BUILDING AND CONSTRUCTION LAW JOURNAL

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EDITORIAL

Prevention principle or "disablement" and discretion? 369

ARTICLES

Quantum meruit and unjust enrichment: Changing jurisprudence in the High Court – *Romauld Andrew* and *Suzanne Kirton*

This article examines recent High Court judgments concerning the role of unjust enrichment in Australian law. It argues that unjust enrichment was introduced into Australian law in *Pavey & Matthews v Paul* (1987) 162 CLR 221 as a unifying concept for claims concerning quantum meruit, so that the terms "quantum meruit" and "unjust enrichment" become virtually synonymous and the ambit of the remedy greatly expanded. It is argued, however, that recent judgments of the High Court, especially in *Farah Constructions Pty v See-Day Pty Ltd* (2007) 230 CLR 89 and more recently in *Lumbers v W Cook Builders Pty Ltd (in liq)* (2008) 232 CLR 635; 82 ALJR 1037, demonstrate that unjust enrichment is no longer to be considered as a unifying concept. Claims in quantum meruit should therefore be based on traditional common law bases. 370

Risky business: Compiling a tender package – *Richard A Wilkinson*

Generally, regardless of whether a principal allows a contractor to rely on tender information in preparing a tender submission, contractors will inevitably rely on some or all of the material proffered by a principal in the tender phase of a project. If that material is inaccurate, the contractor will likely suffer loss, and seek to recover that loss by whatever means the law allows. Thus, compiling a tender package is risky business for a principal, in that it can often lead to an onslaught of contractual, tortious and statutory based claims for inaccuracies in the tender package. However, with careful planning, a principal may be able to develop a recipe to significantly mitigate the risks involved. 377

Statutory adjudication and the standard building contract in Singapore – is the final payment referable to statutory adjudication? – *Dr Philip Chan*

The first case that went to the High Court in Singapore (*Tiong Seng Contractors (Pte) Ltd v Chuan Lim Construction Pte Ltd* [2007] SGHC 142) challenging the validity of an adjudicator's determination decided that the adjudicator's determination involving a final payment is valid. This case is important because it sets the guidelines on the interpretation of the provisions in the Building and Construction Industry Security of Payment Act regarding the relationship between the Act and the payment provisions in the standard form of building contracts. This article examines the rationale of the decision of the High Court and concludes that it has unwittingly brought about legal uncertainty to the standing of a final payment. 394

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