

BARBIERI V FAIRFIELD CITY COUNCIL [1997] NSWCA 405

NSW Court of Appeal – 29 October 1999

FACTS

Barbieri was injured when his leg fell into a hole under a broken manhole cover. The manhole cover gave access to the stormwater drain system. The cover was replaced by the Council on the Monday following the accident.

Barbieri sued the Council for negligence. There was no direct evidence that the Council had broken the manhole cover though a contractor engaged by the Council to complete roadworks may have damaged the cover.

Council claimed that principle of nonfeasance protected it from being liable to Barbieri. The principle of nonfeasance provides that no civil liability is incurred by an authority responsible for roads for neglect to construct or repair a road.

ISSUES

Was the stormwater drain system and manhole cover part of the road system?

Had the Council actually caused the danger (the broken manhole cover) and therefore not entitled to rely on the principle of nonfeasance.

FINDING

The stormwater drain system was part of the road and therefore the principle of nonfeasance could apply.

There was evidence to prove that the Council had no knowledge of the broken cover and/or that it caused the damage to the cover. It was more likely that the contractor may have damaged the manhole cover while completing the road works.

QUOTE

Davies AJA said:

“It follows that, if the Fairfield City Council did not cause the damage to the storm water cover, it was not obliged, even if it was aware of the danger, to give a warning about it. It was, moreover, entitled to remove any barricade which had been placed over the storm water cover by a local resident without authority. The placing of the barricade by Mr Griffith did not impose upon the Council a liability either to repair the damage or to remove the danger.”

The Council was entitled to remove from the footpath any barricade or warning placed there by a resident without warning.” – paragraph 17 of [1999] NSWCA 405

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“Accordingly, if a Readymix truck damaged the storm water cover, it did an act which was not required by the roadworks and was not authorised by the Fairfield City Council.

The Council was liable under principles of negligence for this act which was not a natural or probable consequence of the roadworks. The damage to the storm water cover did not result from any work for which the Council had responsibility but for the negligence of the truck driver.” – paragraph 23 of [1999] NSWCA 405

IMPACT

In this case the Council was not liable because there was no evidence that it had broken the manhole cover.

However, if the Council had engaged contractors to work in the area and had authorised the contractor to do work which may have damaged the manhole cover then Council may have been liable for the claim.

Councils should be careful when authorising contractors to complete road works and ensure that contractors do not engage in activities which may damage part of a road.

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