Lawyers Alliance, Rob Davis and John Gordon, who appeared as counsel for Mr Cornwell in this matter. Both gave up significant time on a no-win, no-fee basis to assist Mr Cornwell in an extremely complex and difficult case, and I acknowledge their efforts and thank them on behalf of my firm and Mr Cornwell. ■

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Negligent men at work

Aston v Redcliffe City Council [2006] QCA 480

By Chris Salerno

Aston v Redcliffe City Council, a case handed down by the Queensland Court of Appeal on 17 November 2006, deals with the liability of local councils to passers-by in negligence for mishaps that can occur when their employees are mowing lawns in public spaces.

THE COUNCIL'S LIABILITY

The plaintiff was riding his bicycle on a footpath when glass fragments were thrown up by the blades of a ride-on lawnmower being operated near the footpath by the defendant's employee, a Mr Fielding. The glass punctured the plaintiff's front bicycle tyre, causing him to fall and suffer injuries.

The particulars of negligence alleged were: first, failing to attach a guard to the lawnmower; second, failing to warn the plaintiff of the presence of flying objects; third, failing to erect a physical barrier around the area being mowed; fourth, failing to take reasonable precautions for the plaintiff's safety; and fifth, exposing the plaintiff to a danger of which the defendant was, or ought to have been, aware.

The trial judge found[1] that the lawnmower had thrown glass fragments that deflated the tyre and caused the plaintiff to fall. The judge rejected the first allegation of negligence because the lawnmower had already been fitted with a guard. The second allegation was rejected on the basis that the plaintiff had seen the lawnmower in operation as he approached it. The third allegation was rejected on the basis that the cost of erecting water-filled barriers would have been too high. The fifth allegation, however, was made out because the trial judge held that Mr Fielding had disobeyed his supervisor's instructions to stop the lawnmower and to disengage the blades whenever a passer-by appeared.

The defendant was held vicariously liable to the plaintiff for damages of $60,801.10.

THE APPEAL

On appeal, the defendant argued that there was, first, no sufficient basis in the evidence for the trial judge's finding that the accident was caused by glass being thrown by the lawnmower and, second, no sufficient basis for the finding that Mr Fielding had been negligent. The Court of Appeal dismissed the appeal; the principal judgment was delivered by Keane JA, with Williams JA and Fryberg J agreeing.

On the first argument, Keane JA held that the trial judge appeared to accept the plaintiff's evidence that the accident occurred because of glass being thrown by the lawnmower, even though the trial judge did not explicitly state as much. Keane JA held that it was a rational conclusion open to the trial judge.

On the second argument, Keane JA held that since Mr Fielding had not seen the plaintiff approaching, Mr Fielding could not be held negligent or disobedient for failing to stop the mower and disengage the blades. The plaintiff then argued that Mr Fielding also disobeyed an instruction to keep a proper lookout for passers-by. Keane JA rejected this argument on the basis that operators of ride-on lawnmowers must, at certain times, devote most of their attention to safely operating them, and the plaintiff had failed to prove that Mr Fielding was able to turn his attention to him as he approached Mr Fielding.

In the end, however, Keane JA upheld the finding of negligence on the basis that temporary barriers (other than the water-filled barriers considered at trial) directing passers-by to the other footpath could have been erected at little cost.

A WARNING TO LOCAL COUNCILS

This case shows how important it is for council employees to cordon off areas they are mowing. It is insufficient, as the employee had done in this case, merely to erect a 'Men at Work' sign. ■

Note: 1 Summarised by Keane JA at paras 15-19.

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