

ADJUDICATION CASE DATA BASE



VICTORIA : LAST UPDATED 19th MARCH 2008 : WWW.NADR.CO.UK

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TOPIC INDEX	CASE NAME (<i>Hyperlinked – word version only – not available in pdf</i>) - CITATION : (<i>On-line web source</i>) : Bullet point summary.	JUDGE	Year/M/D	COURT
Costs	Danidale Pty Ltd (t/as Bernie Cornfoot Sons Earthmoving) v Abigroup Contractors Pty Ltd [2007] VSC 552 Whether plaintiff entitled to any costs of claim when it recovered judgment for less than it had been offered by defendant before proceeding commenced – Extent of power to “otherwise order” under r.26.08(3) – Whether defendant entitled to indemnity costs from date of any of three offers of compromise which exceeded amount recovered by plaintiff – Whether the rejections of the three offers of compromise were reasonable – Whether plaintiff entitled to costs on a higher basis in respect of that part of the counterclaim which the defendant withdrew prior to the hearing – Whether Court could determine argument that that part of the counterclaim could never have succeeded without a hearing on the merits – Whether defendant entitled to costs of the remainder of its counterclaim when it eventually only sought and recovered nominal damages – Whether there should be an order setting off the order for costs payable to the defendant against the judgment sum in favour of the plaintiff – Whether there should be a stay of execution on the judgment pending taxation of the costs orders.	Habersberger J.	2007.12.21	Supreme Court of Victoria. Melbourne
Progress payment cheques bounced	Dellam P/L v. Poposki [2007] VCC 1679 Bills of exchange - Claim in respect of four dishonoured cheques – Cheques provided as progress payments pursuant to a domestic building project – Whether action should be stayed so that claim proceeds in the Victorian Civil & Administrative Tribunal – Section 57(2) Domestic Building Contracts Act 1995.	Anderson J	2007.12.21	County Court of Victoria at Melbourne
Repudiation of contract	Sopov v Kane Constructions Pty Ltd [2007] VSCA 257 Repudiation – Building contract – Whether principal’s conduct evinced intention not to perform contract – Principal’s insistence upon untenable contractual position and commission of unjustifiable breaches – Message conveyed to contractor – Contract repudiated by principal – Whether contractor’s conduct disentitled it to accept repudiation. 22nd November 2007	Maxwell P, Kellam JA Whelan AJA.	2007.11.22	Court of Appeal Supreme Court of Victoria : Melbourne.
Lump sum contract – valuation of works	Danidale Pty Ltd v Abigroup Contractors Pty Ltd [2007] VSC 391 Lump sum contract entered into after parties negotiated on rates basis – Whether cost of excavation of rock included in the lump sum – Assessment of value of work if no agreement on rate – Two conflicting results of survey of volume of soil stripped – Whether parties bound by results of principal’s surveyor – Other factual issues.	Habersberger J.	2007.10.12	Supreme Court of Victoria. Melbourne
Variations : entitlement	National Builders Group P/L v Vigilante [2007] VSC 339 Building Contracts - appeal from VCAT – whether Tribunal was correct in finding that builder was not entitled to the cost of a variation, on a proper construction of the building contract or on a proper construction of ss. 31 and 37 of the DBC Act 1995.	Mandie J	2007.09.19	Supreme Court of Victoria. Melbourne

