

# A WIN FOR ALDI AGAINST SHOPPER INJURED BY MALFUNCTIONING ENTRY GATES

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The ACT Court of Appeal overturned a finding of liability on the part of Aldi for injuries sustained by a shopper when entry gates failed to open, because it was not established that warning signs would have avoided the injury.

## IN ISSUE

- Whether Aldi's knowledge of the operation of the relevant gate was such as to require it to install a warning sign.
- Whether failure to do so amounted to a breach of duty.

## THE BACKGROUND

On 19 December 2013, Ms Korda was injured as a result of an incident at the entry gates for customers to the Aldi store located inside the Canberra Centre. The entry involved passing through two metal gates. Those gates were designed to open when a customer approached them from the outside of the store. The gates were arranged so that a customer entering the store would pass through the first gate, and then through the second gate. There was a distance of about a metre between the two gates. It was common ground that on the day of the incident, the gate assembly mechanism was not working correctly.

On the day of the incident, Ms Korda entered the gate assembly pushing an empty trolley. She pushed the trolley towards the closed second gate. As she did so she looked to her right, away from the gate towards a store display of biscuits. She expected the gate to open automatically. It did not do so. The trolley hit the gate and, as a consequence, struck her on the lower left shin. She then moved her trolley back and forth and the gate opened.

Ms Korda brought proceedings against Aldi as the occupier of the store.

## THE DECISION AT TRIAL

In the ACT Magistrates Court, Ms Korda obtained a judgment in the sum of \$56,054.93 (after damages were reduced by 50% for contributory negligence). The Magistrate held that Aldi had failed to give shoppers a warning that the entry gate to the store was not operating correctly.

## THE ISSUES ON APPEAL TO THE ACT SUPREME COURT

Ms Korda appealed to the ACT Supreme Court against the finding of 50% contributory negligence, and the order made by the Magistrate in relation to costs. Aldi cross appealed in relation to the liability finding made against it.

The Supreme Court allowed the cross appeal, and set aside the judgment below, on the basis that it was not possible to infer that the breach of duty identified by the Magistrate caused the loss suffered.

Ms Korda appealed against that decision.

## THE DECISION ON APPEAL TO THE ACT COURT OF APPEAL

The Court of Appeal noted that at the trial Ms Korda led no evidence of the type of warning sign which should have been provided, the wording of such a sign, or where it should have been placed. There was also no evidence of whether and how Ms Korda would have reacted to such a sign, and in such circumstances, it was not possible to infer that the breach of duty identified by the Magistrate caused the loss suffered.

In any event, the Magistrate erred in finding that a warning sign was required. The evidence did not support a finding that there was any knowledge on Aldi's part of any malfunction in the operation of the second gate. That left the question of whether, knowing that the second gate only opened when triggered by a sensor, Aldi was obliged to place a sign warning patrons to that effect. The Court of Appeal held that there was no such obligation because gates (like doors) are obvious obstacles, and while users of such gates would have an expectation that they would open automatically, they would also realise that such gates are not always 100% accurate in their ability to detect an approaching entrant and, as a result, care needs to be exercised.

The appeal was therefore dismissed.

## IMPLICATIONS FOR YOU

This case highlights the importance of evidence in relation to warning signs and causation. The Court of Appeal emphasised that in a failure to warn case, evidence led by a plaintiff asserting that a warning sign would have altered the relevant behaviour, must be carefully examined and regard had to the inherent probabilities in the particular circumstances, and the general characteristics of human behaviour, before a conclusion is reached that factual and legal causation is established.

*Korda v Aldi Foods Pty Ltd* [2018] ACTCA 6

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