

**DEUTZ AUSTRALIA PTY LTD V SKILLED ENGINEERING LTD & ANOR**

Supreme Court of Victoria – 25 June 2001

**FACTS**

Skilled Engineering supplied their employee, Mr. Sutton, to Deutz to provide qualified forklift services.

In the performance of his work, Mr. Sutton reversed a forklift along a main aisle at Deutz' warehouse with the mast of the forklift in an elevated position contrary to the requirements of Deutz and general forklift safety requirements. In the event, the mast of the forklift struck a beam in its path causing shelving to collapse upon which were stored diesel motors of various sizes. As a result, Deutz lost goods to the amount of \$369,000.

**ISSUES**

Whether it was a term of the contract between Skilled and Deutz that the driver would perform his duties without negligence and with the reasonable competence of a qualified forklift driver. Whether Skilled was vicariously liable for the negligence of Mr. Sutton Whether Deutz was a consumer for the purposes of s4B of the Trade Practices Act ("TPA") and if so whether Deutz could rely upon s74 of the TPA which provides that there should be implied into the agreement a term that the services would be supplied with due skill and care.

Whether Mr. Sutton was liable under s.66 of the Insurance Contracts Act 1984 ("ICA")

**FINDING**

Mr. Sutton was for the purposes of imposition of vicarious liability in tort, an employee of Skilled for all purposes and was not the servant for the particular work of Deutz. Skilled was therefore vicariously liable for the tortious conduct of Mr. Sutton.

Mr. Sutton was also held to be liable to Deutz in tort for his negligence.

Deutz was held liable for contributory negligence to the extent of 15% responsibility for the accident. No breach of the contract between Deutz and Skilled was found.

**QUOTE**

*"Where the negligence of a worker causes loss and damage to a company to which he has been hired out, I consider that the tests of transfer ... should be applied according to the tenor. In determining whether a worker has become pro hac vice the servant of that company, I see no basis for watering the tests down as might be thought justifiable in the case of injury to a hired worker."*

## **IMPACT**

Where a person is hired on a temporary basis from another company to serve the interests of that company, they do not become an employee of the temporary employer unless it can be proved that the circumstances are such that the vicarious responsibility for the negligence has shifted from the general to the temporary employer.

This will only occur in exceptional circumstances and there is a heavy onus on the general employer to prove the transfer has occurred.

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