Commencement of proceedings : meaning	Van Ek Contracting P/L v Roads Corporation [2007] VSC 336 Non-payment of adjudicated amount determined under BCISPA 2002 – Security given by defendant in accordance with s.25(4) of the Act - Whether contractual provision concerning mediation and arbitration meant that defendant had commenced a proceeding within the meaning of s.25(2) of the Act – Summary judgment application unsuccessful.	Habersberger J	2007.09.12	Supreme Court of Victoria. Melbourne
Insolvency : winding up : discoveries : construction payment dispute	Crown Joinery P/L v Lyleho P/L [2007] VSC 214 Winding up – Insolvency – Statutory demand – Demand varied by amount of offsetting claim – Debtor complied with demand as varied – Creditor not relying on statutory presumption of insolvency – Whether creditor has standing – Whether proceeding bound to fail – Whether abuse of process – Corporations Act 2001 s 459H, 459P. Notice to produce – Notice purports to require production of " <i>documents referred to in affidavits</i> " – Documents not referred to in affidavits – Whether notice "fishing" – Whether notice too wide and oppressive – Whether abuse of process - Supreme Court (General Civil Procedure) Rules 2005 r 29.10(2); Evidence Act 1958 s 58C.	Maxwell P	2007.06.20	Supreme Court of Victoria. Melbourne
Settlement Costs Order	Shaw v Yarranova P/L (No 2) [2007] VSCA 48 COSTS – Rule 26.12 – Application for a special order for costs – Whether offer to compromise appeal was certain – Relevance of the merit of the appeal – Consideration of Hazeldene’s – Distinction between rules governing offers to compromise at trial and on appeal – Application for special order for costs refused.	Warren CJ, Eames JJA Neave JJA.	2007.03.22	Court of Appeal Supreme Court of Victoria : Melbourne.
Mediated settlement : Meaning of terms	Buxton Construction P/L v Golf Australia Holdings Ltd [2007] VSC 10 Meaning of mediated settlement agreement of progress payments and asserted LADs. Provision to pay outstanding progress payments. Cross assertion that what was outstanding was less LADS. Held : Settlement did not envisage set off for LADS. Outstanding progress payments due.	Hargrave J	2007.01.15	Supreme Court of Victoria. Melbourne
Summary Judgement Application	Christos Charisiou Building Group P/L v Geopac P/L [2006] VCC 1831 Summary Judgment Application - BCISPA 2002 - S.14 and S.15.	Shelton J	2006.12.15	County Court. Victoria. Melbourne
Construction Contract : meaning of	Shaw v Yarranova Pty Ltd [2006] VSCA 291 Sale of apartment "off-the-plan" by way of a contract of sale – Whether contract of sale covered by Domestic Building Contracts Act 1995 – Whether a "Major Domestic Building Contract" Domestic Building Contracts Act 1995, ss 3, 4, 5, 6, & 42 – Statutory interpretation – Consideration of the position of the Act within legislative regime – Appeal dismissed.	Warren, C.J., Eames: Neave,JJ.A.	2006.12.15	Court of Appeal Supreme Court of Victoria : Melbourne.
Discoveries	SC Land Richmond P/L v Dura (Australia) Constructions P/L (Domestic Building) [2006] VCAT 2519 3rd Party Discovery post adjudications.	Aird C. Deputy President	2006.12.08	Victorian Civil & Administrative Tribunal Melbourne
Service of notice	Siemens Ltd v Vaughan Constructions P/L [2006] VSC 452 Claim for injunction to restrain enforcement of guarantee given under s.25(1)(b) BCISPA 2002 – Whether notice of dispute served on defendant commenced "other dispute resolution proceedings" under s.25(2) – Effect of notice being expressed to be "without prejudice" to rights under the contract and at law.	Kaye J	2006.11.29	Supreme Court of Victoria. Melbourne
Service of claim	Abigroup Contractors P/L v River Street Developments P/L [2006] VSC 425 BCISPA 2002 ss.9, 14, 15, 16 – Payment claim – Payment schedule – Whether service of payment claim on agent of Principal satisfied requirements of s.14(1) of the Act. Procedure : Summary judgment application – Whether real question to be tried.	Habersberger J	2006.11.10	Supreme Court of Victoria : Melbourne.

Fitness for Purpose	Barton v Stiff [2006] VSC 307 Building & construction – contract for design and construction of house – warranty by designer/builders that materials would be good and suitable for the purpose for which used - actual and likely soil and groundwater conditions not such as to give rise to expectation that bricks would be subject to attack by salty groundwater – bricks failed due to attack by salty groundwater – whether designer/builders liable – <i>Domestic Building Contracts Act 1995</i> (Vic), s. 8.	Hargrave J.	2006.11.08	Supreme Court of Victoria, Melbourne.
Accord and satisfaction	Brady Constructions P/L v Dominion Lifestyle Tower Apartments P/L [2006] VCC 1830 BCISPA 2002, Sections 14, 15, 18, 25, 27 and 42 - Summary Judgment Application - Accord and satisfaction - Domestic Building Contracts Act 1995, Sections 54 and 57.	Shelton J	2006.09.29	County Court. Victoria. Melbourne
Summary Judgment Application	Age Old Builders v Arvanitis [2006] VCC 1827 Summary Judgment Application - BCISPA 2002, sections 4, 9, 11 and 16 - Nepean v Total Process Services [2005] NSWCA 409 - Brookhollow v R & R Consultants [2006] NSWSC 1. considered.	Shelton J	2006.06.23	County Court. Victoria. Melbourne
Insolvency : Progress certificate : cross claim	Main Roads Corporation Pty Ltd v Samary Enterprises Pty Ltd [2006] VSC 144 Claim by contractor for payment of progress certificates – Cross-claim by principal – Summary judgment application by plaintiff successful – No payment by defendant– Receivers and managers appointed to plaintiff/judgment creditor – Plaintiff/judgment creditor in administration and then liquidation – Whether there was equitable set-off or statutory set-off – Whether there should be stay of execution of the judgment.	Habersberger J	2006.04.12	Commercial & Equity Division Supreme Court of Victoria : Melbourne
Jurisdiction : Stay	Presser v Ocean View Properties Pty Ltd [2006] VSC 143 Stay of action to Home Building Tribunal : Meaning of Construction Dispute : Home Building Legislation : dispute over defective floors in an apartment. Application for stay approved. Cf <i>Mirvac</i>	Habsburger J	2006.03.10	Supreme Court of Victoria. Melbourne
Summary enforcement.	Contrax Plumbing Victoria P/L v Golf Club Properties Ltd [2006] VCC 237 Summary enforcement : Only to be refused if there is a real issue to be tried which in this case there was not.	Shelton J	2006.03.10	County Court. Victoria. Melbourne
Construction Contract : meaning of	Shaw v Yarranova Pty Ltd [2006] VSC 45 Claimant bought a property under construction : he paid a deposit but refused to complete alleging property not built in conformity with contract. Held : He forfeited his deposit : He should have completed and then taken an action for breach of construction contract.	Bell J	2006.02.23	Supreme Court of Victoria : Melbourne. Common Law Division.
Summary judgment	Cooper Morison P/L v Casa D'Abruzzo Club [2006] VCC 184 Application for payment - no payment schedule issued. Defence of breach of contract not applicable. Application granted.	Shelton J	2006.02.16	County Court, Victoria. Melbourne
Insolvency : leave to proceed.	Blueview Constructions P/L v Vain Lodge Holdings P/L [2005] VCC 1325 : Adj.Soc Corporations – external administration – leave to proceed against Co. – proposed proceeding by unsecured creditor in order to obtain recovery from debtor of Co. – whether consistent with scheme of distribution of company assets. Building contract – subcontractor progress payment claim – contractor under external administration – judgment against contractor sought to enable recovery from principal.	Shelton J.	2005.11.11	County Court Victoria. Melbourne.
Summary enforcement	Shelford Engineering and Construction Pty Ltd v Rescom Constructions Pty Ltd [2005] VCC 361 : Adj.Soc Application for summary enforcement. Adjudicator challenge - contract did not provide a nominating body - so first step was to seek agreement on appointment. This was not followed. Enforcement refused.	Shelton J	2005.07.08	County Court Victoria. Melbourne

