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Insurance Insights

Landlord and agent – the buck stops where?

Yeung v Santosa Realty Co Pty Ltd [2020] VSCA 7

Background

On 19 May 2014, the plaintiff, a tenant of residential premises, slipped at night on back stairs that were worn, slippery, unlit and had no handrail. The tenant successfully brought proceedings for negligence in the County Court against the owner of the premises and the real estate agent.

Judge O'Neill initially held that both the owner and the agent had breached their duty of care to the tenant and were liable to pay damages totalling $433,899.80 plus costs. His Honour apportioned two-thirds of that liability to the owner and one third to the agent.

On appeal, the Victorian Supreme Court of Appeal (VSCA) overturned the judgment and held that the agent should indemnify the owner in respect of all his liability to the tenant.

Court of Appeal's decision

The VSCA held that His Honour Judge O'Neill had erred in his finding that the owner breached his duty of care to the tenant. In contrast, it held that the owner had properly delegated to the agent the duty of care the owner owed to the tenant to take reasonable care to avoid foreseeable risk of injury.

There is well-established authority that the duty of a landlord and deemed occupier to take reasonable care to avoid foreseeable risk of injury to tenants can be discharged by the exercise of reasonable skill and care in engaging a competent contractor. In this case, under the management agreement, the agent was required to conduct routine inspections of the premises and identify repairs that were needed. The owner was able to prove that he received, reviewed and maintained copies of the inspection reports prepared by the agent (no defects to the stairs were identified) however, the agent was not able to prove that an inspection of the stairs was carried out.

The agent was found to have breached its duties under the management agreement with the owner and breached its duty of care to the tenant. Relevantly, the trial judge found that:

(a) the defects to the stairs were not latent and detection did not require specialist expertise;
(b) there was a foreseeable risk of injury that was not insignificant;
(c) had the agent carried out the inspection, identified the defects and notified the owner, those defects would have been repaired; and
(d) had the risk of slipping been removed, the fall would not have occurred.

It is important to note the question of delegation is fact-specific and will depend on the scope of the agreement between the owner and the agent. In this case, the owner had not reserved for himself any aspect of the responsibility to identify obvious hazards. This VSCA made no finding as to whether the owner retained a duty to inspect the premises for latent defects resulting from the ageing nature of the property (the defects to the stairs were not considered latent).

As to apportionment, the VSCA found that the breach of duty causative of loss was the failure to inspect and detect obvious or visible risks, and to effect repairs. This duty was delegated by the owner to the agent and was breached by the agent. In these circumstances the Supreme Court held that the owner should be completely indemnified by the agent.

While the judgment will no doubt be relied on by landlords and their lawyers in future injury claims, it is important to note that the outcome was very much based on the facts of the case. The extent to which an owner has delegated its responsibilities to a managing agent is determined by the agreement and a thorough analysis of this document and surrounding circumstances is required before contribution can be properly assessed.

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