

RECENT DECISIONS

On the Level – Court of Appeal confirms no negligence for uneven elevator

Schneider v AMP Capital Investors Ltd; Schneider v Kent Street Pty Ltd [2017] NSWCA 40 (10 March 2017)

[Link to decision](#)

Summary

Eugenie Schneider ('the worker') failed to establish that the defendants (being the owner and occupier of an office building) had breached any duty of care that they owed to her to ensure that an elevator stopped level with the floor.

The worker appealed from the decision and the Court of Appeal was required to consider whether the trial judge had erred either by rejecting the worker's evidence or in determining the nature of the duty of care that was owed to the worker.

Background

On 12 August 2008, the worker stumbled as she stepped out of a lift that had arrived on a floor of a building premises occupied by AMP Capital Investors. The worker claimed that the lift had failed to stop level with the floor and that she had tripped over the step that was created, wrenching her neck and exacerbating a pre-existing degenerative condition as a result.

The worker commenced actions claiming damages for personal injury against a number of parties, including Kent Street Pty Ltd, the owner of the building, AMP Capital Investors Pty Ltd (AMPCI), as the occupier, ISS Integrated Services Pty Ltd (ISS), who was responsible for overseeing the performance of the building maintenance contract and ThyssenKrupp, who carried out regular periodic inspections to test and maintain the lifts.

The employer had also commenced an independent recovery action against the AMPCI, ISS and ThyssenKrupp that was run concurrently with the worker's proceedings.

Ultimately, the Court did not accept the worker's version of events regarding the difference in levelling between the lift and the floor. The worker alleged that she or a witness had stopped the lift on the floor where she had tripped and was able to get an accurate measure of the discrepancy of the levelling between the floor and lift.

Unfortunately, this account was not corroborated by any witnesses or the worker's earlier evidentiary statement. The trial judge found the worker's version of events to be "for all practical purposes completely unsupported" and noted that she had a "strong motive" to embellish her recollection.

The rejection of the worker's version of events was fatal to proving any breach of duty so that both the worker's action and employer's proceedings were unsuccessful.

Court of Appeal

The worker appealed from the decision on a number of grounds, most notably on the basis that:

1. The trial judge had erred in rejecting the worker's version of events;
2. The trial judge had failed to consider inferential reasoning; and
3. The trial judge had erred in his determination of the scope of the duty of care owed by AMPCI to the worker.

The worker sought to rely upon inferential reasoning to support her allegation of the misaligned levelling of the lift. The worker complained that the trial judge had not considered other evidence, including ThyssenKrupp's maintenance records or evidence from experienced lift experts, other than the witness to the accident regarding the measure of discrepancy of the lift levelling.

The Court of Appeal rejected this complaint finding that the trial judge had considered other evidence in formulating his decision that the evidence by the lift expert did not support the worker's allegation regarding the measure of discrepancy of the lift levelling.

The Court of Appeal also observed that the occupier owed to 'lift passengers as a class, including the plaintiff, a duty to exercise reasonable care for their safety' before finding that AMPCI did not breach any obligation that extended beyond appointing reliable contractors and had not disregarded advice given by its own contractor with respect of the levelling mechanism.

The appeal was accordingly dismissed by the court.

Implications

When considering legal action against occupiers, evidence regarding the scope of the duty of care that they owe to the worker needs to be carefully weighed up.

The occupier may successfully delegate this responsibility to another competent and reliable party, in which case, consideration will need to be given to the nature of any advice or recommendation given by that party to the occupier and the reasonableness of any action that is required to be taken.

The same considerations apply to commencing section 151Z recovery proceedings in tandem with a worker's claim where the employer's fortunes are tied to the worker's ultimate success.

It was perhaps with some element of prescience that the employer chose not to pursue an appeal in this case.

For more information, please contact:



Dominic Maait
Partner

T: 02 8257 5726

M: 0417 021 026

dominic.maait@turkslegal.com.au



Shawn Finnerty
Lawyer