwise required. | Hammerschlag J. | 2008.07.04 | Equity Division. Supreme Court of New South Wales |
| Good faith : adjudicator | Timwin Construction P/L v Facade Innovations P/ L [2005] NSWSC 548 Good faith - meaning of good faith - whether attempt made in good faith by adjudicator to exercise powers under the Act. | McDougall J | 2005.06.01 | Supreme Court of New South Wales |
| Good faith : failure to consider material or: value works | Tolfab v Tie [2005] NSWSC 326 Whether the decision of an Adjudicator should be set aside for failure to take into consideration material in the Adjudication Response - failure to give proper and adequate reasons - failure to value the work - resulting in a breach of natural justice, or failure by the Adjudicator to bona fide exercise power. | Macready Associate Justice | 2005.07.05 | Supreme Court of New South Wales |
| Declaration : stay : security of costs | Tombleson v Dancorell Constructions P/L [2007] NSWSC 1169 Application to declare determination void - no application to set aside judgment - BCISPA 1999 - Whether proceedings should be stayed under s 25(4) pending payment of security by the plaintiff - whether stay should be ordered otherwise where pleadings appear to circumvent the intention of the legislation. | Bergin J | 2007.10.12 | Equity Division. Supreme Court of New South Wales |
| Unliquidated damages claim : set off | Toorallie Pty Ltd v Stuart Alexander Black [2001] NSWSC 1088 Corporations - application to set aside statutory demand - whether genuine offsetting claim pursuant to s.459H - debt owed to partnership of three persons - claim for un-liquidated damages sought to be offset - allegedly offsetting claim in respect of actions of one of present partners when employee for which all then partners allegedly responsible, including remaining present partners. | Barrett J | 2001.11.28 | Supreme Court of New South Wales |
| Appeal : Security of costs | Touma v Gold Holdings [2002] NSWSC 1027 Security for costs of appeal - threshold requirement of special circumstances - discretionary power. | Malpass, Master | 2002.10.28 | Supreme Court of New South Wales |
| Appeal : Leave | Touma v Gold Holdings [2002] NSWSC 1138 Leave to discontinue appeal - terms of leave - indemnity costs and indemnity by solicitor to pay those costs - s 76C and Pt 52A r 43 provide independent remedies. | Malpass, Master | 2002.10.28 | Supreme Court of New South Wales |
| Adjudication notice : service date : admissibility in absence of disclosure | TQM v Dasein [2004] NSWSC 1216 BCISPA 1999 - whether adjudication determination void - where dispute as to date adjudication application served and received - natural justice - whether plaintiff denied natural justice in adjudicator taking into account material withheld from plaintiff - whether relief should be denied as matter of discretion when adjudicator considers payment schedule - whether adjudicator thereby taken to have considered whole of party's case. | McDougall J | 2004.12.03 | Supreme Court of New South Wales |

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| Certiorari : jurisdiction to act as a certifier | Transgrid v Siemens [2004] NSWSC 87 Whether the determination of an adjudicator under the BCISPA 1999 (NSW) is open to judicial review - Order of certiorari sought - discretionary considerations as to the granting of relief - relief refused. Construction contract - progress claims issued pursuant to the BCISPA 1999 (NSW) - Discussion as to whether an adjudicator can exercise the powers of a certifier under the construction contract. | Macready Master | 2004.02.25 | Supreme Court of New South Wales |
| Progress payment – error in calculation | Transgrid v Siemens Ltd. [2004] NSWCA 395 Progress payments - BCISPA - Progress claim - Adjudicator's determination - Grounds for judicial intervention - Calculation of progress payment - Meaning of "amount calculated in accordance with the terms of the contract" where contract provides for certification by superintendent - Discretion. | Mason P : Giles JA : Hodgson JA. | 2004.11.03 | Court of Appeal. Supreme Court of New South Wales |
| Jurisdictional error of law : judicial review | Transgrid v Walter Construction Group [2004] NSWSC 21 Construction contracts - determination of adjudicator under BCISPA 1999 - whether jurisdiction to review - whether jurisdictional error of law - whether Superintendent's certification binding on adjudicator - whether denial of natural justice. | McDougall J | 2004.02.06 | Supreme Court of New South Wales |
| Due process – whether issue put to adjudicator | Trysams P/L v Club Constructions (NSW) P/L [2008] NSWSC 399 BCISPA 1999 – adjudication determination – adjudicator’s consideration of an issue not raised by parties – parties denied opportunity to put submissions on issue – whether issue material to determination – whether denial of natural justice – adjudicator’s failure to consider relevant contractual provisions – power of Court to order adjudicator to reconsider adjudication application. | McDougall J | 2008.05.06 | Equity Division. Supreme Court of New South Wales |
