

BUILDING AND CONSTRUCTION LAW JOURNAL

Volume 38, Number 1

2022

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ARTICLES

Contract Damages for Defective Construction Work: An Unsolvable Puzzle? – *Matthew Bell*

This article considers how the common law decides upon the appropriate measure of damages where there is a breach of contract resulting in defective construction work. It focuses upon recent case law from South Australia offering a “menu” of factors which can be taken into account in deciding whether damages based upon the cost of rectification of the work ought to be awarded. This “menu” is by no means unproblematic; it sits in tension with High Court authority which leaves unresolved the more nuanced aspects of how parties’ performance interests are to be upheld by way of damages awards. Hence, the “puzzle” aspect of the article’s title. The article concludes that the “menu” is worthy of consideration outside of South Australia, but should include an overriding factor that rectification will be deemed reasonable to the extent that the defect threatens the health and safety of occupants of the building. 4

Quiet Enjoyment versus Public Interest: The Application of Private Nuisance to Wind Farms – *Trevor Thomas, James Ye and Wayne Jovic*

The right to quiet enjoyment of land is a core protection of the common law. Renewable energy projects like wind farms serve the public interest. Both statements are largely uncontroversial. The difficulty lies in how the law should resolve conflicts between the two goods of quiet enjoyment and the public interest. A classic recent illustration is *Uren v Bald Hills Wind Farm Pty Ltd*, in which a noisy wind farm led to a successful private nuisance claim. The core elements of a private nuisance claim are well settled. Despite this, the case reveals controversies about the onus of proof in showing that activities were reasonable; the operation of the statutory authority defence; and the relevance of planning permits and the public interest. 17

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