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Précis Paper

Rodd v Hall (2019) NSWSC 1304

A discussion about the recent decision of *Rodd v Hall* (2019) NSWSC 1304.

Discussion Includes

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Rodd v Hall (2019) NSWSC 1304

1. **In this edition of BenchTV, Michael Cranitch SC (Barrister, State Chambers, Sydney) and Julianne Carroll (Solicitor Director, Commins Hendriks, Wagga Wagga) discuss the recent decision of *Rodd v Hall* (2019) NSWSC 1304.**

Material Facts

2. **The plaintiff was a paying guest at a motel on 13 August, 2013. Whilst showering in the hotel, a quantity of water made its way from the shower curtain onto the tiled floor. The shower curtain was approximately 90mm from the floor.**
3. **The plaintiff came out of the shower and found the shower mat on the floor completely saturated with water. Approximately an hour later, the plaintiff re-entered the bathroom and fell heavily, sustaining a fracture to her hip.**

Legal Principles

4. **The legal principles to be decided in this matter included, whether the defendant held a duty of care to the plaintiff, whether the defendant breached its duty of care and whether the defendant's negligence caused the plaintiff's injury, loss and damage.**
5. **Other matters which the case considered were contributory negligence and the relevance of obvious risk.**

Key Considerations of Court in determining breach of duty of care

6. **There was no evidence that the tiling was any more slippery than may be expected in any motel or domestic situation, that is, that there was no breach of any building requirements or anything of that nature and it was contended by the defendants that it was not unusual that in a bathroom, there would be wet tiles.**
7. **The problem was that the experts were in agreement that they were slippery, that they did comply with the requirements that were in place when the bathroom was constructed, however the standards no longer required a static coefficient of friction. The standard is now a more dynamic standard that takes into account the type of movements engaged in the slip and other matters.**
8. **The problem with the bathroom in question was that if the wet area had been confined to something near or approximate to where the shower recess ended, then there would not have been an argument about it at all as it should not have been slippery. In this case, the water got out into an area far wider than would have been anticipated.**

9. **It is now necessary to look at the whole thing prospectively from the point of view of the *Civil Liability Act* 2002 (NSW). Section 5B of the *Civil Liability Act* 2002 (NSW) is the foundational principle on which any act of negligence that is seeking to be proved is based.**
10. **In the case of *Modbury Triangle Shopping Centre Pty Ltd v Anzil* [2000] HCA 61 it was said that the basis of the duty owed by an occupier was controller knowledge of the state of the premises . In this case, there was a direct denial by the owner of the motel that firstly, there had never been any such occurrence in the past and secondly, that she was unaware herself from cleaning the motel on a daily basis of the unduly slippery state of the tiles when they were wet.**

Expert Evidence

11. **The experts in this case were in agreement that if one relied upon the old standard being a certain low level of coefficient of friction, they were in agreement that the tiles did comply with a safe standard coefficient of friction.**
12. **The issue lay in the fact that there was a history of the plaintiff rushing into the bathroom and even though she said she did not expect the tiles to be slippery at that stage, she knew when she got out of the shower that the tiles were slippery.**
13. **The experts did agree that there were some fairly simple measures that could have been taken to reduce the risk of injury to the plaintiff. Under the *Civil Liability Act 2002* (NSW), one of the matters that one has to take into account is the degree of difficulty in eliminating the risk of harm.**
14. **In this case there was good expert evidence that said simple and inexpensive measures could have been put into place, the simplest of which was that the shower curtain was far too short and as a result, water was allowed to escape into areas that it would not otherwise have become wet.**

Key considerations for practitioners

15. **There has been a noticeable drop off in actions being brought for occupier's liability over the last few years. It is surmised that this resulted from the gradual implementation and increase in case law under the *Civil Liability Act* 2002 (NSW).**
16. **A study from Lawyers Weekly, 2019 saw the lowest public liability claims for slips, trips and falls in the last 15 years across Australia. People have been asking whether there has been a certain degree of discouragement for people to bring such claims due to the perceived impediments of the *Civil Liability Act 2002* (NSW). In 2019, the lowest ever number of public liability cases were noted across Australia. Of the 28 cases recorded, 24 were from NSW. In part, the higher claims may be due to the fact that for**

example, in QLD they have a civil procedure requirement that the matter be mediated before any action is started in court.

17. In *Modbury Triangle Shopping Centre Pty Ltd v Anzil* [2000] HCA 61 was cited, where the basis of the duty owed by the occupier in that case was control of and knowledge of the state of the premises. Other Cases such as *Strong v Woolworths Limited* [2012] HCA 5 and *Adeels Palace Pty Limited v Moubarak; Adeels Palace Pty Limited v Bou Najem* [2009] HCA 48 have caused interesting reassessments of the nature of breach and the nature of causation.
18. However, breach is substantially determined by Section 5B of the *Civil Liability Act* 2002 (NSW) and the starting point is identifying the risk.

