

Duty of designers

Slivak v Lurgi (Australia) Pty Ltd [2001] HCA 6 (15 February 2001)

In *Slivak v Lurgi (Australia) Pty Ltd* the High Court considered the duty of designers under Section 24(2a)(a) of the *Occupational Health, Safety and Welfare Act 1986* (SA). Sub-section (2a)(a) of the Act provides:

"(2a) Without derogating from the operation of subsections (1) and (2), where any structure is to be erected in the course of any work:

(a) the person who designs the structure must ensure so far as is reasonably practicable that the structure is designed so that the persons who are required to erect it are, in doing so, safe from injury and risks to health;"

The High Court held that the statutory duty of a designer is limited to matters of design. The designer did not have an obligation to ensure its designs are erected and constructed according to plan; it is enough for a designer to ensure its design plans alone are safe and the designer is entitled to expect that its specifications will be followed.

The facts and the evidence

The appellant was severely injured after falling some 25 metres from a fume extraction system he was constructing in the course of his employment with Lucon (Australia) Pty Ltd.¹

The system was designed by the respondent Lurgi (Australia) Pty Ltd and was being installed for BHP. Under the installation contract, Lurgi accepted responsibility for the entire project including a general responsibility to BHP for safety of the workers and safe working conditions. Lurgi had contracted with Lucon for the performance by Lucon of part of the construction work.

The trial judge accepted evidence adduced by the appellant that the cell plate upon which the appellant was standing collapsed and that that cell plate had been constructed by Lucon with slight variations (up to 14mm in parts) contrary to the designer's plans. There was evidence that had the cell plate been constructed according to design and within tolerances, it would not have fallen.

Submission by the appellant

The appellant argued that the designer should have contemplated that slight variations to its design were foreseeable and to take steps to guard against it.

The decision

Held: appeal dismissed.

Sub-section (2a) divides and allocates in paras. (a)-(d) duties between those who design a structure, undertake its erection, import, manufacture or supply materials. The difference in the content of the duties and their different scope of operation suggests that the duty imposed upon designers is intend-

ed to be limited to matters of design.

Section 24(2a)(a) does not require a designer to anticipate errors or departures from design by the person undertaking the erection and to take steps to guard against it by modifying the design.

The ordinary and natural meaning of the terms in s24 (2a)(a) is that they apply to a structure built in accordance with design. "Thus, if, as designed, parts of a structure are incapable of bearing weight that the structure is intended to bear, or if, as designed, it is possible for parts of the structure to fall or break, or if the design is incapable of being built safely having regard to features of the location in which it is being built, then the design will be inadequate and the designer will have breached s24(2a)."

The designer is not required to take into account factors outside its power to control, supervise or manage, such as the procedures to be adopted during construction.

In addition, the court also considered the question of who bore the onus of proof under the statute and concluded that the plaintiff bore the onus of proof. ■

Footnote:

¹ Section 54(1) *Workers Rehabilitation and Compensation Act 1986* (SA) abolishes causes of action by employees against employers for damages for personal injuries.

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