

Shopping Centre's Cleaner Not Responsible for Slip and Fall

Bevillesta Pty Ltd v Liberty International Insurance Co [2009] NSWCA 16

(3 July 2009)

What Happened

A woman injured herself when she slipped on a squashed orange at Top Ryde Shopping Centre and sued the shopping centre owner. The owner in turn made a cross claim against its cleaning contractor (which was by then in liquidation).

Decision At Trial

The trial judge held the owner liable for the woman's injuries on the basis that it had halved the number of cleaners required under its contract with the cleaning contractor from 4 to 2 prior to the incident. The trial judge, who found that there had not been any inspections between 5.00pm and 5.40pm on the day of the incident, held that the reduction in cleaning staff exposed customers to a greater risk of injury and that risk materialised. The trial judge found that a reasonable inspection schedule was every 15 minutes.

The trial judge dismissed the owner's cross claim against the cleaning contractor on the basis that there was not sufficient manpower to eliminate the risk of foodstuffs falling and remaining on the floor for longer periods.

Decision On Appeal

The owner appealed in relation to its cross claim against its cleaning contractor. The Court of Appeal confirmed that, in general, an owner's duty of care could be passed on to the cleaning contractor.

The Court found that, after the change to the cleaning contract, the cleaning contractor was still required to exercise reasonable care and skill even though there was no particular requirement regarding frequency of inspections. The absence of this requirement proved fatal to the owner's case. The Court held that, because there was no evidence regarding the frequency of the cleaning contractor's obligation to make inspections, the owner had not done enough to transfer its duty of care to the cleaning contractor.

Consequently, the owner failed to establish that the cleaning contractor had breached its duty of care or its contractual obligation to exercise reasonable care and skill. The result was that the cleaning contractor was not liable and the owner's appeal was dismissed.

Why The Decision Is Important

In the current economic climate, a shopping centre owner or centre manager may be tempted to cut back on cleaning services in order to save costs. This decision serves as a reminder that, in order to effectively delegate the owner's duty of care to a cleaning contractor, the owner must ensure that the cleaning contract specifies an appropriate frequency level for cleaning inspections.

For further information on this topic, please contact [Cameron Graham](#), or one of our other [shopping centre lawyers](#).