| Costs of declaration of invalidity of adjudication | Trysams Pty Ltd v Club Constructions (NSW) Pty Ltd [2007] NSWSC 1298. Declaration that adjudication determination under BCISPA 1999 (NSW) void – Moneys paid into Court pending proceedings – Whether declaration should be made conditional upon part of the moneys in Court being paid out to unsuccessful defendant : Decision: Declaration that the adjudication determination dated 28 May 2007 of the second defendant void; first defendant to pay plaintiff's costs; amount in Court together with any interest accrued thereon to be paid to the plaintiff. | Hammerschlag J | 2007.11.13 | Equity Division. Supreme Court of New South Wales |
| Natural justice – failure to consider all submissions | Trysams Pty Ltd v Club Constructions (NSW) Pty Ltd [2007] NSWSC 941. Building and construction adjudication pursuant to s 22 BCISPA 1999 – Whether adjudicator breached basic and essential requirements of the Act to consider all submissions duly made – Whether adjudicator failed to make a bona fide attempt to exercise his powers under the Act – Whether plaintiff denied measure of natural justice required under the Act – Nature, gravity and effect of adjudicator’s error relevant : Decision: Adjudicator's determination set aside | Hammerschlag J | 2007.11.01 | Equity Division. Supreme Court of New South Wales |
| Insolvency | TS Recoveries P/L v Sea-Slip Marinas (Aust) P/L [2007] NSWSC 1410 Winding up - company concedes insolvency - whether winding up proceedings should be dismissed as an abuse of process - whether the court should in its discretion dismiss or adjourn the winding up proceedings. | Barrett J | 2007.12.07 | Supreme Court New South Wales. |
| Notice requirements : service | Tsoukatos v Mustafa [2007] NSWSC 614 Claims under BCISPA 1999 (NSW) – Payment claim – Adjudication – Requirements for service of notice – Principles of service – Validity of service of documents addressed to the building of a party’s ordinary place of business as opposed to the precise address of the office within that building. | Hall J | 2007.06.15 | Common Law Division. Supreme Court of New South Wales |

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| Trade usage : Adequate reasons | Uszok v Henley Properties (NSW) Pty Limited [2007] NSWCA 31 Implication of term by custom or usage - whether custom or usage well-known – whether contrary to express terms of contract - whether adequate reasons for decision given – fact-finding & expert evidence - whether damage proved – duty of a trial judge where party unrepresented - New Trial? - whether trial sufficiently unfair to demonstrate miscarriage. | Beazley JA; Bryson JA; Basten JA. | 2007.02.28 | Court of Appeal. Supreme Court New South Wales |
| Recovery of progress payments | Veolia Water Solutions & Technologies v Kruger Engineering Australia P/L [2007] NSWSC 46 Entitlement to & recovery of progress payments - payment claim - valuation of delay costs - payment schedule - incomplete or defective works - whether adjudication determination void - natural justice - whether dispute decided on basis for which parties did not contend - s22(2)) - whether adjudicator entitled or required to consider statutory declaration in support of payment schedule. | McDougall J | 2007.01.19 | Equity Division. T&C : Supreme Court of New South Wales |
| Double Jeopardy | Veolia Water Solutions & Technologies v Kruger Engineering Australia P/L [2006] NSWSC 1406 BCISPA Act 1999 - new payment claim incorporating matters that had been subject to prior adjudication – plaintiff seeks to restrain adjudication application based on new payment claim – assertion that prior adjudication determination is void. | McDougall J | 2006.12.06 | Equity Division. Supreme Court of New South Wales |
| Insolvency of claimant | Veolia Water Solutions v Kruger Engineering [No 3] [2007] NSWSC 459 Defendant recovered adjudication determination & judgment against plaintiff; defendant subject to deed of company arrangement; plaintiff asserts cross-claim for liquidated damages & defective & incomplete works : plaintiff seeks permanent stay & return of security given by it : whether BCISPA 1999 ceases to apply when contractor or subcontractor becomes insolvent : impact of external administration : where conflict exists between s 25(4) BCISPA & ss 553, 553C Corporations Act : whether refusal of stay will cause irreparable prejudice. | McDougall J | 2007.05.14 | Equity Division. T&C : Supreme Court of New South Wales |
