

Friday, 9 October 2015

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

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Executive Summary (1 minute read)

Bitupave Ltd t/as Boral Asphalt v Pillinger (NSWCA) - negligence - motorcyclist injured on public road - Boral and Council liable - primary judge erred in finding motorcyclist contributorily negligent - motorcyclist's cross-appeal allowed - Boral's appeal dismissed - Council's cross-appeal dismissed

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)

Bitupave Ltd t/as Boral Asphalt v Pillinger [2015] NSWCA 298

Court of Appeal of New South Wales

Ward, Emmett & Gleeson JJA

Negligence - first respondent injured when he lost control of motorcycle on public road - first respondent sued second respondent Council and appellant (Boral) - primary judge found Boral and Council liable- primary judge found first respondent was 10% contributorily negligent - primary judge apportioned responsibility to Boral at 60% and Council at 40% - primary judge also found Boral breached contractual obligation to Council to take out insurance in respect of Council's liability - primary judge awarded damages to Council against Boral in amount of judgment against Council - Boral appealed - Council cross-appealed and filed notice of contention that Boral breached different contractual obligation to it - first respondent cross-

appealed against finding of contributory negligence - held: no error in decision of primary judge in relation to Boral's appeal or Council's cross-appeal - Boral's appeal dismissed - Council's cross-appeal dismissed - primary judge erred in finding first respondent contributorily negligent - first respondent's cross-appeal allowed.

[Bitupave](#)

[From Benchmark Thursday, 1 October 2015]

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](#)

[From Benchmark Friday, 2 October 2015]



Benchmark

Speech: “To be, or not to be, that is the question”

By William Shakespeare

(from Hamlet, spoken by Hamlet)

To be, or not to be, that is the question:
Whether 'tis nobler in the mind to suffer
The slings and arrows of outrageous fortune,
Or to take arms against a sea of troubles
And by opposing end them. To die—to sleep,
No more; and by a sleep to say we end
The heart-ache and the thousand natural shocks
That flesh is heir to: 'tis a consummation
Devoutly to be wish'd. To die, to sleep;
To sleep, perchance to dream—ay, there's the rub:
For in that sleep of death what dreams may come,
When we have shuffled off this mortal coil,
Must give us pause—there's the respect
That makes calamity of so long life.
For who would bear the whips and scorns of time,
Th'oppressor's wrong, the proud man's contumely,
The pangs of dispriz'd love, the law's delay,
The insolence of office, and the spurns
That patient merit of th'unworthy takes,
When he himself might his quietus make
With a bare bodkin? Who would fardels bear,
To grunt and sweat under a weary life,
But that the dread of something after death,
The undiscover'd country, from whose bourn
No traveller returns, puzzles the will,
And makes us rather bear those ills we have
Than fly to others that we know not of?
Thus conscience does make cowards of us all,
And thus the native hue of resolution
Is sicklied o'er with the pale cast of thought,
And enterprises of great pitch and moment
With this regard their currents turn awry
And lose the name of action.

<http://www.poetryfoundation.org/bio/william-shakespeare>

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