

PILE DRIVER HELD LIABLE FOR INJURY TO THIRD PARTY CONSTRUCTION WORKER

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The liability of a pile driving company to a labour hire employee for failing to take reasonable steps to prevent foreseeable injury during the erection of a pile driver.

IN ISSUE

- The existence and scope of the duty of care owed by pile driving company.
- Whether the plaintiff contributed to his injuries.

FACTS

The plaintiff, Riste Bosevski, suffered injuries while working on a construction site on 22 September 2006. At that time, employees of Avopiling Pty Ltd (Avopiling) were erecting the mast on a pile driving rig at the site when an auxiliary cable snapped under tension. As a result, a number of metal objects struck the plaintiff on the head, neck and chest, causing him injury.

Although the plaintiff was not an employee of Avopiling, he alleged it owed him a duty to take reasonable care for his safety when working at the site. The plaintiff was employed by Professional Contracting (NSW) Pty Ltd (PC), the defendant in a cross-claim issued by Avopiling. Soilmec, the owner of the pile driver, was also a party to the action.

In issue was the existence and scope of the duty of care owed by Avopiling (and its employees), whether that duty (if any) was breached, and whether the breach caused the plaintiff's loss. Avopiling also alleged contributory negligence against the plaintiff.

DECISION

The court noted that the risk of tension failure of pile driving cables was ever present. Accordingly, that risk was foreseeable, and one of which Avopiling and its employees were or ought to have been aware. Despite this, two operators employed by Avopiling heard "a tension noise" and chose to continue the erection of the mast. The court found that a reasonable person in the position of these employees ought to have investigated, ensured sufficient cable, and kept the cables under continuous observation. Avopiling was found liable.

There was insufficient evidence to establish liability against Soilmec.

In terms of the non-delegable duty of care owed by PC, the plaintiff's employer, the court held that its liability was not absolute. In this instance, had PC made enquiries, it would have been

satisfied that there was a safe system in place such that the plaintiff was not at risk. PC lacked the requisite knowledge of the danger involved in the manner in which the pile driver was erected, and as such there was no want of care by it.

Avopiling failed to establish contributory negligence on the part of the plaintiff (for being in the vicinity of the pile driver during its erection). The court found that the plaintiff and a co-worker were in the vicinity of the pile driver in the course of their work (constructing an excavator pad, as instructed by their employer), and Avopiling's employees were aware of their presence.

Avopiling was therefore 100% liable for the plaintiff's injuries.

IMPLICATIONS FOR YOU

Construction sites remain fertile ground for litigation. Employers and their insurers can take some comfort from the fact that the courts will not always make a liability finding against them in appropriate circumstances such as here, where Avopiling and its employees were solely liable because of their knowledge of the ever present risk of tension failure and because simple precautions could have been (but were not) taken to avoid the risk occurring.

Bosevski v Avopiling Pty Ltd; The Workers Compensation Nominal Insurer v Avopiling Pty Ltd [2016] NSWSC 1893

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