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Occupiers' liability for actions of third parties

Beardmore v Franklins Management Service Pty Ltd [2002] QCA 60

The Facts

Mrs Beardmore was shopping in a Franklins Supermarket in Brisbane. Shortly after entering the supermarket she observed a child of about five or six years of age 'throwing some sort of tantrum' and running up and down the aisles with a trolley which had quite a few groceries in it. The child appeared to be accompanied by his mother.

During this time she noticed a number of Franklins' staff members working in the aisles packing shelves. At one point she reports making eye contact with a female staff member whose facial expression was consistent with disapproval of the conduct. She also observed the child nudge an older lady with the trolley when he couldn't pull it up in time to avoid colliding with her. She reported that the child was very noisey. Later in her shopping trip she bent down to look at some canned products, heard a yell and as she turned around was hit by the trolley being pushed by the child. She suffered a back injury. The mother and child were not identified. The plaintiff sued the supermarket.

Finding at First Instance

The learned trial judge held Franklins to have been negligent in failing to prevent the injury. He found that the child was 'acting uncontrollably' and there were a number of staff members who either saw or heard his conduct. He found that a staff member could have asked the mother to restrain the child, and if that failed, take hold of the trolley 'to impede its progress'.

Findings on Appeal

On appeal, the Queensland Court of Appeal, constituted by McMurdo P and Ambrose J, with McPherson JA dissenting, upheld the decision of the trial judge.

It was held that an occupier of premises owes a duty to take reasonable care for the safety of an entrant to its premises if there is a relationship of sufficient proximity between the occupier and the entrant. 'The appellant had a duty to keep its supermarket premises as safe for the purpose of shopping as the exercise of reasonable care and skill can make them'.[1]

While the mother had a duty of care to act reasonably and control the boy, this did not exempt the supermarket from liability 'where it is aware that a child in the company of its mother is behaving in a way which demonstrates a reasonable foreseeability of a real risk of injury to others in the store'.[2] On the facts available, it was reasonable for the trial judge to infer that staff of the supermarket saw and heard, or ought to have seen and heard, the child's actions and taken steps to avoid the risk of injury posed by the child's actions.

In his dissenting judgment, McPherson JA held that on the evidence the child did not appear to be out of the control of its mother such as to require intervention by supermarket staff. In reaching this conclusion he placed weight on the fact that neither the respondent nor any other shopper saw fit to complain about the conduct.

Conclusion

Since *Wormald v Schintler*[3] it has been clear that occupiers of premises have a duty to prevent foreseeable injuries caused by third persons on their premises. However unlike in *Wormald*, (which involved a drunken hotel patron about whom the management had received numerous complaints) here the supermarket was held liable despite the fact that there had been no complaints made about the conduct. Clearly occupiers of premises may be held accountable for the actions of those on their premises of which they are aware, or should be aware. The principle developed in this case provides plaintiffs who are injured in a public place with an alternate defendant where the individual responsible for the injury is impecunious or, as in this case, cannot be identified. PL

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Footnotes:

1. Per McMurdo P at para 4.
2. Per McMurdo P at para 6.
3. [1992] QCA 311.