Contributory Negligence in "Slip and Fall" Cases – No Control Over the Plaintiff's Own Actions or Inaction?

Unfortunately, people slipping (or tripping) and falling is a fairly common occurrence on common property of residential and commercial premises.

If a 'slip and fall' occurs and injury is suffered, there is a distinct possibility that the injured person (that is, the plaintiff) will make a claim against the owner corporation for damages alleging negligence and breaches of various safety statutes. Common causes include factors relating to poor floor surfaces, contamination, the environment, footwear and people.

Whilst owners corporations and managing agents may implement measures and systems to reduce the risk of slip and trips (such as the placement of warning signs and a system of regular inspections), it may have been the plaintiff's actions or inaction which contributed to the accident.

If a court finds an owner/occupier responsible for the accident, the plaintiff's entitlement to damages may be reduced if the plaintiff was also contributory negligent. A plaintiff is guilty of contributory negligence at common law or under the Civil Liability Act 2002 (NSW), if it can be established that one of the causes of the accident was the failure by the plaintiff to take reasonable care for his/her own safety. The below cases illustrate this concept.

- In Jackson v McDonald's Australia Ltd [2014] NSWCA 162, the Court found the plaintiff 70% contributory negligent when he slipped after walking through a clearly signposted wet floor and did not hold any handrails. McDonald's bore 30% of the liability for its failure to mop up the spill immediately.

- In Fitzsimmons v Coles Supermarkets [2013] NSWCA 273, the Court found the plaintiff 50% contributory negligent for failing to heed the 'wet floor' signs positioned around the puddle of water on which the plaintiff slipped. Coles bore 50% of the liability because its signs were low lying and outside the normal field of vision of customers and failed to station an employee around the spill to warn customers.

- In Hamilton v Duncan [2010] NSWDC 90, the Court found the plaintiff 30% contributory negligent for not maintaining a proper lookout for the hole despite being aware of the hole in which he tripped and even warned a witness of its presence minutes prior to the accident. The occupiers bore the remaining liability for its failure to inspect the area and fill in the hole(s) in a timely fashion.

- In Indigo Mist Pty Limited v Palmer [2012] NSWCA 239, the Court found the plaintiff not contributory negligent for her injuries when expert evidence established that the presence of liquids on the glass steps would have been practically impossible to detect at night and that the plaintiff had noticed the liquid just as her foot was about to touch the step.

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As can be seen from the above examples, the finding of contributory negligence depends on the individual facts and circumstances (and the court's own assessment) of each case. Owners and occupiers should not take for granted that their existing safety measures and systems (if any) would absolve liability. For example, warning signs may be not visible or apparent or the known hazard was not repaired in a timely manner.

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