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Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Ball v McInerney (NSWCA) - negligent construction claim - defendant allegedly succeeded at trial on case not pleaded - trial will only miscarry on this basis where there is real practical injustice - appeal dismissed

Summaries with links (5 minute read)

Ball v McInerney [2014] NSWCA 331

Court of Appeal of New South Wales

Beazley P, Emmett & Gleeson JJA

Construction - Ball and Carey retained McInerney to design and develop horse riding and training facilities - drainage problems - Ball and Carey sued - primary judge dismissed claim - found defects did not arise from faulty design or construction, but from failure of maintenance by Ball and Carey - Ball and Carey appealed - claimed maintenance issue had not been pleaded at trial - held: denial of procedural fairness depends on circumstances of each case - ultimate focus is on practical rather than theoretical injustice - issue is unfairness, not whether an expectation has been disappointed - appellants had to show a substantial wrong or miscarriage - maintenance issue had been clearly articulated prior to trial in McInerney's response to Scott Schedule - also raised in McInerney's experts' reports - appellants not taken by surprise - no procedural unfairness



- appellants bound by conduct of case at trial where no objection to tender of further evidence - no error shown in findings of primary judge - appeal dismissed.

[Ball](#)

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