



HIGH COURT OF AUSTRALIA

2 August 2023

CCIG INVESTMENTS PTY LTD (ABN 57 602 889 145) v SCHOKMAN
[2023] HCA 21

Today, the High Court allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of Queensland. The appeal concerned whether an employer was liable for a tortious act committed by their employee in circumstances where the act occurred in shared staff accommodation in which the employees were required to live.

In 2016, the respondent, Mr Schokman, commenced employment with the appellant at a resort in the Whitsunday Islands off the coast of Queensland. It was a requirement of his employment that he live on the island in furnished, shared accommodation. Mr Schokman shared his room with another employee, Mr Hewett. In the early morning of 7 November 2016, Mr Hewett returned to the shared accommodation in an intoxicated state from the staff bar. Around 3.30 am, Mr Schokman was woken in a distressed condition and unable to breathe as Mr Hewett was urinating on him. Mr Schokman suffered a cataplectic attack as a result of the incident, which was described as a sudden and ordinarily brief loss of voluntary muscle tone triggered by emotional distress. Mr Schokman brought proceedings against the appellant, relevantly claiming that the appellant was vicariously liable as an employer for the negligent act of Mr Hewett because that act was done in the course or scope of his employment.

The trial judge did not accept that the actions of Mr Hewett were committed in the course of his employment with the appellant. Whilst his Honour accepted that the occasion for the tort committed by Mr Hewett arose out of the requirement of shared accommodation, his Honour did not consider that it was a fair allocation of the consequences of the risk arising to impose vicarious liability on the employer for the drunken misadventure of Mr Hewett.

The Court of Appeal allowed Mr Schokman's appeal. Their Honours relied on the terms of Mr Hewett's employment to find the requisite connection between Mr Hewett's tortious act and his employment. As Mr Hewett was obliged to occupy the room as an employee under his employment contract, not as a stranger, it followed that there was the requisite connection between his employment and his actions.

The High Court held that the appellant was not liable for the actions of Mr Hewett. The question of whether a wrongful act was committed in the course or scope of employment depends on the circumstances of the particular case, including identification of what the employee was actually employed to do, and held out as being employed to do. Nothing in the present case pointed to the drunken act of Mr Hewett being authorised, being in any way required by, or being incidental to, his employment. In truth, it had no real connection to it.

- *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.*