

will always depend upon the wording of the exclusion agreement and the facts of each individual case.

Parties to an arbitration who wish all disputes arising in the arbitration to be finally determined by the arbitrator without a right of appeal should ensure that their exclusion agreement is clear and wide enough in its terms to cover disputes which might be added after the exclusion agreement is entered into. A narrow description of the nature of the dispute at the preliminary conference when an exclusion agreement is made could result in a narrow scope to the exclusion agreement. If in doubt, another exclusion agreement should be entered into to ensure that the right of appeal is excluded for new disputes.

In the words of one of the appeal judges in *Aintree*:⁷

"If the parties wish to oust [the Court's] jurisdiction they can, but only if they express that intention in the clearest terms".

TIM HORGAN
GREG STEINPREIS
[Perth]

CASE NOTE UPDATE

Resort Condominiums International Inc. v Ray Bolwell & Anor.

Reference is made to a Case Note published in *The Arbitrator* Vol. 12 No.4 at page 233 – February, 1994 and a further article regarding the case published in *The Arbitrator* Vol.14 No.4 at page 223 – February, 1996.

We have been advised that an appeal against the decision of Mr Justice Lee, Supreme Court of Queensland is no longer current it having been dismissed by consent of both parties.

APPLICATION TO SET ASIDE INTERIM AWARDS AND REMOVE ARBITRATOR – SEC. 42 UPHOLD ON APPEAL

Supreme Court of Western Australia, Full Court
10 November 1995

Giustiniano Nominees Pty Ltd v The Minister for Works and Others

FACTS

- Plaintiff building contractor entered a contract with the Minister for works for the construction of primary school buildings in Perth. Plaintiff entered a contract with second defendant for the supply of mortar and with the third and fourth defendants for the laying of bricks.
- Defects in brick work requiring demolition of brick work.