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LABOUR HIRE EMPLOYER NOT LIABLE – NO DUAL VICARIOUS LIABILITY IN AUSTRALIA

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Occupier escapes liability for injury to labour hire employee despite ownership of vehicle which caused injuries.

In Issue

- Whether employer vicariously liable for driver of pallet mover
- Whether Coles as occupier was negligent under *Civil Liability Act 2002* (NSW)
- Whether Coles as motor vehicle owner was liable as statutory agent of driver
- Whether dual vicarious liability applies

The Background

The plaintiff was employed as a warehouse worker by AllStaff Australia (AllStaff). On 24 April 2009, he was working at warehouse premises occupied and managed by Coles Group Supply Chain Pty Limited (Coles) pursuant to a labour hire contract, when a pallet mover owned by Coles (but driven by another AllStaff employee), collided with the plaintiff and crushed his lower right leg. Both AllStaff employees had received induction training on how to safely use a pallet mover.

The plaintiff commenced 2 sets of proceedings claiming damages – one against Coles and the other against AllStaff who each filed cross claims against the other.

The Decision

The court found that Allstaff owed the plaintiff a non-delegable duty of care as his employer and was vicariously liable for the actions of the driver of the pallet mover. It was the fault of the driver that caused the plaintiff's injuries. Therefore, Allstaff had breached its duty of care to the plaintiff and was found to be negligent. No contributory negligence was found in respect of the plaintiff's conduct.

The liability of Coles as occupier was not established. The plaintiff's injuries were not caused by any failure of Coles to take appropriate precautions under section 5B of the *Civil Liability Act 2002*. Accordingly the claim against Coles as occupier failed.

AllStaff and the plaintiff argued that Coles was nevertheless liable because the interaction of the *Motor Accidents Compensation Act 1999* (NSW) (MACA) and the *Workers Compensation Act 1987* (NSW) (WCA) meant that the AllStaff driver was the statutory agent of Coles, making Coles liable as a principal. The court rejected this interpretation and held that there was no relationship of statutory agency created by the operation of the legislation. Even if

there was, the court affirmed the long standing principle against dual vicarious liability – the law does not recognise a several liability in two principals who are not connected. Since AllStaff was vicariously liable, Coles could not also be vicariously liable and was not a presumed agent of AllStaff.

Damages were assessed under the MACA.

Implications for you

The employer in these circumstances was found to be vicariously liable for the driver of the vehicle which caused the accident. The more interesting aspect of the decision, however, was the findings with respect to the interrelationship between the MACA and the WCA insofar as they related to the liability of Coles. The court found that the legislation did not create an exception to the general rule against dual vicarious liability. Coles was therefore not liable for the negligence of the driver of the vehicle under the principle of statutory agency.

Steven George Villanti v Coles Group Supply Chain Pty Limited; Steven George Villanti v All Staff Australia NSW Pty Ltd t/as Allstaff Australia [2017] NSWSC 1231

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