

Plaintiff successful in trip and fall case

Muir v Hume [2003] QSC 191

In *Muir v Hume*,¹ the Queensland Supreme Court considered a trip and fall claim brought by the plaintiff tenant against her landlord.

THE FACTS

On 2 December 1990, the plaintiff tripped on a patch of worn and damaged carpet in the hallway at the entrance to the bathroom of the house and fell, suffering acute spinal disc derangement.

The plaintiff had moved into the premises on 14 July 1990. The defendant had inspected the premises on 13 June 1990 and noted an oval-shaped hole in the carpet. The defendant's evidence was that the hole was about 15 centimetres across with frayed edges. The judge, however, preferred the evidence of the plaintiff that the hole was 30 cm to 46 cm in size. The defendant trimmed away some of the 'bigger threads' and then covered the hole with a 40 cm by 60 cm mat.

The letting agent also notified the defendant of the state of the carpet on 14 June 1990.

The plaintiff gave evidence that she had inspected the property before moving in and had complained about the carpets. Although the letting agent had no recollection or documentation of such an inspection, the judge accepted the plaintiff's evidence that this had occurred.

The judge accepted the plaintiff's estimate of the hole being 30 cm to 46 cm across. He also accepted the plaintiff's evidence that on either side of the

hole it was worn and there was looping and ravelling edges poking out from the sides, so that the mat did not completely cover the damaged area of the carpet.

The defendant again inspected the house on 27 September 1990, noting that the carpet outside the bathroom was in the same condition as it had been in June. The plaintiff on that occasion asked if something could be done about the carpet. The judge also noted that the plaintiff had had frequent conversations with the letting agent concerning arrears of rent and that it was likely that she had complained about the carpet to the agent during those conversations.

The plaintiff had disposed of the mat the defendant had provided because it buckled, was not sturdy enough and it tended to move. She bought a replacement mat of the same size, but on the day of her fall it was not in place as it was airing.

The evidence also established that the cost of replacing all of the carpet was \$1450.

By reason of the fall the plaintiff required spinal surgery and developed narcotic dependence and a psychiatric condition secondary to her chronic pain.

THE DECISION

The plaintiff's claim was successful in negligence and breach of contract. The court held that the defendant was under a duty to provide and maintain the premises in good tenable repair and fit for human habitation. This duty was established under a specific clause in the tenancy agreement and by way of

an implied warranty under section seven of the *Residential Tenancies Act* 1994 (Qld).

The judge found that by failing to replace or repair the hall carpet at the entrance to the bathroom the defendant had failed to provide and maintain the house in good tenable repair and fit for human habitation and had thus exposed the plaintiff to a risk of injury.

The defendant had notice of the defect in the premises in sufficient time to take remedial action. The provision of the mat to cover the hole in the carpet was not an adequate interim measure to remove the risk. A mat was likely to constitute as much an obstacle that could be tripped on as the hole itself, and it was likely that it would be displaced or removed for one reason or another from time to time, as happened on the day in question.

Contributory negligence was assessed at 15% for failure to keep a proper lookout, although the reduction for contributory negligence was not applied due to the law in *Astley v Austrust Ltd*.²

Damages were assessed in the sum of \$1,248,402.54.

COMMENT

Trip and fall cases are notoriously difficult. It is pleasing to see that in the current environment a plaintiff can still be successful in circumstances in which a defendant should be clearly accountable. ■

Endnotes: 1 [2003] QSC 191. 2 (1999) 197 CLR 1.