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LADs Making Mischief at Home and Abroad: Should the Penalties Doctrine Apply to Whether Low-Value Liquidated Damages Are an Exclusive Remedy for Delay? – *Matthew Bell and Trevor Thomas*

This article examines an under-considered aspect of the “mischief” which characterises the principles and practice of liquidated damages law in Australia and across the common law world. This is whether low-value liquidated damages – especially, those where the parties have specified a value of “nil” or “\$1” – override the non-defaulting party’s right to recover general damages for its loss in breach of contract. The article regards the case law on this point – illustrated by the recent New South Wales Court of Appeal decision in *Carbone v Fowler Homes Pty Ltd* – as tending to promote uncertainty due to its roots in contract interpretation principles. As a way of alleviating this uncertainty, the article poses the question: if the doctrine of penalties can intervene when it comes to a maximum rate of liquidated damages, why should it not also act to regulate a minimum rate of liquidated damages? 246

Pafburn and Beyond: (Almost) Half a Decade of the Design and Building Practitioners Act 2020 (NSW) – *Declan Byrne and Ajay Sivanathan*

Five years after the enactment of the *Design and Building Practitioners Act 2020* (NSW), defect claims based on breach of the duty of care set out in s 37(1) have become ubiquitous in the courts of New South Wales. With an increasing number of significant decisions being handed down, including the High Court’s recent decision *Pafburn Pty Ltd v The Owners – Strata Plan No 84674*, the Courts are grappling with several complex issues associated with this legislation. 257

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