hba *legal.*

Another win for a haulage contractor in claim by employee of subcontractor

Lee v Wickham Freight Lines Pty Ltd [2016] NSWCA 209

Key Points

- A principal is not vicariously liable for the acts of their contractors.
- The law does not generally impose a duty of care on a principal with respect to employees of its subcontractors.
- Although there may be particular circumstances in which a principal does owe a duty, the content of this duty is far lower than the duty owed by an employer to an employee.

Background

The Plaintiff suffered a back injury while manoeuvring boxes of soft drink that had become loose in the back of a semi-trailer owned by his employer. In an almost eight year journey between commencing proceedings and the verdict, the Plaintiff had discontinued proceedings against Coca Cola Amatil who had pre-packaged the pallets with the boxes and Woolworths who had loaded them onto the truck at its distribution centre.

The Plaintiff proceeded to trial solely against Wickham Freight Lines (WFL) who had subcontracted delivery of the goods to the Plaintiff's employer. There was little doubt the manner by which the Plaintiff was required to manoeuvre the boxes was unsafe. However, presumably because of the restrictions under New South Wales workers' compensation legislation, the Plaintiff did not pursue a claim against his employer.

The Decision

In one of the clearest in a long line of decisions involving the liability of principals for injuries suffered by employees of their sub-contractors, the Court of Appeal unanimously dismissed the Plaintiff's claim. In doing so the court endorsed the basic proposition that a principal is not vicariously liable for the acts of its subcontractor. Further, that absent "particular circumstances" a principal does not generally owe a duty of care to an employee of a subcontractor.

Applying the factors from the leading case of *Sydney Water Corporation v Abramovic* to determine whether "particular circumstances" existed in this case, the court made the following key findings:

- Although WFL had a presence at the depot where the incident occurred it was not the occupier and hence had no particular control over the premises.
- The fact that the exercise of unloading involved a transhipment from the truck of one

subcontractor to vehicles operated by another subcontractor did not involve any **active** coordination by WFL.

- Further, WFL did not exercise any day-to-day control over the activities of the subcontractor or its employee.

- The fact that WFL had directed that the broken boxes be transported to the customer did not assist the Plaintiff because, the risk of boxes breaking was well understood and the worker had the right to contact his employer. Accordingly it was not WFL's responsibility to ensure the task was completed safely.

Lessons Learnt

With the significant restriction of common law claims against employers in New South Wales and other jurisdictions, Plaintiffs will continue to search for other defendants whose involvement in the incident will usually be more remote than the employer. For companies that subcontract their duties to others, this case is a refreshing reminder that where the principal genuinely has little to do with directing how the work is performed courts will be slow to acquiesce in these attempts.

Contact

For more information on this article, please contact:

Chris Murphy
Partner
T: +61 (0) 7 3307 5504
M: 0405 537 425
chris.murphy@hbalegal.com

Visit www.hbalegal.com for more case articles and industry news.