



HIGH COURT OF AUSTRALIA

7 March 2012

STRONG v WOOLWORTHS LIMITED T/AS BIG W & ANOR
[2011] HCA 5

Today the High Court allowed an appeal from the Court of Appeal of the Supreme Court of New South Wales, which had dismissed a claim in negligence by the appellant against Woolworths on the basis that the appellant had failed to prove that Woolworths' negligence caused her injuries. The High Court held by majority that, on the balance of probabilities, Woolworths' negligence caused the appellant's injuries.

The appellant suffered serious spinal injury when she slipped and fell while at the Centro Taree Shopping Centre ("the Centre"). The incident occurred at around 12.30pm. At the time of her fall, the appellant had an amputated right leg and walked with the aid of crutches. The fall occurred as the result of the tip of her right crutch coming into contact with a greasy chip that was lying on the floor of a sidewalk sales area which was under the care and control of Woolworths. The crutch slipped out from under her and she fell heavily.

The appellant brought proceedings in the District Court of New South Wales claiming damages in negligence against Woolworths and CPT Manager Limited ("CPT"), which was the owner of the Centre. The appellant obtained judgment against Woolworths, and the claim against CPT was dismissed. Woolworths appealed to the New South Wales Court of Appeal.

On appeal, the primary issue was whether the appellant had proved that Woolworths' negligence was the cause of her injury. It was not in question that Woolworths owed a duty to take reasonable care for the safety of persons coming into the sidewalk sales area, and that on the day of the appellant's fall Woolworths did not have any system in place for the periodic inspection and cleaning of that area. Prior to the appellant's fall, the sidewalk sales area had last been inspected at 8.00am that morning.

The principles governing the determination of causation in a claim for negligence in New South Wales are set out in s 5D of the *Civil Liability Act 2002* (NSW) ("the Act"). Section 5D of the Act relevantly requires that the negligence was a necessary condition of the occurrence of the harm ("factual causation") and that it is appropriate for the scope of the negligent person's liability to extend to the harm so caused ("scope of liability").

Applying the statutory test, the Court of Appeal held that the appellant had failed to prove on the balance of probabilities that Woolworths' negligence caused her fall. The Court approached the causation question on the basis that reasonable care in the circumstances required periodic inspection and necessary cleaning of the sidewalk sales area at 15 minute intervals throughout the day. The Court found that the likelihood was that the chip had been deposited at lunchtime. On that basis, the Court considered that it could not be concluded that, had there been a dedicated cleaning of the area every 15 minutes, it was more likely than not that the appellant would not have fallen. The Court set aside the judgement of the trial judge and dismissed the appeal. The appellant appealed by special leave to the High Court.

The primary issue on appeal to the High Court was the correctness of the Court of Appeal's conclusion on causation. The High Court held by majority that, in the circumstances, it was an error for the Court of Appeal to hold that it could not be concluded that the chip had been on the ground for long enough to be detected and removed by the operation of a reasonable cleaning system. The evidence did not permit a finding of when, in the interval between 8.00am and 12.30pm, the chip was deposited in the sidewalk area. Given this, the probability was that it had been on the ground for more than 20 minutes prior to the appellant's fall. On the balance of probabilities, therefore, the appellant would not have fallen but for Woolworths' 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.*