

SWEENEY V BOYLAN NOMINEES PTY LIMITED [2006] HCA 19

FACTS:

Boylan Nominees Pty Ltd (“Boylan”) maintained and serviced refrigeration units in retail outlets. One had a faulty door and Boylan engaged an independent contractor to attend the premises and repair the unit.

A customer who attended the outlet (“Sweeney”) opened the door of the refrigeration unit, which subsequently fell and injured her.

Sweeney sued Boylan as being vicariously liable for the actions of the independent contractor.

It is noted that the independent contractor paid his own salary, superannuation, insurance; and provided his own materials and tools. There was no control as to the manner the work was conducted, exerted over the independent contractor by Boylan. He issued his own invoices to Boylan for payment.

ISSUES:

Can the liability of an independent contractor be imputed to Boylan as the entity who engaged the contractor to render its services?

FINDING:

The court found that Boylan was not vicariously liable for the acts of the independent contractor on the basis the facts did not support a finding that the independent contractor was an employee.

QUOTE:

Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ [at 32] contrasted this case with the earlier case of Hollis,

“The mechanic [independent contractor] or, if it were the case, his company, was engaged from time to time as a contractor to perform maintenance work for the respondent. Unlike the principal in Hollis, the respondent did not control the way in which the mechanic worked. The mechanic supplied his own tools and equipment, as well as bringing his skills to bear upon the work that was to be done. And unlike the case in Hollis, the mechanic was not presented to the public as an emanation of the respondent.”

IMPACT:

The case illustrates the importance of proper engagement of contractors in order that the principal is not vicariously liable for the contractors default. The terms of engagement should clarify the varying indicia of the independent contractor, no control over way in which the work was done, the contractors provision of tools, equipment, uniform, transport and payment for services rendered and whether the contractor is to be presented as part of the defendant’s organization. High Court of Australia 16 May 2006