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Get your stairway examined – Plaintiff awarded $1.6M for *"stumble, loss of balance and fall"* upon a stairway

Covey v State of Queensland [2017] QSC 23

Key Points

- An employer's duty is very high and can include engaging experts to inspect things such as stairways for latent defects.
- Even in the case of non-catastrophic injuries, where a young worker has a reasonable argument they have lost a career due to an injury, $1M+ awards are not so uncommon anymore.

Background

The Plaintiff was a physiotherapist working at the Charters Towers Hospital who suffered a frozen shoulder type injury "arising out of a stumble, loss of balance and fall upon a stairway". The Plaintiff had previously made a damages claim against Coles arising out of a lower back injury sustained in a part-time university job which she conceded had caused her to seek work in the public rather than the private health systems.

The expert liability witnesses agreed that there was a significant inconsistency in the dimensions between the successive risers on the stairs. They also agreed that, although it was not clear whether a relevant Australian Standard applied, they would recommend the installation of concrete capping to eliminate the height differentials and that this measure would be inexpensive.

It is clear that the stairway was relatively old, but there was no evidence of any previous injuries or complaints made about the stairs. Accordingly, the case turned on whether an employer has a duty to inspect for latent dangers.

Against this background the Defendant argued that:

- As no Australian Standard or code applied to the stairs, the Plaintiff had not demonstrated any change should have been made;
- Given the very modest differential in height that any change would have avoided the incident; and
- The exact circumstances of the incident were uncertain and so the Plaintiff was negligent for not looking down at her feet.

The Decision

Informed by the often cited principle that what is a reasonable standard of care for an

employee's safety is "not a low one"[1] North J found that the employer had a duty to "turn its mind" to the safety of the stairway. In the case of this employer, that meant engaging an expert to inspect them and make recommendations.

His Honour was also prepared to find that, as the engineers thought that the introduction of capping would have eliminated the risk of a slip or fall **caused by** riser height variation, this would have prevented the incident.

On the issue of contributory negligence, his Honour found that the incident would not have been prevented if the Plaintiff had walked up holding the handrail. Although he found the Plaintiff's conduct suggested "inadvertence, inattention or misjudgement" he was not prepared to find that the Plaintiff was guilty of contributory negligence.

Damages

It was common ground that the Plaintiff had suffered frozen shoulder syndrome with at least some psychological overlay. The Plaintiff also led evidence from pain specialists to the effect that she had a permanent impairment of up to 30%.

Following the incident the Plaintiff continued to work as a physiotherapist for a period of time. However this proved unfeasible following which she partly completed a Masters in Public Health Administration. She then successfully completed a Law Degree with Honours. By the time of trial the Plaintiff was conducting her practical legal training on a part-time basis.

The Plaintiff was a 'knowledge worker' who was found by the judge to be highly intelligent and hence expected to secure alternative employment. Despite this, the Plaintiff received an award for future economic loss based upon a net loss of $1,000 per week.

Lessons Learnt

The duty of an employer is a very high one. In other contexts, a Defendant has been found not to have a duty to inspect for latent defects. For instance, in *Sheehy v Hobbs*, a tenant who was rendered a paraplegic in very similar circumstances to these was unsuccessful. However, this case demonstrates that for an employer to avoid claims relating to dangers in its buildings it must have them periodically assessed by experts.

The case also demonstrates in cases where a claimant has lost a particular career due to injury to avoid large quantum the defendant must lead persuasive evidence as to what else they may be capable of.

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[1] O'Connor v Commissioner for Government Transport

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