

# IGNORANCE IS NOT ALWAYS BLISS

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An underground 11,000 volt cable owned by SA Power Networks (SA Power) (the respondent on appeal and the plaintiff at trial) was severed by sub-contractors, D&V Services Pty Ltd (D&V) (the appellant on appeal and the defendant at trial), which led a nearby earth leakage detector to trip, causing significant damage to SA Power's equipment. The cost to repair the cable and equipment was \$219,474.00 (the damages).

SA Power pursued D&V for the damages on the basis that D&V had failed in its duty of care to take reasonable precautions when completing the excavation.

## IN ISSUE

- D&V did not dispute that it owed SA Power a duty of care; the question was whether D&V had taken enough care when excavating to discharge the duty it owed to SA Power.
- Whether reasonable precautions were taken by D&V to reduce not insignificant risks when excavating.

## THE BACKGROUND

- D&V obtained a "Dial Before You Dig" plan (DBYD Plan) from another contractor at the construction site without contacting Dial Before You Dig (DBYD).
- Although the DBYD Plan which D&V used showed where the cable was predicted to be, the plans normally supplied by DBYD contained a cover sheet which stated that they are indicative only, and that if someone planned on digging within five metres of a high voltage cable, they should locate it first.
- The DBYD Plan relied upon by D&V did not contain this cover sheet, or the disclaimer.
- Ultimately, D&V believed that the cable was 3.2 metres away from where it was digging.

## THE DECISION AT TRIAL

The trial judge found that a reasonable person in the position of the D&V ought to have been aware that the plan used was "indicative only"; it could not be ignorantly relied upon as being perfectly accurate. D&V also should have sought a complete copy of the plan from DBYD.

As such, by relying on the DBYD Plan, D&V failed to take reasonable precautions to reduce not insignificant risks whilst excavating.

## THE DECISION ON APPEAL

The Appeal was dismissed, with D&V failing on every point raised.

D&V's failure on appeal was largely due to the Court of Appeal finding that D&V should have known, or ought reasonably to have known, the risk associated with digging within 3.2 metres of a high voltage cable,

and more importantly, that the DBYD Plan was indicative only. By not taking steps to investigate or mitigate the risk it failed in its duty of care.

The mere reliance on the DBYD Plan to be completely accurate, and to not take further precautions, was essentially enough for the Court of Appeal to rule that D&V breached its duty of care to SA Power.

## IMPLICATIONS FOR YOU

If working in the construction or excavation industry, always obtain DBYD plans.

More generally, always think critically about any risks that may be faced when completing an activity in which a duty of care is owed, and take steps to mitigate those risks. Ignorant reliance on an indicative plan, process or guidelines without taking steps to mitigate risks will not be sufficient.

*D&V Services Pty Ltd v SA Power Networks [2018] SASFC 92*

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