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**Recent Cases**

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**Builder's Liability - Bryan v Maloney - A Postscript**

*Bryan v Maloney* (1995) 182 CLR 609

*Bryan v Maloney* is probably one of the most widely known building cases in the common law world of recent years. The case originated in the Supreme Court of Tasmania from a decision of Wright J delivered in 1992.

A decision of Cox CJ delivered on 2 December 1998 now provides a postscript to this famous decision.

Following the delivery of the decision of the High Court, the owner issued a bankruptcy notice against the builder, non-compliance with which led to bankruptcy proceedings being commenced in the Federal Court.

The builder sought and obtained a lengthy adjournment of the bankruptcy proceedings on the basis that he wished to file an application with the Full Court of the Supreme Court of Tasmania for an extension of time to appeal the first instance judgment and for leave to appeal that judgment.

In May 1996 the builder filed an application to set aside the first instance judgment with the Full Court of the Supreme Court of Tasmania relying on the grounds that there was fresh evidence not in the possession of the builder at the time of the trial and which could not, with proper diligence, have been obtained by the defendant before the termination of the trial. The fresh evidence was said to contradict certain evidence given by the principal expert witness called on behalf of the owner, whose evidence had been preferred by the Trial Judge.

The applications to the Full Court having been made, little further meaningful progress was made in the Supreme Court proceeding and, in September 1997, a sequestration order was made against the builder by the Federal Court. The builder then filed an application to review that order. In response, the owner applied to the Supreme Court of Tasmania for dismissal of the builder's application to the Full Court for want of prosecution.

It appears that the Supreme Court has now laid the Bryan and Maloney saga to rest on the basis that the application to set aside the judgment at first instance, which had already been reviewed by the Full Court and by the High Court of Australia, had been delayed without justification. As neither the builder personally nor his trustee in bankruptcy had taken any action to have the application listed for hearing, the application to review the first instance judgment was dismissed for want of prosecution.

In the course of delivering judgment, the Chief Justice observed that the owner had received none of the judgment amount and that it was common ground that the builder had no assets and no dividend could be reasonably expected from his estate.

- **Craig Doherty, Toomey Maning & Co, Barristers and Solicitors, Hobart.**