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Insurance Insights

Mind your Ps and safety first!

Sanders v Multiplex Engineering & Infrastructure Pty Ltd [2022] WADC 31

Key takeaways

- **For employers or principals, the benefit of following the 4Ps of safe working can never be under estimated: Plan, Prepare, Protect and Proceed.**
- **Confirmation of the premise that the principal or main contractors are not expected to supervise or have specialist knowledge of all the specialist trades working on a construction site at any one time.**
- **For employees, if it does not fall within their specialist area of work, its safer to stop work and seek further instructions than to undertake work outside of their specialism.**

Background

The Plaintiff was a bricklayer employed by NeoWest (**NeoWest**) Building Co Ltd to work on the Perth Stadium (**Stadium**) construction project (**Project**).

In 2016, the Plaintiff suffered an injury to his left arm when he singlehandedly tried to remove two overhead steel purlins (**Purlins**) that were obstructing his work in laying a wall to a toilet block in the Stadium.

The Plaintiff alleged he had been instructed to remove the Purlins by his direct supervisor from NeoWest and by a supervisor from Multiplex Australasia Pty Ltd (**Second Defendant**). Multiplex Engineering & Infrastructure Pty Ltd (**First Defendant**) was the principal contractor for the Stadium, occupying the building site, having overall management of the Project and having engaged NeoWest.

The Plaintiff alternatively argued that even if he had not been instructed to remove the Purlins, it was foreseeable that a bricklayer would, on encountering an obstructing purlin, take steps to remove it. The Plaintiff alleged his injury occurred as a result of the Defendants' negligence and breach of statutory duties pursuant to section 5[1] of the *Occupiers' Liability Act 1985* (WA) (**OLA**) and sections 19 and 23D of the *Occupational Safety and Health Act 1984* (WA) (**OSH**)[2].

[1] Duty of care owed by an occupier of premises to take reasonable care to see that a person entering premises will not suffer injury or damage due to the state of the premises.
[2] Section 19 imposes a duty on an employer to provide and maintain a working environment in which its employees are not exposed to hazards so far as reasonably practicable. Section 23D extends the operation of section 19 to contractors engaged to carry out work by a principal. Claims were also made for breach of sections 21 and 22 of the OSH, both of which were unsuccessful.

The Defendants denied the Plaintiff was instructed to remove the Purlins himself and nor would such an instruction have been given. Further, the Plaintiff was not qualified to remove the Purlins, this work falling within the scope of steel riggers engaged to work on the Project.

The Defendants argued a safe system of work was in place and they had taken all reasonable steps to ensure this was the case.

Decision

The District Court found that the Defendants were not negligent or had acted in breach of their statutory duties under the OLA or OSH.

The focus of the judgment was on the actions of the First Defendant[3]. The First Defendant was found to have taken the precautions that a reasonable person would have taken to avoid the risk of harm at common law by:

- identifying the need to clearly define the scope of works for each individual subcontractor and contractually prohibiting a subcontractor from doing any work outside of its scope of work without prior permission[4]
- tasking each subcontractor with the responsibility for completing its own works, over which it had specialised knowledge, in a safe manner
- preparing contracts including the requirement for a subcontractor to comply with all legal safety requirements and provide adequate training for workers on the same[5]
- the potential for a clash between trades working on the Project had been anticipated and planned for, and
- it would not have been reasonable for the Defendants to have anticipated each and every possible clash between trades.[6]

Further, the Court did not consider that the Defendants would have supervised the setting out by NeoWest of its own works or inspected the same afterwards to ensure any potential obstructions, ie the Purlins, were detected. NeoWest was contractually responsible for setting out its own works. Applying *Leighton Contractors Pty Ltd v Fox*[7], it was found to be unnecessary and impractical to impose a duty on the Defendants to supervise each and every specialised task of every trade on-site, when it was unlikely to have had that level of specialised knowledge, and so would unlikely to be unhelpful in its supervision.[8]

[3] With the same findings ultimately applying to the Second Defendant on similar terms.
[4] *Sanders v Multiplex Engineering & Infrastructure Pty Ltd* [2022] WADC 31 at [280], [285].
[5] at [280], [285].
[6] At [282], [287].
[7] [2009] HCA 35; (2009) 240 CLR 1
[8] At [292].

There was no breach of section 5 of the OLA because the Purlins did not represent a danger to the Plaintiff on account of the state of or due to anything to be done at the Stadium. There was no danger from the Purlins unless the Plaintiff himself interfered with them[9], which he ultimately did!

The Defendants were not found to have breached the OSH. A system of work was found to be in place between NeoWest and the Defendants which was sufficient to meet the Defendants' duty of care under section 19 (as extended by section 23D) of the OSH.

Crucially, NeoWest had autonomy under its subcontract as to how it was to complete its works and was considered to be the appropriate body to provide training and induction within its specialised area (of bricklaying) and to specify the methods to be used by its workers when performing required tasks. Therefore, it was not reasonably practicable for the First Defendant to impinge on NeoWest's training and induction of its employees as to the proper and safe method of completing works within its area of expertise and specialist knowledge[10].

Implications

This matter is a reminder to all contractors, whether principals or sub-contractors, to follow the 4Ps of safe working: Plan, Prepare, Protect and Proceed. It was the Defendants' attention to detail in establishing a safe system of work which stood it in good stead in defending the action.

This decision also confirms that a principal contractor cannot reasonably legislate for every possible scenario that may occur on a construction site. It is reasonable for them to assume that any systems in place would not be ignored.

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[9] At [312].
[10] At [324].