<u>The future of slip and fall cases</u>

19. This case was a commercial setting and there is always room in commercial cases for a slip and fall situation, the matter is somewhat more difficult in a domestic case. For example, there have been a number of cases which deal with what is expected in a public space and in dealing with liability to entrance on premises in a commercial setting, then one has to look at the fact that for example, it was said in *Ratewave Pty Limited v BJ Illingby* [2017] NSWCA 103 it is to be reasonably expected that users of commercial premises would include those that were distracted or inattentive or less than careful.
20. This involved a case where the supermarket had laid down a parking area that was underground and subject to hydrostatic pressures such that some water made its way onto the walkways, even though the plaintiff in that case had traversed the area a couple of times without incident, on this occasion came to grief
21. Therefore, a common sense approach needs to be taken in a commercial setting in a way that you would not get in a domestic premises. In a domestic setting, the standard to be applied would be that of a reasonable household and the duty is much heavier in commercial premises than domestic

<u>Decision</u>

22. Ultimately, His Honour found the plaintiff 20% contributory negligent. However, there was a substantial argument to be made that because of the lapse in time between the time when the water got onto the floor and the time she used the bathroom and came to grief, that there should be no contributory negligence as she did not expect there to be water a) where there was and b) she thought if there was water there it would have dried up in the intervening hour. This is entirely consistent with previous cases such as *Podrebersek v Australian Iron and Steel Pty Ltd* (1985) 59 ALJR 492.

23. **As in any contributory negligence case, it is a matter of weighing up fault of the tortfeasor and fault of the injured plaintiff and then trying to reach an apportionment**
24. **The defendant raised the situation that there was no expectation that there would be a hazard that was occasioned in the manner this was. In *Bankstown Foundry Pty Ltd v Braistina* [1986] HCA 20 it was said there that the weight to be attached to an accident prehistory involves a question of fact to be determined in the light of all relevant circumstances. In this matter the relevant circumstances favoured the plaintiff in this matter.**
25. **In *Coles Supermarkets Australia Pty Ltd v Bridge* [2018] NSWCA 183 which concerned a matter where there were no prior complaints, it was noted that there is always an expectation that an entrant will use reasonable care for his or her own safety.**

BIOGRAPHY

Michael Cranitch SC

Barrister, State Chambers, Sydney

Michael Cranitch SC came to the bar in 1974 and was appointed a Senior Counsel in 1995. He is a generalist Barrister. Mr Cranitch SC is a qualified mediator and has a position on the Supreme Court of Mediators. His practice in Personal Injury focuses on those with catastrophic injuries and medical misadventure. Mr Cranitch SC's involvement in this area is caused by his desire to see his clients receive adequate compensation. In addition, he has a significant practice in Insurance Law. Mr Cranitch SC was appointed an Acting Judge of the NSW District Court in the late nineties over a period of 2 years but resumed his work practicing as a Barrister. His commitment and love for the Bar has never wavered. In his spare time, Mr Cranitch loves to sail and involve himself with the sailing community. He was on the Board of the Cruising Yacht club of Australia for 12 years and is currently chair of the Safety Committee of Yachting Australia.

Julianne Carroll

Solicitor Director, Commins Hendriks, Wagga Wagga

Julianne joined Commins Hendriks as a Law Graduate in 2002 having previously spent some time working with the firm during her University breaks. She has been admitted to practice as a Solicitor since October 2003 and became a Director of Commins Hendriks in 2012. Julianne specialises in litigious disputes, with particular emphasis on public risk insurance, damage from defective products, property damage, debt recovery actions, employment-related disputes, Family Provision claims under the Succession Act, personal injury claims and professional indemnity. Julianne represents many rural clients, employers, company entities and property owners in a wide range of litigation matters. She is an advocate who has conducted matters in most Australian jurisdictions, including the High Court, Federal Court, New South Wales Court of Appeal, Supreme Court, District court, Local Court, Fair Work Commission and Consumer, Trader and Tenancy Tribunal.

REFERENCES

Legislation

***Civil Liability Act* 2002 (NSW)**

Cases

***Rodd v Hall* (2019) NSWSC 1304**

***Modbury Triangle Shopping Centre Pty Ltd v Anzil* [2000] HCA 61**

***Strong v Woolworths Limited* [2012] HCA 5**

***Adeels Palace Pty Limited v Moubarak; Adeels Palace Pty Limited v Bou Najem* [2009] HCA 48**

***Ratewave Pty Limited v BJ Illingby* [2017] NSWCA 103**

***Podrebersek v Australian Iron and Steel Pty Ltd* (1985) 59 ALJR 492**

***Bankstown Foundry Pty Ltd v Braistina* [1986] HCA 20**

***Coles Supermarkets Australia Pty Ltd v Bridge* [2018] NSWCA 183**