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LAWYERS

CAUTION: POTHOLES AHEAD! CLAIM DISMISSED FOR WOMAN WHO FELL IN POTHOLE AND FRACTURED HER ANKLE.

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The occupier of a car park of commercial premises was not liable to the plaintiff who suffered injuries when she fell into a pothole because the evidence did not establish that it failed to maintain or repair the car park or provide better lighting.

IN ISSUE

- The focus of the court was on what caused the fall, together with whether there was inadequate lighting in the outdoor car park, and whether the occupier had an inadequate maintenance system.

THE BACKGROUND

On 15 May 2009 at about 7.15pm, the then 63 year old female plaintiff fell in the outdoor gravel car park of the George Harcourt Inn (the Inn). She had just parked her car and was entering the Inn when she stepped over a railway sleeper and then into a pothole the size of a dinner plate which she did not see, and then fell. She claimed that she did not see the pothole due to the lack of adequate lighting in the car park. As a result of the fall, she fractured her ankle in two places. She commenced proceedings against the first defendant (which were discontinued prior to the hearing), the second defendant as the occupier of the car park and the third defendant as the owner of the car park. The claim against the third defendant was not pursued.

THE DECISION

The court accepted that the evidence established there was a pothole that the plaintiff stepped into, causing her to fall. The court also noted that the lighting of the car park was “undeniably poor”. Although the system of maintenance was casual and insufficient to identify the particular hazard, it did not follow that the system fell short of the standard required to discharge the second defendant’s duty of care.

The court was not satisfied that in the circumstances an occupier acting reasonably would have taken the precaution of identifying and repairing every small hole on the surface of a dirt car park. Further, there was no evidence proffered that the occupier knew about any hole. It could not repair something it did not know about. The evidence was not sufficient to establish that the second defendant failed to discharge its duty of care to the plaintiff, either by failing to maintain the car park so that the hole was discovered and repaired; warning patrons; or by failing to provide better lighting in the car park so that the hole could be seen. There was insufficient evidence to establish that better maintenance of the car park would have identified the hole, or that improved lighting would have alerted the plaintiff to the state of the ground at the location where she fell. Although the plaintiff fell on a surface that was not as safe as it could have been, that did not translate to negligence by the second defendant.

Even if the plaintiff had established breach of the duty of care owed, there was insufficient evidence to enable a finding that any such breach caused the fall.

IMPLICATIONS FOR YOU

This case is a reminder of the previously established principle that an occupier does not need to undertake so many precautions as to completely eliminate every risk, if it is not reasonable to do so in the circumstances – the law accepts that there is no such thing as absolute safety. The judgment also provides a timely reminder that when it comes to negligence, one size does not fit all. The court noted that the Inn and carpark had a "rustic charm" that attracted patrons and although that could not be taken too far in determining negligence, it was not an urban environment and the occupier could not be held to the maintenance and lighting standard of a concrete car park attached to a supermarket.

Jennings v George Harcourt Management Pty Ltd [2018] ACTSC 33

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