

Doyle (WA) Pty Ltd v ING Real Estate Joondalup [2013] WADC 18

Key Points

- Recent Slip & Trip Case – WA.

Background

An employee of a barber shop received workers' compensation payments for injuries sustained when she tripped over a metal bracket set into the concrete in the service yard of a shopping centre. The barber shop issued proceedings in the District Court, seeking recovery of the workers' compensation payments paid to the worker from the shopping centre, on the basis that the shopping centre breached its duty of care to the worker.

The District Court found that the shopping centre did not breach its duty of care and the recovery claim was dismissed.

The Facts

The metal brackets were used by the shopping gate to accommodate large metal gates to close the shopping centre after hours. The brackets were painted yellow. The plaintiff described the bracket as a little bar protruding out of the ground with a little yellow paint on it.

The Law

The Trial Judge's Findings on Liability

The barber shop argued that the shopping centre was negligent in that it failed to restrict access to the service yard or warn against entry; it failed to warn the of the danger posed by the metal bracket and it failed to cover the bracket when not in use. It also argued that the bracket should have been further painted or highlighted to make its presence obvious to pedestrians.

The hotel argued that it was not reasonable or practical to cover the brackets when the gates were open, and it was necessary for workers to access the yard to use the cardboard compactor and for deliveries. The yard was also a fire exit.

The trial judge concluded that the presence of the painted bracket was obvious to a reasonable person in the position of the worker: s 5F CLA and the barber shop's recovery claim was dismissed.

Conclusion

This decision may be compared with the recent decision of the New South Wales District Court in *Wurth* where a plaintiff received damages of \$456,000.00 for injuries sustained when she twisted her foot inside a broken drainage grate in a hotel car park driveway (see our law update). In that case the defendant hotel unsuccessfully argued that the broken grate was an obvious risk as defined in sections 5F and 5G of the *Civil Liability Act (NSW)*.