

### Inside:

This ruling effectively means there is a legal obligation on staff to curb any dangerous behaviour of customers.

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## Controlling the (un)controllable – negligence in shopping premises

A recent case in Queensland highlights the potential liability of retail operators for negligence arising from the actions of their customers. AAR Lawyer, Michelle Davies reports on a Queensland Court of Appeal ruling which demonstrates how courts are more than willing to make store occupiers responsible when reasonably foreseeable injuries occur on their premises.

### The case

In the case *Beardmore v Franklins*,<sup>1</sup> Franklins Supermarkets were found to be liable in negligence for an injury suffered by a customer in their store that was caused by the reckless behaviour of another customer – namely a small child pushing a trolley. Franklins were liable for the injury because its employees were aware of the child's behaviour, and the child's use of the trolley posed a reasonably foreseeable risk to the other customers in the shop. Even though the child's mother had a duty to act reasonably to control the child, the court stated that this did not mean that Franklins could escape liability.

The case sets a high standard for managers of shopping premises to monitor and control the behaviour of those on their premises.

### The facts

In the morning of 26 February 1996, Ms Julie Beardmore, the plaintiff, was shopping for groceries in a Franklins Supermarket at a Brisbane shopping centre. While shopping in the first aisle of the supermarket, she noticed a five or six-year-old boy throwing a tantrum and making a lot of noise. The child was apparently running up and down the aisles with a trolley, yelling and pushing the trolley around like a car. The plaintiff

1. *Beardmore v Franklins Pty Ltd* [2002] QCA 60

also saw him nudge another woman with the trolley. Members of Franklins' staff were packing the shelves in the aisle, but no one spoke to the mother or the child.

About half an hour later, the plaintiff bent over to examine some goods close to the floor. She heard a yell, turned around, and was injured when struck in the lower back by a loaded shopping trolley pushed by the child she had seen earlier. The plaintiff was certain that at least one member of staff had seen the child pushing and riding the trolley before she was injured, as she had made eye contact with a young female staff member, who looked at her as if to say, 'you know, this is a rotten little kid who is making a lot of noise'.

### The decision on first hearing

The District Court of Queensland held that Franklins were liable in negligence for the injury sustained. The court considered that a member of staff could have asked the mother to restrain the child, and to keep watch to ensure that the child was restrained. Alternatively, the court suggested that Franklins' staff members could have taken hold of the trolley. These actions would have avoided the plaintiff's injury and, by failing to take such precautions, Franklins breached its duty of care to the claimant. The court rejected Franklins' submission that the plaintiff had been guilty of contributory negligence by failing to look out for her own safety. The plaintiff was awarded approximately \$42,000 plus costs.

### The Appeal

In a two-to-one majority, the Court of Appeal dismissed an appeal by Franklins, agreeing that the supermarket, as the shop occupier, owed a duty of care to the plaintiff, which it had breached, resulting in the plaintiff's injury. The factors that seemed to influence the majority in their findings were the length of time that the child's unruly behaviour continued unchecked, and the evidence that a number of people, including at least one Franklins employee had witnessed the child's behaviour and had taken no steps to curb it. The sole

judge who disagreed with this finding held instead that if anyone was legally liable for the plaintiff's injuries, it was one or both of the child and his mother.

Despite Franklins' contention that its staff members were under no obligation in the circumstances to ask the child's mother to prevent the misbehaviour with the trolley, the court found the store had a clear duty to act in the circumstances. Franklins argued that the plaintiff ought to have called some staff and request that they take appropriate measures, but the court found that this was irrelevant unless the Franklins staff did not know that the child was acting dangerously. There was enough evidence for the court to conclude that members of the Franklins staff either did in fact see or hear the behaviour of the child, or at least ought to have in the circumstances. The court decided that although the mother had a duty to control her son's conduct, the fact that Franklins, through its staff, were aware of the conduct, meant that it was under a duty to take reasonable steps to put a stop to it.

### Conclusion

The outcome of this case effectively means that whenever retail staff are aware of dangerous behaviour from customers, there is a legal obligation on the occupier of the premises to make reasonable attempts to curb the behaviour. In this case, Franklins had the right to control the way the shopping trolley was used, and reasonable steps should have been taken to prevent it being used in a dangerous manner. In effect, employers must put in place a system that addresses such instances of bad behaviour where preventative measures are taken, preferably before there is any need for customer complaint. Such a system could provide for junior staff members to report matters to senior staff who would attempt to deal with the problem following store guidelines and policy. Indeed, managers are now expected to maintain a very high level of awareness of 'dangerous behaviour', even when the person exhibiting the unsafe behaviour might appear to the casual observer to be under the control of a parent or some other party.

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