

# NAVIGATING THE COMMON ACCESS WAY: STORE OWNER HELD LIABLE FOR CUSTOMER COLLECTION AREA

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The Court of Appeal in Western Australia has confirmed that a store owner owed a duty of care to a customer who, when standing in a common access way while his goods were being loaded, was negligently driven into by another user of the access way.

## IN ISSUE

- Whether the appellant, a Harvey Norman franchisee, owed a duty of care to customers collecting goods from its pick-up area.
- Whether it was possible to identify precautions which the appellant ought to have taken and if so, whether a failure to take such precautions caused the injury.

## THE BACKGROUND

On 13 January 2015, a staff member of the appellant directed a customer to drive his vehicle down the side of the building, a common access way, to a pick-up bay. Access to the bay was blocked by the truck and trailer of the respondent, who was delivering goods to a different store. The customer parked behind the trailer and was served by another staff member of the appellant. While they were loading goods into the boot of the customer's vehicle, the respondent reversed and ran into the customer, who was crushed against his own vehicle.

The customer sued the respondent, who admitted negligence and consented to judgment being entered against him in the sum of \$865,000 for damages and costs. The respondent claimed a contribution from the appellant, which the appellant resisted.

## THE DECISION AT TRIAL

The trial judge found that the appellant owed the customer a common law duty of care (which it had breached) and that a reasonable store owner, in the position of the appellant, would have taken some precautions against the risk of harm to which its customers were inevitably exposed in the vicinity of the pick-up bay and access way. The appellant was required to contribute 25% of the judgment sum paid by the respondent.

## THE ISSUES ON APPEAL

In essence the appellant contended that the trial judge had made unsupported findings of fact; had erred in determining that the appellant owed and breached a duty of care (encompassing reckless driving by a third

party); and had failed to determine whether any of the precautions suggested by the trial judge would have resulted in avoiding the injury to the customer.

## THE DECISION ON APPEAL

In dismissing the appeal, the Court of Appeal found that the appellant had a duty to exercise reasonable care to take steps to avoid a foreseeable risk of injury to its customers arising from the place at which, and the circumstances under which, they were required to collect their purchased goods.

Crucially, by its employees the appellant knew, or ought to have known, that customer vehicles were loaded in the access way from time to time, and of the risks and difficulties arising whenever the need arose for large vehicles (such as that of the respondent) to reverse in the access way. The appellant was negligent in failing to direct its employees to only load customer vehicles parked in the pick-up bay. Had this occurred, the injury would have been avoided.

## IMPLICATIONS FOR YOU

Store owners should undertake a risk assessment of hazards associated with areas to which customers are directed to collect their purchases, and ensure that any precautions appropriate to avoid a risk of harm are identified and implemented.

*Osborne Park Commercial Pty Ltd v Miloradovic* [2019] WASCA 17

## AUTHORS



**KATRINA WELCH**  
SENIOR ASSOCIATE

+61 8 6424 0408  
katrina.welch@bnlaw.com.au