



INSURANCE
CONSTRUCTION &
ENGINEERING
ENERGY &
RESOURCES
CORPORATE
COMMERCIAL
PROPERTY
LITIGATION &
DISPUTE
RESOLUTION
AVIATION &
TRANSPORT

Plaintiff's \$151,000 grape claim squashed by the Court of Appeal

Ryan Stehlik, Senior Associate

***Woolworths Ltd v McQuillan* [2017] NSWCA 202**

In brief

Woolworths has successfully appealed the New South Wales District Court's findings that its staff members were negligent for either causing the suspect grape to fall to the ground or failing to identify it on the ground just after the store had opened.

The Court of Appeal found the inferences of the judge at first instance were not correct, and Woolworths' staff were not required to keep a 'perfect' lookout.

District Court finding

On 25 November 2012, Ms Colleen McQuillan slipped on a grape at 10:06am in the produce section of Woolworths Leichardt, suffering injuries. The store had only opened six minutes earlier. It was argued by Woolworths, and

accepted by the plaintiff, that staff had been appropriately trained to identify and clean up hazards on the floor of its stores. It was also accepted that, if the system was operational, nothing further was required.

However, the plaintiff argued that two staff members assigned to the area did not identify the grape and so the system was ineffective in the circumstances.

The District Court ultimately found that the grape dropped to the floor '*after or at the time the grapes were brought...onto their display table*' and it was overlooked during the busy store opening period.

Ms McQuillan was successful at first instance and awarded \$151,000 plus interest and costs.

Finding on appeal

The real issue for the Court of Appeal to consider was whether a reasonable person in Woolworths' position would have taken precautions greater than the ones they took. The majority of the Court of Appeal found that the two staff assigned to the area were in the area at the time (direct evidence to that effect was provided by a manager) appropriately monitoring the produce section. Their Honours were not convinced that an inference could be drawn that the grape had fallen at any particular time or before the store opened.

Further, and very fortunately for Woolworths, the court held that its staff members' failure to identify one single grape on the floor did not constitute a casual act of negligence. Justice Gleeson said, *'keeping a proper lookout in accordance with instructions to maintain vigilance for hazards on the floor, such as grapes, does not mean a perfect lookout'*.

Comment

Much of the court's decision came down to the fact that Woolworths had in place an appropriate **and operational** system of inspection and cleaning. To succeed, Ms McQuillan's case would have had to suggest that each part of the floor be under observation every minute the store was open, which would have effectively invoked strict liability against Woolworths.

This case is very favourable to defendant occupiers and their insurers. If there is strong evidence in a matter that demonstrates an appropriate and operational inspection and cleaning system was in place at the time, defendants can take comfort in this decision to defend those matters.

A more detailed analysis of this case will be included in the next edition of Carter Newell's Injury Liability Gazette.

Author



Ryan Stehlik

Senior Associate (Melbourne)

P: +61 (0) 3 9002 4503
E: rstehlik@carternewell.com

Other Contacts



Rebecca Stevens

Partner (Brisbane)

P: +61 (0) 7 3000 8347
E: rstevens@carternewell.com



Christian Breen

Senior Associate (Sydney)

P: +61 (0) 2 8315 2704
E: cbreen@carternewell.com

Please note that Carter Newell collects, uses and discloses your personal information in accordance with the Australian Privacy Principles and in accordance with Carter Newell's Privacy Policy, which is available at www.carternewell.com/legal/privacy-policy. This article may provide CPD/CLE/CIP points through your relevant industry organisation. To tell us what you think of this newsletter, or to have your contact details updated or removed from the mailing list, please contact the Editor at newsletters@carternewell.com. If you would like to receive newsletters electronically, please go to www.carternewell.com and enter your details in CNJNewsletter signup.

The material contained in this newsletter is in the nature of general comment only, and neither purports nor is intended to be advice on any particular matter. No reader should act on the basis of any matter contained in this publication without considering, and if necessary, taking appropriate professional advice upon their own particular circumstances. © Carter Newell Lawyers 2017

Brisbane
Level 13, 215 Adelaide Street
Brisbane QLD Australia 4000
GPO Box 2232, Brisbane QLD 4001
Phone +61 (0) 7 3000 8300

Sydney
Level 11, 15 Castlereagh Street
Sydney NSW Australia 2000
GPO Box 4418, Sydney NSW 2001
Phone +61 (0) 2 8315 2700

Melbourne
Level 10, 470 Collins Street
Melbourne VIC Australia 3000
Phone +61 (0) 3 9002 4500



ABN 70 144 715 010
www.carternewell.com