Slip and fall in a Canberra shopping complex

Elizabeth Cairns v Woolworths Ltd t/as Big W and Ors [2005] ACTSC 95 (30 September 2005)

By Patricia Worthy

The plaintiff brought two personal injury damages actions in this matter. The first action was against her employer for injuries suffered cumulatively over a period of years. The nature of her duties included, inter alia:

- pushing two large, metal soft-drink machines from inside the store out to the concourse; and
- manually carrying cash-register drawers (weighing between 10 and 12 kg), three at a time, down a staircase.

After a time, the plaintiff noticed pains in her back associated with her heavy activities and began to complain to her supervisor and to OH&S meetings at work. Master Harper was satisfied that, in requiring the plaintiff to move the soft-drink machines, the cash register drawers and trolleys, and ignoring her complaints, her employer had committed a breach of the duty of care it owed to the plaintiff as an employee to take reasonable care for her safety.

The second claim was for injuries suffered when the plaintiff slipped and fell at a Canberra shopping centre. That claim was brought against the occupier of the shopping centre and a retailer, which it was alleged was the source of the spilled chips on which the plaintiff slipped. The occupier joined a company which provided cleaning services to the shopping centre.

In these troubled times for slip-and-fall cases, it's not surprising that the *Canberra Times* headlines ranted: '$548,000 pay-out for fall – woman slipped on chip'. Of that sum, judgment was entered against the employer in the sum of $36,000, against the occupier in the sum of $512,000 and judgment was entered for the occupier against the cleaner in the sum of $170,667.

It was clear to the Master from minutes of the occupier's OH&S committee meetings, and from other evidence, that the occupier was well aware of the continuing problem of spillages of hot chips in the shopping centre. The OH&S meetings were supposed to take place every three months but in practice were far less frequent. The Master noted that there had been no meeting of the committee for almost eight months prior to the plaintiff's fall.

The minutes showed that there had been 21 slip-and-fall accidents in the five months from February to July 1997 (the plaintiff's incident occurred on 17 March 1998) and another 50 incidents reviewed at the committee meeting on 22 April 1998, perhaps 35 of which involved a slip and fall.

The Master made findings that the circuits made by the cleaners were carried out about once every 30 minutes, rather than every 15 minutes, with longer gaps over the cleaners' lunch breaks. He said that this system was not adequately monitored by either the occupier or the cleaning company.

After discussing the relevant principles of law, the Master was satisfied on the balance of probabilities that had a system been in place whereby a cleaner completed a circuit every 15 minutes, the spilt chips more probably than not would have been detected and cleaned up in time for the plaintiff to have avoided a fall. The failure of the occupier to ensure that the cleaning company complied with its obligation to patrol at 15-minute intervals amounted to a breach of the occupier's duty to take proper care for the safety of the plaintiff.

The third-party claim by the occupier against the cleaning company was based on negligence and contract. Pursuant to their contract, the occupier was not entitled to indemnity from the cleaning company, but the Master found the occupier to be entitled to contribution and determined that a just and equitable apportionment of liability between the occupier and the cleaning company would be achieved by holding the occupier two-thirds responsible and the cleaning company one-third responsible.

The plaintiff's case against the retailer (probably the source of the spilt chips) failed. The retailer was one of a number of food outlets selling chips and the Master could not be satisfied that it was more probable than not that the chips had been sold by the retailer. He was satisfied, on the balance of probabilities, that a customer inadvertently spilled the chips. ■

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