Duty of landlords to tenants and their families

Harris v Northern Sandblasting Pty Ltd & Ors

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On 14 August 1997, the High Court delivered its judgement in the action of *Harris v Northern Sandblasting Pty Ltd & Ors*. By a majority of four judges to three, the Court dismissed the appeal of Northern Sandblasting and affirmed the decision of the Queensland Court of Appeal in favour of the plaintiff.

The plaintiff, a nine-year old girl at the time of the accident, suffered severe brain damage as a result of a severe electric shock. Northern Sandblasting was the owner of residential premises rented to the plaintiff's parents for occupation by their family. The electric shock suffered by the plaintiff was caused by a combination of a defective electrical system and a faulty repair of an electrical appliance by an electrical contractor which rendered the defective electrical system lethal. The trial judge at first instance found that the electrical system was in a defective state at the time the Harris family entered into occupation of the rented premises and that an inspection would have readily identified the defective condition.

The majority of the High Court which dismissed the appeal of Northern Sandblasting was comprised of Chief Justice Brennan & justices Gaudron, Toohey and McHugh. Justices Toohey and McHugh found for the plaintiff on basis that the landlord did not discharge its duty of care to the plaintiff by engaging a qualified and apparently competent electrical contractor to repair the electrical appliance. They found that the circumstances gave rise to a non-delegable duty although they each adopted a different analytical approach to reach that conclusion.

Chief Justice Brennan and Justice Gaudron found that there was a duty on Northern Sandblasting to inspect the rented premises to identify and rectify defects existing at the commencement of the tenancy.

Chief Justice Brennan's reasons for decision contain a detailed analysis of the duty owed by landlords to tenants and others whom the landlord knows are intended to occupy the rented premises. Significantly the Chief Justice expressly decided that *Cavalier v Pope* was no longer good law in Australia, describing the case as anomalous and logically indefensible and referable to social conditions which have long since passed.

Northern Sandblasting did not dispute that as owner of the rented premises it owed a duty of care to the plaintiff. It argued that it had discharged that duty by retaining the services of a competent qualified electrical contractor to repair the defective electrical appliance, and that no duty arose in respect of the defective electrical system as it had no knowledge of the defective condition. These arguments were rejected by the majority of the Court.

The Chief Justice held that a landlord is under a duty of care in respect if demised premises requiring the same standard of care as is required of occupiers towards those who enter occupied premises by consent or for reward. The duty of care is owed to the tenant(s) and those who to the knowledge of the landlord are intended to occupy the premises under and for the purposes of the tenancy. It is limited to defects in the premises at the time when the tenant entered into possession.

The Chief Justice adopted the standard of care stated by McCardie J in *MacLenan v Segar* (1917) 2KB 325 at 332-333. It is to use all reasonable care and skill to see that the premises are safe for habitation by the tenants excluding defects which could not reasonably have been discovered by reasonable care or skill on the part of any person concerned with the construction, alteration, repair or maintenance of the premises.

Chief Justice Brennan, when applying the principles enunciated in his reasons for decision, found Northern Sandblasting liable to the plaintiff and dismissed its appeal. ■

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Damages ruling turns up heat on landlords

By MARGO KINGSTON

The High Court has dramatically expanded the liability of landlords by finding that a landlord company which had no knowledge of an electrical fault was liable for damages because it did not inspect the property before tenants moved in.

The case arose in 1987 when a Queensland mother, Mrs Pamela Harris, asked her nine-year-old daughter to turn off an outside tap. When the child tried to do so she received an electric shock, resulting in severe brain damage.

The accident was the combined result of faulty electrical wiring present when the mother moved in, and a later negligent stove repair job by a qualified electrician.

Negligence against the electrician was proved, and he was ordered to pay more than $1.2 million in compensation.

But the Queensland trial judge found the landlord, Northern Sandblasting, exempt from liability because it had no duty to inspect before occupation, and had employed a licensed electrician to repair the stove.

However, in the High Court's four-to-three ruling, the Chief Justice, Justice Brennan, said a landlord now had a duty of care not to have defects in the premises before the tenant moved in, even when the landlord had no knowledge of the defect.

"The premises were unsafe by reason of a defect which would have been manifest on a simple inspection, namely the lack of a connection between the major earth wire and the neutral link."

Justice Gaudron said a landlord was liable for loss due to "defects discoverable on inspection".

"The switchbox was not inspected by a qualified electrician before [the family] took up residence . . . It follows that there was a breach of the duty of care owed by the landlord," she said.

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