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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)

JM & PM Holdings Pty Ltd v Snap-on Tools (Australia) Pty Ltd (NSWCA) - contract - franchise agreement - "monthly cash flow projection" spreadsheet not relied on in decision to enter agreement - appeal dismissed

Surfstone Pty Ltd v Morgan Consulting Engineers Pty Ltd (QSC) - costs - rejection of offer to settle not unreasonable - indemnity costs refused - unsuccessful plaintiffs to pay defendant's costs on standard basis

Meyer v Cool Chilli Pty Ltd (ACTSC) - work injury - negligence - worker injured in slip and fall from ladder - employer negligent - breaches of statutory duty by employer and third party - third party liable to employer for 25% contribution

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Summaries With Link (Five Minute Read)

JM & PM Holdings Pty Ltd v Snap-on Tools (Australia) Pty Ltd [2015] NSWCA 347

Court of Appeal of New South Wales

Macfarlan & Leeming JJA; Emmett AJA

Contract - franchise agreement - first appellant franchisee entered franchise agreement with respondent franchisor which gave franchisee right to operate a "Snap-on" franchise - franchisee fell into arrears - agreement terminated - franchisor sued franchisee and second appellant director and shareholder of franchisee for recovery of debt - director sued on a guarantee - franchisor obtained judgment against appellants - appellants had cross-claimed based on contraventions of ss52 & 51AD *Trade Practices Act 1974* (Cth) in relation to "monthly cash flow projection" spreadsheet (document) given to director before entry into agreement - primary judge found aspects of document misleading but found director did not rely on it when entering into agreement - appellants challenged dismissal of cross-claim - held: no appellable error demonstrated in primary judge's findings that document not relied on in decision to enter agreement - appeal dismissed.

[JM & PM Holdings](#)

Surfstone Pty Ltd v Morgan Consulting Engineers Pty Ltd [2015] QSC 322

Supreme Court of Queensland

P Lyons J

Indemnity costs - defendant established limitation clause formed part of contract between it and plaintiffs - defendant sought indemnity costs on basis of non-acceptance by plaintiffs of its offer to settle by discontinuance of action with no order as to costs - whether r361 *Uniform Civil Procedure Rules 1999* (Qld) applied - held not a straightforward matter to determine whether limitation clause was included in contract - it was reasonable for plaintiffs not to accept defendant's offer - order for indemnity costs refused - plaintiffs to pay defendant's costs on standard basis.

[Surfstone](#)

Meyer v Cool Chilli Pty Ltd [2015] ACTSC 336

Supreme Court of the Australian Capital Territory

Mossop AsJ

Work injury - negligence - breach of statutory duty - apportionment - plaintiff worked in IT support role for defendant employer - plaintiff working at premises of third party - while plaintiff climbing ladder to get into ceiling space it slipped from beneath her and she injured herself - plaintiff sued employer in negligence - employer issued third-party notice against third party seeking contribution or indemnity - ss21 & 168 *Civil Law (Wrongs) Act 2002* (ACT) - s24 *Scaffolding and Lifts Act 1912* (ACT) - *Workers Compensation Act 1951* (ACT) - ss6, 7, 73 & 80 *Scaffolding and Lifts Regulation 1950* (ACT) - held: employer breached duty of care to plaintiff and was liable for damage caused by accident - no contributory negligence - third party claim failed insofar as relied on allegation of negligence - work being carried out was building work



under Scaffolding and Lifts Act - both third party and employer breached s73 Scaffolding and Lifts Act when they carried out work in ceiling space - employer breached s80(7) Scaffolding and Lifts Act - appropriate contribution from third party was 25% - judgment for plaintiff against employer - judgment for employer against third party.

[Meyer](#)



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The Lake Isle of Innisfree

BY WILLIAM BUTLER YEATS

I will arise and go now, and go to Innisfree,
And a small cabin build there, of clay and wattles made;
Nine bean-rows will I have there, a hive for the honey-bee,
And live alone in the bee-loud glade.

And I shall have some peace there, for peace comes
dropping slow,
Dropping from the veils of the morning to where the cricket
sings;
There midnight's all a glimmer, and noon a purple glow,
And evening full of the linnet's wings.

I will arise and go now, for always night and day
I hear lake water lapping with low sounds by the shore;
While I stand on the roadway, or on the pavements grey,
I hear it in the deep heart's core.

[WILLIAM BUTLER YEATS](#)

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