

Insurance Insights

In accommodation settings, does 'slippery when wet' mean liable?

Nikolich v Webb [2020] WASCA 169 (21 October 2020)

Key takeaways

- Due to the operation of s 50 of the *Civil Liability Act 2002 (WA)*, there is no duty to warn of an obvious risk.
- The risk of slipping and falling on a wet bathroom floor where the floor is not uniquely slippery, is an obvious risk for the purpose of this section.
- Short stay accommodation rental operators are not required to make bathroom floors that are not uniquely slippery permanently non-slip in response to this risk if it cannot be done at a reasonable cost.

Background

The Plaintiff was injured when she slipped in the bathroom of a short term accommodation apartment, owned and operated by the respondent. There was an accumulation of water on the bathroom floor, following use of the shower and spa bath with her husband. The Plaintiff slipped and fell on the wet floor when she re-entered the bathroom 30 minutes later, causing her to injure her right shoulder and arm.

The primary judge dismissed the Plaintiff's claim that the accommodation operators were liable for failing to warn the Plaintiff that the bathroom floor was dangerous and slippery when wet, and failing to take the precaution of making the floor permanently non-slip.

Court of Appeal Decision

The WA Court of Appeal dismissed the Plaintiff's appeal.

The Court agreed with the primary judge that s 50 of the Civil Liability Act removes any duty of care to warn of an obvious risk, even in contexts where a *volenti non fit injuria* defence is not established. The Court also held that the risk of slipping and falling on a wet bathroom floor in circumstances where the plaintiff knew it was wet, was an obvious risk.

As the bathroom was not uniquely slippery and the water had not accumulated in an unexpected location, the court held that the Plaintiff's subjective knowledge/failure to realise this risk was irrelevant, as a reasonable person in the Plaintiff's position who knew the floor was wet on exiting the bathroom, would have realised on re-entry no more than 30 minutes later that the floor would remain wet.

Further, the court held that the primary judge did not err in finding that making the bathroom floor permanently non-slip was not a reasonable response to the risk, as this could not be done at a reasonable cost and the reasonable response was to provide guests with a bath mat and towels, as the respondents did.

Implications

- This case is important for accommodation facility operators. It highlights the circumstances where a risk of slipping may be an obvious risk and when extensive steps to address this risk may not be required.
- In circumstances where a bathroom is not uniquely slippery or water does not accumulate in a unique way/area, there may be no duty to warn of the risk of slipping on the wet bathroom floor.
- Accommodation facility operators will not be required to take extensive steps in response to the risk of slipping in bathrooms such as making bathroom floors permanently non-slip, where it is not affordable to do so as providing bath mats and towels is sufficient.

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