GARZO v LIVERPOOL/CAMPBELLTOWN CHRISTIAN SCHOOL [2012] NSWCA 151

Facts:

- The plaintiff was injured on 27 November 2007 when she slipped on a white painted line of a pedestrian crossing which was within the grounds of the 1st respondent (Liverpool/Campbelltown Christian School). Although it was not raining at the time, the ground was wet due to some earlier light drizzle.

- The crossing was created in 2005 and had been repainted by the 2nd respondent (T&J Turner Building Services Pty Ltd), the school's maintenance contractor, in July 2007, approximately 4-5 months before the plaintiff's accident.

- The school had 1400 students and there was no evidence of previous accidents.

- The trial judge (Justice Garling in the Supreme Court) found that there was no evidence that the painted surface was unreasonable slippery.

- The relevant Australian Standard current in 2007 recommended that the slip resistance for paint on a pedestrian crossing be a minimum of BPN45.

- The paint used by the school on the pedestrian crossing, when new, had a BPN of 40.

Expert Evidence:

- The plaintiff's expert conducted testing some three months and two weeks after the incident. After conducting a number of tests at different locations on the crossing he found that areas with the most worn paint had the best slip resistance whilst areas with the least worn paint had the worst slip resistance.

- He expressed the opinion that "*the slip resistance may improve rapidly over a few days of wear and use with the surface abrasion from pedestrians crossing the road*".

- The expert evidence also acknowledged that a variation of 4 BPN would not be significant enough for the ordinary pedestrian to notice.

Appeal Findings:

Negligence – Section 5B(1) CLA:

(a) The risk of someone slipping on paint that was not appropriate for a pedestrian crossing was **foreseeable.**

(b) The risk of slipping on the painted area of the pedestrian crossing, particularly when the surface was wet and where slip resistance qualities of the paint were less then the recommended minimum standard was found to be **not insignificant.**

(c) The respondents **failed to take precautions** to ascertain whether the paint was appropriate for use on the pedestrian crossing and that a **reasonable person** in the position of the respondents would have taken such a precaution.

Causation – Section 5D(1) CLA:

(a) the negligence of the respondents **was not** a necessary condition of the of the occurrence of harm.

Reasoning

- The Court found that at the time of the re-painting of the crossing (July 2007) the respondents had breached their duty of care, however on the basis of the evidence provided by the plaintiff's own expert that the slip resistance of the paint would improve over time, it was decided that as at the date of the plaintiff's accident (27 November 2007) the slip resistance of the painted crossing would have improved to a point where it complied with the relevant standard;

- Accordingly, it was ultimately found that the plaintiff had established a **breach of duty** of care but that **causation** had not been established, particularly on the basis that any non-compliance with the recommended standard was insignificant (i.e. less than 4 BPN) and would not have contributed to the plaintiff's fall.

- The Court stated that it would be difficult to see how one surface could be deemed unreasonably slippery and another not, if the difference is not readily perceptible to a pedestrian crossing the subject surface.

- *“The fact of the plaintiff’s fall, without more, did not establish that it was caused by the painted surfaces of the crossing being unreasonably slippery. Other explanations were equally available...The realistic possibilities included some contaminant or other substance on the surface of the crossing or the sole of the appellant's left shoe which made a contribution to her slipping and which would have continued to do so with the same result even if the painted surface had a slightly higher BPN.”*

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