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DISEMBARK THIS WAY – DISTRICT COURT RULES ON AIRPORT TRIP CASE

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An injured plaintiff brought a negligence claim against Qantas Airways Limited (Qantas), the City of Karratha (Karratha) and Skystar Airport Services Pty Ltd (Skystar), following a trip and fall while crossing the tarmac to enter a terminal building.

In Issue

- The liability of Karratha and Skystar to the plaintiff, and as between Qantas and Karratha.
- As between Karratha and Skystar, whether Skystar was obliged to effect a public liability policy of insurance which extended cover to Karratha with respect to Karratha's liability to the plaintiff.
- As between Qantas and Karratha, whether there was a term implied into the agreement between Karratha and Qantas to the effect that Karratha would provide safe access for passengers to disembark aircraft and access the terminal building at the Karratha Airport.

The background

On 4 November 2012 the plaintiff was a passenger on a Qantas flight from Perth to Karratha. The plaintiff disembarked from the rear stairs and followed a path across the tarmac to the terminal, the path being designated by bunting with flags strung between wheelie bins. As the plaintiff approached a 30 foot lighting tower his left foot struck the corner of a raised concrete plinth, causing him to trip and fall. The plaintiff commenced proceedings against Qantas (as the carrier operating the flight), Karratha (as the owner and occupier of Karratha airport) and Skystar (who contracted with Qantas to provide the ground handling services at Karratha Airport, and was responsible for the marshalling of passengers disembarking to the terminal building).

The decision at trial

On 14 May 2018 the trial judge, Burrows DCJ entered judgment for the plaintiff against Qantas in the amount of $500,000, being the limit of Qantas' liability under the Civil Aviation (Carriers' Liability) Act 1961 (WA) (CACLA, and costs in the amount of $45,000. On 21 May 2018 judgment was entered for Qantas in its third party action against Skystar for 50% of Qantas' liability to the plaintiff.

The Judge contrasted and distinguished the circumstances of the case from the situation of an uneven surface of a suburban driveway as in *Neindorf v Junkovic* [2005] HCA 75, or the situation of a pedestrian walking along a suburban street. He observed that it was reasonable to expect that passengers walking from the aircraft across the tarmac carrying hand luggage, and perhaps talking to one another, would include those who were distracted and inattentive. The risk of a passenger not seeing the plinth and tripping on it in those circumstances was a foreseeable and not insignificant risk.

The Court found that Karratha had breached its duty of care owed to the plaintiff under the *Occupiers' Liability Act 1985* (WA) and CLA by failing to properly illuminate the area of the plinth, failing to paint the plinth or otherwise mark it so that it was clearly distinguishable, and failing to erect balustrading, barricades, flagging or other equipment around the plinth so as to warn persons using the pathway of its presence and eliminate the hazard.

The Court was also satisfied that Skystar was acting as an agent of Qantas in circumstances where it was performing services in furtherance of the contract of carriage (being the function required of Qantas to deliver passengers from the aircraft to the terminal). Skystar was also found to be negligent in failing to warn the plaintiff of the presence of the plinth (which was held not to be an obvious risk), directing the plaintiff on a course which took him into close proximity with the plinth, failing to place the wheelie bin and flagging system in such a manner so as to avoid exposing the corner of the plinth and failing to supervise and guide the plaintiff so as to keep him clear of the plinth.

No contributory negligence was established on the part of the plaintiff.

Karratha's claim against Skystar for breach of contract by failing to insure pursuant to the lease for office space at the airport terminal was dismissed. The Judge concluded that Skystar's promise to insure under the lease did not require Skystar to effect insurance covering Karratha for its own negligence. The claim for breach of contract by failing to insure pursuant to the lease was therefore dismissed.

The Judge also found that there was a term implied into the Airport Agreement between Karratha and Qantas to the effect that Karratha would provide safe access for passengers to disembark aircraft and access the terminal building at the Karratha Airport, and that Karratha breached that term by the exposed plinth creating a tripping hazard. Qantas was entitled to damages for breach of the implied term, to be assessed.

Implications for you

This decision is a timely reminder that, where there is a risk that people would not ordinarily expect to come across, occupiers need to take reasonable measures to eliminate the risk of people tripping and falling.

Garnett v Qantas Airways Limited [2019] WADC 89

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