| Notice to apply late : alternative action in debt | Vince Schokman v Xception Construction P/L [2005] NSWSC 297 S17(2) notice of intent to apply for adjudication served out of time - Adjudication application made out of time - S15(2)(a) makes provision for alternatives of either proceeding to recover claimed amount as a debt in curial proceedings or of making adjudication application - Where claimant elects to seek adjudication determination and adjudication procedures miscarry, claimant cannot revert to seeking judgment in curial proceedings. | Einstein J | 2005.04.04 | Supreme Court of New South Wales |
| Progress claim : time : premature ? | Walter Construction Group Ltd v CPL (Surry Hills) P/ L [2003] NSWSC 266 Whether payment claim valid : Whether failure to provide payment schedule attracts liability : Whether entitlement to summary judgment : Whether claim related to construction work : Whether BCISPA 1999 (NSW) applies : Whether payment claim premature : Whether claimant entitled to progress payment : Whether misleading or deceptive. | Nicholas J | 2003.04.09 | Supreme Court of New South Wales |
| Mareva injunction | Walter Construction Group v The Robbins Company [2004] NSWSC 549 Mareva orders - dispute under BCISPA 1999 (NSW) - where defendant is a US entity - where work conducted in Australia through a subsidiary - where subsidiary has made substantial losses - where defendant has no assets in Australia & debts owed to it by subsidiary - whether facts reveal a sufficient basis for grant of a Mareva order - whether power to grant a Mareva order enlivened by problems of enforcement. | McDougall J | 2004.06.18 | Supreme Court of New South Wales |
| Referee's Reports | Westpoint Management Ltd v Chocolate Factory Apartments Ltd [2007] NSWCA 253 Building contract - defective or incomplete work - entitlement to costs of rectification - if rectification a reasonable course - consideration of principles derived from <i>Bellgrove v Eldridge</i> - relevance of intention to carry out rectification work or whether it will be carried out – Referee's Report - approach to consideration of adoption. | Giles JA; McCull JA ; Campbell JA | 2007.09.20 | Court of Appeal. Supreme Court New South Wales |

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| Damages : Progress payment counterclaim | Williams v Star Structures P/L (Home Building) [2006] NSWCTTT 347 Claim for damages by owner : counterclaim for unpaid progress payment. Both successful. Each party to bear costs. G J Durie. 28th June 2006. | Durie G.J | 2006.06.28 | Consumer Trader & Tenancy Tribunal. New South Wales |
| Personality : equitable assignment | Wooding v Eastoe & Maitland Fabrications P/L [2006] NSWSC 277 Administrative Law - Jurisdictional error- Statutory adjudicator- Error in wrongly determining contracting parties does not vitiate decision. Equity - Equitable assignment- Necessity for plain words eliciting clear intention- Equitable assignment of development property does not alter the parties to the contract concerning that property- Statutory adjudicator cannot consider questions of equity. | Young CJ in EQ | 2006.04.12 | Supreme Court of New South Wales |
| Rectification of decision by tribunal | Xycrete P/L v David Taylor Building Services P/L [2008] NSWCTTT 779 Whether the work for which payment is sought was additional work or rectification work? Whether there was a subsequent agreement made for accord and satisfaction of the Applicant's claim? Whether the Tribunal has jurisdiction to hear the matter as the matter? | Pickard B | 2008.01.17 | Consumer, Trader and Tenancy Tribunal. New South Wales |
| Certiorari : planning application | Zhang (Julie) v Canterbury City Council [2001] NSWCA 167 Administrative law - consent to development applications - requirement to "take into consideration" development control plan - Environmental Planning and Assessment Act 1979, s79C(1) - appeal on question of law. | Spigelman CJ: Meagher JA : Beazley JA | 2001.06.14 | Court of Appeal : Supreme Court of New South Wales |
| Set aside : counterclaim. | Ziade v Tricon [2004] NSWSC 1070 Building and construction, hearing of originating process seeking to set aside statutory demand, contested adjudication application, property developer, construction management agreement. Offsetting claim, whether this was an appropriate supplementation of the initial affidavit rectification - property sold. Is the offsetting claim genuine. Proceedings dismissed. | Macready. Master | 2004.11.22 | Equity Division. Supreme Court of New South Wales |
| Insurance | Zurich Specialities London Ltd v Thiess Pty Ltd [2008] NSWSC 1010 BCISPA 1999 : construction of insurance policy - provision requiring insured to take reasonable precautions to safeguard subject matter insured from loss or damage - whether such provision is a construction contract between the insured and insurer. | Bergin J | 2008.09.25 | Equity Division. Supreme Court of New South Wales |