

BUILDING AND CONSTRUCTION LAW JOURNAL

Volume 35, Number 2

2019

EDITORIAL – *Editor: Michael Christie SC*

The Honourable Robert McDougall’s Service to the Supreme Court of New South Wales 85

BOOK REVIEW

International Construction Contract Law (2nd ed), by Lukas Klee – *Reviewed by Rami Marginean* 86

CASE NOTE

Termination of Construction Contracts: The Good Faith Risk – *Jeffrey Goldberger, Emanuel Confos and Harriet Oldmeadow* 88

ARTICLES

Cladding – Who Will Pay? – *Mark Waller, Chris Erfurt and Tara Mulroy*

The Lacrosse Tower fire in Melbourne, the Grenfell Tower tragedy in London, and the Alucobond cladding class action highlight the safety risk posed by non-compliant building materials and call into question the adequacy of historical regulation of those materials in the building and construction industry. Around Australia, legislation has been enacted to develop a regulatory response to the issue. These new regulations raise questions of the rectification works required to ensure buildings are safe, and issues regarding the extent to which property owners and building professionals in the supply chain are responsible for compliance, remediation and rectification costs, and whether those costs can be claimed from insurers or third parties. This article looks at the current legal liability landscape, the key risks for property owners and potential defendants to cladding-related claims arising from regulatory non-compliance and common law breaches of duties of care, and the insurance coverage considerations for property owners, building professionals, and the building and construction industry at large. 91

Is the Prevention Principle Still Relevant? A Case for Statutory Intervention – *Michael Elliott*

This article analyses whether, in the context of modern-day construction contracts, the operation of the prevention principle adequately safeguards against the unfairness and unreasonableness that it was intended to address. Through the use of time bars and contractual provisions purporting to exclude its operation, the principle risks being consigned to obscurity. In circumstances where the principle is premised on a well-established need to cure unfairness in commercial transactions, a case can be made that statutory intervention is justified in order to compensate any of the principle’s shortcomings. 103

REPORTS

Santos Ltd v BNP Paribas	115
Icon Co (NSW) Pty Ltd v Australia Avenue Developments Pty Ltd	123
Robinson v 470 St Kilda Road Pty Ltd	134