



## HIGH COURT OF AUSTRALIA

Public Information Officer

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### MARIA SWEENEY v BOYLAN NOMINEES PTY LIMITED trading as QUIRKS REFRIGERATION

Boylan Nominees was not vicariously liable for injuries caused by the substandard maintenance work performed by an independent contractor on its behalf, the High Court of Australia held today.

Mrs Sweeney suffered injuries to her head, neck and hand when a door of a refrigerator at a service station fell off and landed on her when she attempted to open it to buy milk. Boylan had leased out the refrigerator and the lease obliged the company to service and maintain the refrigerator. Shortly before the accident, the service station manager had told Boylan that the refrigerator door was not closing properly. Boylan sent a mechanic who tightened the screws in the hinges and showed the manager that the door was now working. The mechanic was not employed by Boylan. He performed work at Boylan's request then invoiced Boylan for the hours he performed and for spare parts. Boylan did not provide a uniform, tools, equipment or a vehicle. The mechanic's van carried his own company's name.

In the New South Wales District Court Mrs Sweeney sued both the owners of the service station and the refrigeration company. The claim against the service station owners failed but the claim against Boylan succeeded and Mrs Sweeney was awarded \$43,932 plus costs. Judge Christopher Robison held that Boylan was vicariously liable for the negligence of a mechanic it had sent to service the refrigerator in response to the service station's complaint that the door was not closing properly. Judge Robison concluded that the mechanic was acting as Boylan's servant or agent.

The NSW Court of Appeal allowed an appeal by Boylan. It held that Boylan was not vicariously liable for the mechanic's negligence. Mrs Sweeney appealed to the High Court, which by a 5-1 majority dismissed the appeal. The Court concluded that the mechanic was an independent contractor and therefore the claim against Boylan must fail. The mechanic was not a Boylan employee and he conducted his own business, invoicing Boylan for each job and supplying his own tools. An employer will generally be vicariously liable for an employee's negligence but someone engaging an independent contractor will not generally be vicariously liable for the contractor's negligence.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*