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Security guard shines a light on duty of occupier

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Humphries v Downs Earthmoving Pty Ltd & Anor [2015] QDC 323

Introduction

Carter Newell has recently successfully defended a claim against an occupier for damages for personal injuries sustained by a security guard while inspecting commercial premises in the course of his employment with a security contractor.

The facts

Brett Humphries (**plaintiff**), was injured on 9 April 2013 when he attended the premises of Downs Earthmoving in the course of his work as a security guard. At 2:00am, the plaintiff was called to the premises by a co-worker to investigate a suspected break in which had occurred on the previous weekend.¹

The plaintiff said that he walked along a driveway and, as he was looking through a window at the premises, he fell down a concrete embankment (also described as a drain) beside the driveway and injured his ankle. He said that he was not aware of the presence of the drain.² The court found that it was more plausible that the plaintiff had in fact become aware of the presence of the drain in the course of his previous inspections.³

The plaintiff's employer, Darling Downs Security, had conducted a risk assessment of the premises and created a '*first night brief*' and a risk assessment of the premises which were kept in a bag and collected by the security officers prior to commencing

their shift.⁴ Those documents identified risks at the premises as including ‘*can get dark in places*’ and recommended that the plaintiff ‘*carry your torch, watch your footing slips trips and falls*’.⁵ At the trial, the plaintiff agreed that there were hazards of various kinds that he needed to keep a look out for during the patrols.⁶

The plaintiff had a number of years experience as a security guard including experience in a managerial role where one of his duties included ensuring that risk assessments had been completed.⁷ Evidence also emerged that after the incident, Downs Earthmoving had spent money installing better lighting for security purposes.

The claim

The plaintiff made claims in negligence against the occupier of the premises, Downs Earthmoving, and his employer, Darling Downs Security. His allegations against Downs Earthmoving included a failure to provide a warning about the presence of the drain and a failure to provide lighting.

The plaintiff said that, although he was an experienced security guard, he did not have any special skill to identify tripping hazards at night time.⁸

Judgment

Downs Earthmoving

It was conceded that Downs Earthmoving, as occupier of the premises, owed the plaintiff a duty to exercise reasonable care to avoid foreseeable risks to the plaintiff whilst he was on the premises.⁹

The issue for determination was what that duty required Downs Earthmoving to do in light of its relationship with the plaintiff. Downs Earthmoving argued that it engaged Darling Downs Security as an independent

contractor to provide specialist security services at its premises and, in doing so, it was entitled to rely upon the skill and expertise of that party.¹⁰

Bowskill QC DCJ applied the following principle outlined in *Papatonakis v Australian Telecommunications Commission*¹¹ by Brennan and Dawson JJ to determine the scope of the duty owed by Downs Earthmoving:

‘...where an independent contractor carrying on a particular trade is engaged by an occupier to work on his premises, the occupier is not under a duty to give a warning of a defect in the premises if tradesmen of that class are accustomed to meeting and safeguarding themselves against defects of that kind.’

Her Honour said that the relevant risk in this instance was

*‘...a risk that a security patrol officer might injure themselves, by tripping or falling on an unseen hazard on the driveway of the premises, in the night, in dark conditions.’*¹²

Bowskill QC DCJ held that the scope of the duty owed by Downs Earthmoving did not extend to warning the plaintiff about the presence of the drain or to taking precautions such as providing better lighting. Accordingly, her Honour found that Downs Earthmoving did not breach its duty of care to the plaintiff.



Darling Downs Security

As against Darling Downs Security, her Honour found that the warnings contained in the risk assessment and the first night brief were all that reasonable care required in response to the risk of injury. On that basis, she also found that Darling Downs Security did not breach its duty to the defendant.

Quantum

The plaintiff claimed damages of \$281,470.51 which included a significant component for future economic loss on the basis that he had diminished earning capacity by being unable to work on the weekend, which he said he would have done in the past, and in the future, to supplement his income.¹³

Her Honour found that the claimant had not demonstrated a diminished earning capacity,¹⁴ nor had he demonstrated that this injury was productive of financial loss.¹⁵ Her Honour would have made no award for future economic loss had she found for the plaintiff.

Contributory negligence

Significantly, had the plaintiff been successful as against Downs Earthmoving, his own failure to use reasonable care would have resulted in a finding of contributory negligence of 75%.¹⁶ As against Darling Downs Security, her Honour found that the plaintiff would have borne 30% contributory negligence.¹⁷

Apportionment

Had her Honour found both defendants liable, the appropriate apportionment would have been 80% to Darling Downs Security and 20% to Downs Earthmoving.

Comment

The scope of the duty of care owed by an occupier to an entrant is to be considered by reference to the relationship between the parties. In this instance, the relevant risk that arose did not require the occupier to take any action to mitigate that risk. As the risk complained of was of a kind which a security guard was accustomed to dealing with, the fact that adequate lighting had not been provided until after the accident did not assist the plaintiff.

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¹ The plaintiff said that they were attending to a possible break in on the night of his injury; however this was not accepted by Bowskill QC DCJ: *Humphries v Downs Earthmoving and another* [2015] QDC 323 [104] and [105].

² Ibid [4].

³ Ibid [84].

⁴ Ibid [55].

⁵ Ibid [57] to [60]. N.B. The plaintiff said that he had not received the risk assessment but this was not accepted by Bowskill QC DCJ: Ibid [65].

⁶ Ibid [45].

⁷ Ibid [19].

⁸ Ibid [9].

⁹ Ibid [158].

¹⁰ Ibid [162].

¹¹ (1985) 156 CLR 7 [20].

¹² [2015] QDC 323 [178].

¹³ Ibid [222].

¹⁴ Ibid [226].

¹⁵ Ibid [227].

¹⁶ Ibid [238].

¹⁷ Ibid [240].

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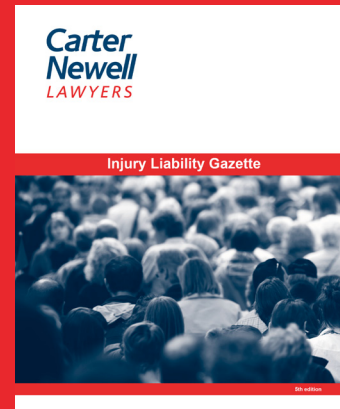
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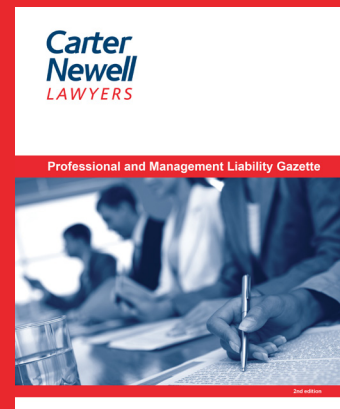
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