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Daily Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Campbelltown City Council v WSN Environmental Solutions Pty Ltd (NSWCA) - contract - dispute resolution - parties' dispute under clause of contract not a dispute to be dealt with under dispute resolution clauses - appeal allowed

Mayfield & Mayfield (ATF B & M Mayfield Superannuation Fund) v P & B Corporation Pty Ltd (ATF North Cape Development Trust) [No 2] (WASC) - summary judgment - pleadings - certain pleas struck out - summary judgment refused - application allowed in part

Classic Constructions (Aust) Pty Ltd v Fischetti (ACTCA) - negligence - work injury damages - independent contractor injured while lifting concrete - no breach of duty of care by builder - appeal allowed

Summaries With Link (Five Minute Read)

Campbelltown City Council v WSN Environmental Solutions Pty Ltd [2015] NSWCA 299

Court of Appeal of New South Wales

Bathurst CJ; Meagher & Ward JJA

Contract - dispute resolution - respondent processed waste on behalf of appellant Councils - parties were in dispute whether respondent entitled to variation of fees payable to it by Councils - whether primary judge erred in finding parties' dispute as to "whether a variation circumstance should apply" under clause of contract was dispute to be dealt with by dispute resolution clauses - construction of contract - held: variation circumstance would exist "in accordance with the provisions of Clause 24.4" only if parties had undertaken negotiations under that clause and reached agreement that variation circumstance should "apply" - parties did not intend that any increase in costs asserted to be within clause would constitute additional "variation circumstance" - in absence of agreement between parties that variation circumstance should apply there was no dispute falling within dispute resolution clause - respondent not entitled to refer dispute to expert - appeal allowed.

[Campbelltown](#)

Mayfield & Mayfield (ATF B & M Mayfield Superannuation Fund) v P & B Corporation Pty Ltd (ATF North Cape Development Trust) [No 2] [2015] WASC 356

Supreme Court of Western Australia

Allanson J

Summary judgment - pleadings - plaintiffs invested in property development and subdivision project - investment vehicle was unit trust - plaintiffs sued trustee and others - claim against seventh and eighth defendants alleged breaches of duties in providing advice to trustee and unit holders - plaintiffs had filed minute of proposed fourth amended statement of claim and minute of third amended writ of summons - seventh and eighth defendants opposed granted of leave and sought summary judgment - s18 *Australian Consumer Law* - s12DA *Australian Securities and Investment Commission Act 2001* (Cth) - O 1, rr4A & 4B *Rules of the Supreme Court 1971* (WA) - serious question to be tried - successive amendments - whether reasonable cause of action disclosed by proposed amendments - held: certain pleas struck out - summary judgment refused - application allowed in part.

[Mayfield](#)

Classic Constructions (Aust) Pty Ltd v Fischetti [2015] ACTCA 51

Court of Appeal of New South Wales

Murrell CJ; Refshauge ACJ & Burns J

Work injury damages - respondent was independent contractor to appellant builder - respondent claimed damages from appellant for injuries suffered while lifting concrete blocks - respondent alleged appellant negligently breached duty of care not to expose him to risk of injury which he suffered - Master satisfied appellant owed duty of care to respondent to take precautions against risk of injury suffered and that builder breached duty of care - appellant appealed - held:

respondent failed to answer appellant's challenge that task assigned to him was relevantly simple and well within competence as independent contractor - no duty on appellant to give any greater directions or to take further precautions than it did to protect respondent given nature of task and respondent's experience - no breach of duty of care by appellant - appeal allowed.

[Classic Constructions](#)



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To An Old Mate

By Henry Lawson

Old Mate! In the gusty old weather,
When our hopes and our troubles were new,
In the years spent in wearing out leather,
I found you unselfish and true --
I have gathered these verses together
For the sake of our friendship and you.

You may think for awhile, and with reason,
Though still with a kindly regret,
That I've left it full late in the season
To prove I remember you yet;
But you'll never judge me by their treason
Who profit by friends -- and forget.

I remember, Old Man, I remember --
The tracks that we followed are clear --
The jovial last nights of December,
The solemn first days of the year,
Long tramps through the clearings and timber,
Short partings on platform and pier.

I can still feel the spirit that bore us,
And often the old stars will shine --
I remember the last spree in chorus
For the sake of that other Lang Syne,
When the tracks lay divided before us,
Your path through the future and mine.

Through the frost-wind that cut like whip-lashes,
Through the ever-blind haze of the drought --
And in fancy at times by the flashes
Of light in the darkness of doubt --
I have followed the tent poles and ashes
Of camps that we moved further out.

You will find in these pages a trace of
That side of our past which was bright,
And recognise sometimes the face of
A friend who has dropped out of sight --

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I send them along in the place of
The letters I promised to write.

<http://www.poetrylibrary.edu.au/poets/lawson-henry/>

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