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Scope of Duty – Employers and Principals

A Contract Worker performed an activity outside the scope of his engagement and the NSW Court of Appeal found that there was no breach of duty of care by either the occupier/principal or the employer as the incident was not foreseeable.

***South Sydney Junior Rugby League Club v Gazis* [2016] NSWCA 8**

The plaintiff, Ross Gazis, a security guard, injured his back at South Sydney Junior Rugby League Club (the **Club**) whilst moving a large trolley used to transport money from poker machine takings.

The Club contracted with Sermacs Australia (**Sermacs**) for the provision of armed security services at the Club. Sermacs, in turn, sub-contracted the security services to MPS Security (**MPS**) who was Mr Gazis' employer.

At first instance it was found that the Club was liable for 75% whilst MPS was liable for 25% of the damages assessed at $929,329.20 plus costs, which is not an unusual apportionment in circumstances where Mr Gazis was a contract worker.

The Court of Appeal found in favour of the Club and Sermacs. The primary aspects of the judgment were:

- the act of moving the trolley was an **activity outside the scope of the Mr Gazis' retainer**. As a security contractor at the Club he was not retained to move the trolley transporting the poker machine takings;
- neither the Club or MPS had **knowledge** that the task would be performed by Gazis and **the risk was therefore not foreseeable;**
- MPS was found to have breached its duty to inspect the Club, being Mr Gazis' workplace, however, **this breach did not cause the accident** given any inspection or investigation by MPS would not have revealed any particular risk of injury arising from the movement of trolleys by him.

Duty of care and foreseeability

Neither the Club nor MPS could have warned Mr Gazis of the risk associated with the equipment or the undertaking which had no relationship to his retainer as a security contractor at the Club.

Club/Occupier	It was accepted that the Club owed a duty of care as occupier of the premises at which Mr Gazis worked. That duty, however, did not extend to giving a direction to Mr Gazis on how to safely move trolleys as it did not have any knowledge that he was moving trolleys. Even if Mr Gazis had been successful in proving that the Club had knowledge of him moving the trolley, the failure to prevent him from doing so did not, in and of itself, amount to a breach of duty of care as that risk would be considered insignificant and not one which would have caused or ought to have caused a reasonable person, in the position of the Club, to prevent the movement of the trolley, that is, it was not foreseeable.
Employer	MPS, as an employer, owed a non-delegable duty of care to Mr Gazis, the scope of that duty, however is affected by the work specified to be performed by him. The trial judge found that a non-delegable duty of care also meant that the scope of that duty was to ensure safety at work in all circumstances. The Court of Appeal found that the scope of MPS' duty was to take reasonable care to avoid unnecessary risks of injury. Mr Gazis was a security guard and not responsible for using the trolley in question. The events associated with the trolley were, in those circumstances, not foreseeable by MPS.

Scope of duty v existence of duty for employers

The apportionment of liability between an occupier and employer in labour hire cases is determined in accordance with the widely cited the decisions of *TNT v Christie* [2003] NSWCA 47 and *Pollard v Baulderstone Hornibrook Engineering Pty Limited* [2008] NSWCA 99. In both *Christie* and *Pollard*, the Court of Appeal found that in circumstances where an employee has been sent to work at another's premises and where there is an opportunity for the employer to ascertain the system of work, the employer is obligated to do so. A failure to inspect and/or devise a safe system of work resulted in a finding of liability against the employers.

Gazis can be distinguished from *Christie* and *Pollard on* the basis that no breach of duty was found to exist in respect of either the Club or MPS as it was not foreseeable that Mr Gazis would use the trolley in the course of undertaking an activity which was not part of his role.

The most important aspect of this decision is that **the scope of an employer's duty is not to ensure safety at work in all circumstances, rather is to take reasonable care to avoid unnecessary risks of injury.**

Contact

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