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# RESEARCH WORKSHOP ABSTRACT

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## **Defective Work Damages after *Tabcorp v Bowen Investments*: A Construction Law *cul de sac* or Contract Law Broadway?**

On 12 February 2009, the High Court of Australia handed down its judgment in *Tabcorp Investments Ltd v Bowen Investments Pty Ltd* [2009] HCA 8. The judgment dismissed an appeal by the lessee under a commercial lease (*Tabcorp*) against an award made by the Full Court of the Federal Court that it pay to the plaintiff lessor (*Bowen Investments*) \$1.38M in damages for breach of the lease.

The breach in question was *Tabcorp's* unauthorised demolition and replacement of the foyer of the building. There was little argument that *Tabcorp* was in breach – what was in issue, though, was whether *Tabcorp* should have to pay the full replacement value of the foyer (which, including lost rent during the reinstatement, amounted to \$1.38M) or merely the difference in rental available to *Bowen Investments* as a result of the replaced foyer (at trial, nominal damages of \$1,000 were awarded on this basis).

This presentation will outline the High Court's judgment and its background. It is, I will propose, interesting on a number of bases. To a construction lawyer like me, the primary interest is that the case confirms the continued application of – and gives further guidance upon – the test laid down in the High Court's 1954 case on defective work damages, *Bellgrove v Eldridge*. Moreover, the case seems to extend the reach of *Bellgrove* into other areas in which the common law had traditionally applied a different, specific test for ascertaining damages – in this case, damages for breach of a repair covenant via *Joyner v Weeks*.

Most broadly, I see the case as being of interest to everyone looking for early insights into the approach of the High Court under Chief Justice French. If *Tabcorp* is anything to go by, we can look forward to the swift issuing of clearly-written and succinct joint judgments which – in the case of those relating to contract – reinforce the place of contract at the heart of commercial jurisprudence.