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RECENT DECISIONS

Section 151Z - Mind your surroundings: The importance of the nature and placement of warnings regarding risks

Kellys Property Management Services Pty Ltd v Anjoshco Pty Ltd trading as McDonalds BP Chinderah [2016] NSWCA 341(6 December 2016)

Link to decision

Summary

In this case, the NSW Court of Appeal heard an appeal by Kellys Property Management Services Pty Ltd (Kellys) against Judgment for injury caused by negligence of their cleaner, while the worker was on a third party site.

Background

On the morning of 14 March 2011, Ms Muller (the worker), an employee of Anjoshco Pty Ltd (Anjoshco) slipped and fell while walking towards the toilets from a food court at a BP Service Station Complex. She received significant injury and her employer commenced payment of worker's compensation.

The floor surface was wet where the worker sustained her injuries and she described water that extended "a bit down the corridor". The CCTV footage showed a cleaner pushing a cleaning scrubbing machine across the area where the worker fell. The worker did not see any "wet floor" signs on the ground in the area where the injury occurred.

Anjoshco commenced proceedings against Kellys pursuant to section 151Z(1)(d) of the *Workers Compensation Act 1987* (NSW). Kellys held a contract to supply cleaning services at the subject accident site.

At trial, Judgment was entered in favour of Anjoshco in the sum of $117,918.12. The Court held that Kellys had failed to take reasonable care not to leave wet slippery floors unguarded, and that the risk of a person slipping and falling on a wet floor was foreseeable and not insignificant. Given that a reasonable person in the position of the worker would not have realised that the floor had recently been cleaned, left damp and unguarded, the Court held that there should be no reduction for contributory negligence.

Court of Appeal

Kellys appealed the decision, providing submissions with respect to primary liability, contributory negligence and negligence on behalf of the worker's employer.

The thrust of Kellys submissions fell squarely on the view that it would be obvious to a reasonable person in the position of the worker that the floor ahead of her was wet and would need to proceed across it with care.

In support of this submission, Counsel for Kellys referred to the worker's prior knowledge that the complex was cleaned in the early hours of the morning, that the floors were left damp after being cleaned, that the worker observed the cleaner earlier in the evening, that there were chairs placed on tables at the time, and that the placement of other "wet floor" signs around the complex.

The Court of Appeal rejected the submissions made by Kellys. The Court held that the placement of "wet floor" signs would not have been noticed given they were blocked from the worker's view, that placement of chairs on tables at the food court was not, in and of itself, sufficient to indicate that the floor was wet, and that the appearance of wet tiles were not so different from dry tiles to render the risk they posted as obvious. Liability rested solely on Kellys.

As the factual contention raised by Kellys had been rejected, the submissions regarding of contributory negligence did not succeed.

Implications

This case serves as a timely reminder of the importance of warnings regarding risks both, within the workplace and without. In the event that there is insufficient warning to a reasonable person in the position of the worker, recovery against the third party can be sought.

Further, recovery action is not isolated to injury that occurs outside the place of employment, it may also be available in circumstances where the injury occurred at the site owned and occupied by the employer. The nature and placement regarding the warning of risks by third parties should be considered in any context which may have led to a worker's injury.

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