

Episode 57: Summary

Episode name: A Year Like No Other: A Review of Building and Construction in 2021

Guest(s): Paul Folino-Gallo

What area(s) of law does this episode consider?

Developments in building and construction and real estate in 2021.

Why is this topic relevant?

Building and construction was heavily impacted by the COVID-19 pandemic. Throughout 2021, in response to government measures to curb the spread of COVID-19, the construction industry was impacted by standdowns, shutdowns, vaccine mandates and protests.

This episode looks at some of the moments and cases that defined the building and construction industry in 2021.

What legislation is considered in this episode?

Building and Construction Industry Security of Payment Act 1999 (NSW)

Design and Building Practitioners Act 2020 (NSW)

Fair Work Act 2009 (Cth), Part 5-3

Home Building Act 1989 (NSW)

What cases are considered in this episode?

Bingo Holdings Pty Ltd v GC Group Company Pty Ltd [2021] NSWCA 184

- In *Bingo*, the court held that section 34 of the *Civil Liability Act 2002* (NSW) requires the identification of a proposed concurrent wrongdoer, as well as how their actions caused the alleged loss and damage.

Liberty Mutual Insurance Company Australia Branch trading as Liberty Specialty Markets v Icon Co (NSW) Pty Ltd [2021] FCAFC 126

- The Federal Court ultimately took a pragmatic view to the operation of the relevant insurance contracts and reinforced the view that such contracts were to be read in a manner which gave effect to the whole of the agreement and did not impinge on common sense.

The Owners - Strata Plan 89005 v Stromer [2021] NSWSC 853

- In *Stromer*, the court refused the defendant leave to amend its defence to plead a limitation defence on the grounds that any prejudice suffered was self-inflicted and that granting leave would be contrary to the overriding purposes of justice.

White Constructions Pty Ltd v PBS Holdings Pty Ltd [2019] NSWSC 1166

- In *White*, Justice Hammerschlag had an expert assist the court under rule 31.54 of the UCPR 2005 (NSW). In accepting the advice of an expert engineer to interpret the reports of two separate expert witnesses, Justice

Hammerschlag remarked that r 31.54 was a useful rule which wasn't used as often as it could be.

What are the main points?

- Many of the issues that arose throughout 2021 in the building and construction space are still to be curially considered.
- There has been a marked increase in legal sophistication among smaller subcontractors as a result of access to valuable legal advice at capped costs.
- The decision in *Stomer* is a timely reminder to specifically plead causes of action, statements of claim and defences - especially where there is a proposed limitation defence.

What are the practical takeaways?

- Paul advises junior barristers to approach solicitors flooded with building and construction work as opportunities for oral advocacy reduce.
- The extent of Paul's hard skills advice is to pick up a decent building and construction handbook. For soft skills, he recommends that practitioners learn to speak the language of their clients. This is especially important in the building and construction space.

Show notes

[Paul's 2021 Year in Review for Construction Law Cases](#)