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EDITORIAL

Society of Construction Law Australia Annual Conference 2024 3

BOOK REVIEW

Construction Law (4th ed), by Julian Bailey – *Reviewed by Michael Christie SC* 4

CASE NOTE

Federal Court Decouples Bankruptcy from Building and Construction Industry Security of Payment Adjudication Decisions: *Smith v Achieve Homes Pty Ltd* – *Harry Fenton*

Lower court authority has consistently assumed that the adjudicative process under the *Building and Construction Industry Security of Payment Act 1999* (NSW) (*SOP Act*) enables a respondent to set up a “cross-claim, set-off or cross demand” (as defined in Commonwealth bankruptcy legislation), preventing a judgment debtor from setting aside a bankruptcy notice. In *Smith v Achieve Homes Pty Ltd*, the Federal Court examined the interrelationship between the purpose of the *SOP Act* and Commonwealth bankruptcy legislation, rejecting the previous authorities. In doing so, the Court set important parameters concerning the availability of bankruptcy as a method to recover debt arising from SOP claims. 6

ARTICLE

The Enforceability of Termination for Convenience Clauses and the Unfair Contract Terms Regime – *Laina Chan*

A Termination for Convenience clause allows a party to terminate the contract without cause and is usually subject to that party reimbursing the other party for contractually defined costs. The practice of including a termination for convenience clause has become prevalent in Australian construction contracts. This article will consider the enforceability of a Termination for Convenience Clause predominantly in the context of the Unfair Contract Terms Regime. It will also touch upon the concept of good faith and the circumstances in which an unfettered right to terminate a contract might amount to illusory consideration. 9

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