



Friday, 5 June 2015

Weekly Construction Law Review A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Jojeni Investments Pty Ltd v Mosman Municipal Council (NSWCA) - environment and planning - existing use of land was as a "building containing flats" - appeal allowed - declaration (I B C)

Fogg v Kane Constructions (NSW) Pty Ltd; Fogg v Les Quatre Musketeers Pty Ltd (t/as Plastamasta South Coast) (No. 5) (NSWSC) - negligence - plaintiff injured while delivering building materials to worksite - subcontractor liable - contributory negligence 15% (I B C)

Summaries With Link (Five Minute Read)

Jojeni Investments Pty Ltd v Mosman Municipal Council [2015] NSWCA 147

Court of Appeal of New South Wales

Macfarlan, Gleeson & Leeming JJA

Environment and planning - Council approved building alteration works to convert a two storey house into two flats in 1933 - appellant sought to demolish existing building and construct building containing three flats - land zoned R2 - appellant's proposed development prohibited on land zone R2 - application turned on existing use rights - primary judge declared land "has the benefit of existing use rights as two flats in a house" - appellant appealed - held: In 1933 it was possible for owner of property to use property as two residences without Council's approval - use of building as modified for residential purposes answered description of "existing use" under s106(a) *Environmental Protection and Assessment Act 1979* - characterisation of determined by having regard to purpose served by activities undertaken on land - use of building for three flats is not "different in kind" from use as a building for two flats - appropriate declaration of existing use was as a "building containing flats" - appeal allowed.

[Jojeni](#) (I B C)

[From Benchmark Friday, 29 May 2015]

Fogg v Kane Constructions (NSW) Pty Ltd; Fogg v Les Quatre Musketeers Pty Ltd (t/as Plastamasta South Coast) (No. 5) [2015] NSWSC 648

Supreme Court of New South Wales

Johnson J

Negligence - limitations - plaintiff injured in fall while delivering building materials to worksite - plaintiff sued head contractor at site (Kane), subcontractor contracted by Kane and employer with whom Hutchison contracted, for damages in negligence - held: plaintiff's claim not statute-barred - Hutchison breached duty of care to take reasonable care to ensure deliveries made at location and in manner that did not carry unreasonable risk of injury - breach caused plaintiff's injuries - Hutchison liable - liability not established against Kane or employer - plaintiff failed to take reasonable care for his own safety - contributory negligence assessed at 15% - damages assessed - parties to bring in short minutes of order.

[Fogg](#) (I B C)

[From Benchmark Tuesday, 2 June 2015]



Benchmark

Song: "Under the greenwood tree"

BY William Shakespeare
(from As You Like It)

Under the greenwood tree
Who loves to lie with me,
And turn his merry note
Unto the sweet bird's throat,
Come hither, come hither, come hither:
 Here shall he see
 No enemy
But winter and rough weather.

Who doth ambition shun
And loves to live i' the sun,
Seeking the food he eats,
And pleased with what he gets,
Come hither, come hither, come hither:
 Here shall he see
 No enemy

[William Shakespeare](#)

[Click Here to access our Benchmark Search Engine](#)