

Leichhardt Municipal Council -v- Montgomery [2007] HCA 6

Judges

Gleeson CJ, Kirby, Hayne, Callinan, Crennan JJ

Date of Decision

27 February 2007

Key Issues Arising

Liability of a road authority for the negligent acts of an independent contractor.

Key Facts

Leichhardt Municipal Council engaged Roan Constructions, an independent contractor to perform work on a public road, including the footpath area. The Council's specifications required Roan Constructions to lay artificial grass or carpet over the top of the disturbed area of the footpath to provide clean access to adjacent commercial premises. Roan Constructions negligently laid carpet over a broken telecommunications pit cover. A pedestrian using the footpath fell into the pit and was injured.

The pedestrian sued both the Council and Roan Constructions. Roan Constructions was clearly negligent and the claim against it was settled prior to trial. The trial proceeded solely against the Council. The primary judge found the Council liable. There was no finding of direct liability on the part of the council but both the primary judge and the New South Wales Court of Appeal found that the Council, as the road authority, owed the plaintiff a non-delegable duty of care. Consequently, they found the council vicariously liable for the negligence of Roan Contractors. The Council appealed to the High Court.

Decision

The High Court found that there is no general principle that a road authority owes a non-delegable duty of care and that on a proper construction of the Roads Act 1993 (NSW), the Council as the road authority was not subject to such a non-delegable duty. Consequently, the Council was not vicariously liable for the acts of an independent contractor. The case was remitted for hearing to the New South Wales Court of Appeal to consider whether, on the evidence, there was any negligence on the part of the Council itself.

Practical Application

The decision confirms that as a matter of general principle:

- a. A road authority is not subject to a non-delegable duty of care (the nature of the duty imposed by the relevant legislation must be considered).
- b. A defendant is not vicariously liable for the negligence of an independent contractor; and

Although this decision relates to a public liability claim, the principle has application to all claims for damages for negligence involving a road authority or other principal and an independent contractor. Unless a principal/road authority is found on the facts to have a non-delegable duty of care, it will be necessary to show actual negligence on the part of the principal/road authority to establish liability.

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Consequently, in a claim arising out of roadwork or other construction work, contribution will not be available from a principal contractor if:

- The principal is not subject to a non-delegable duty of care;
- The principal engaged a reasonably competent independent contractor to perform the work; and
- The claim arises **solely** as the result of the negligence of the independent contractor i.e. there is no evidence of negligence by the Council itself.

In those circumstances, a claim for contribution should be made against the independent contractor. However, if there is some uncertainty as to whether the principal had a non-delegable duty, or if there is some evidence of actual negligence on the part of the principal or its employees (e.g. an actual obligation to supervise that is not satisfied), the claim for contribution should be made against both the principal and the contractor.

This case note was prepared by Rachael Miller and Felicity Donalds