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.
Summary enforcement	Belmadar Constructions P/L v Environmental Solutions P/L [2005] VSC 24 : Application for summary enforcement.	Byrne J.	2005.02.18	Commercial & Equity Division. Supreme Court Victoria. Melbourne.
Domestic contract	Domaine Homes (Vic) Pty Ltd v RIA Building Pty Ltd [2005] Adj.Soc Stay application pursuant to s.57(2) of the Domestic Building Contracts Act 1995 – alternative claims for damages for breach of contract and under the BCISPA Act 2002.	Shelton J.	2005.02.15	County Court Victoria. Melbourne.
Enforcement	ADH Plant Hire P/L v Construct Co P/L [2004] Adj.Soc. Application for summary enforcement.	Shelton J.	2004.12.16	County Court Victoria. Melbourne.
Builder - identity	Huggins v Fasham Johnson P/L [2004] VCAT 2274 Domestic Building List; Registered domestic builder entering into agreement to supply kits and arranging for owners to enter into construction contract with regional builder to erect the kit items as a house designed by the registered builder; Whether registered builder 'a builder' or 'the builder' and responsible as such for the construction of the house; Effect of assurances given by builder's officers.	M.F. Macnamara, Deputy President	2004.11.23	Civil & Admin Tribunal : Victoria : Melbourne.
Construction Contract : Meaning of	Mirvac (Docklands) PL v Philp [2004] VSC 301 Construction Contract : Meaning of : Home Building Legislation : Contract to purchase property subject to a development program held to be a contract of sale of land not a construction contract.	Byrne J	2004.08.20	Supreme Court of Victoria : Melbourne
Enforcement application	AMD Formwork P/L v Yarraman Construction Group P/L [2004] Adj.Soc. Application for summary enforcement.	Shelton J.	2004.08.03	County Court Victoria. Melbourne.
Summary enforcement	Performance Builders (VIC) Pty Ltd -v- Southern Restaurants Vic Pty Ltd [2004] Adj.Soc Application for summary enforcement. Attempt to show the claim was not a progress payment failed. Court unhappy about adjudicator giving affidavit to the effect that the claim was a progress payment and not a final account.	Cohen J.	2004.04.30	County Court Victoria. Melbourne
Summary enforcement	Concrete Panel Co Pty Ltd v Advanced Storage Systems [2004] Adj.Soc. Application for summary enforcement.	Shelton J.	2004.03.30	County Court Victoria. Melbourne.
Summary judgement under Cl42/44	Aquatec-Maxcon Pty Ltd v Minson Nacap Pty Ltd [2004] VSCA 18 Building and Construction - Standard form of contract - Construction of clauses 42 and 44 of A.S.4303-1995 considered - Entitlement of sub-contractor to obtain judgment for unpaid progress claims. Practice and Procedure - Claim for summary judgment by sub-contractor in respect of unpaid progress claims after termination of contract.	Winneke P : Buchanan JA : Eames JA.	2004.03.05	Court of Appeal at Melbourne: Supreme Court of Victoria