

# Do I have a duty to make my building safe?

SWINBURNE V NEWBEE INVESTMENTS (PTY) LTD

In this case the Court had to consider the delictual liability of a landlord towards the Lessee for an injury the lessee sustained when falling down a flight of stairs on the landlord's premises.

The Lessee, Mr Swinburne, and his wife returned home after visiting friends for the day. They lived in a block of flats belonging to Newbee Investments. It had rained heavily for 3 days prior to the incident. There were stairs leading up to the apartments from the parking area and these were the most convenient route to gain access to the apartments. Mrs Swinburne climbed the stairs first and Mr Swinburne followed. The stairs were made out of concrete and had stones laid into the concrete. A pile of sand had gathered on the top stair due to the rain and Mr Swinburne stepped on the pile of sand, lost his balance and fell to the ground. He broke his leg.

The question that the Court had to consider was whether or not Newbee Investments' negligence had led to Mr Swinburne's fall and his injury. The main argument was that there was a duty of care on Newbee Investments to put a handrail up next to the stairs. The Court held that if the handrail had indeed been erected, Mr Swinburne would have been able to steady himself and would most likely not have fallen as he did. The question was thus if Newbee Investments had a duty towards the users of the stairs to protect them against injuries.

The Court found that there was indeed a duty of care on Newbee Investments to ensure that the stairs were safe to use. It then had to rule on whether or not Newbee Investments was negligent by not ensuring that the stairs were safe to use. The test applied here was that of the reasonable person. Would the reasonable person in Newbee Investments' shoes have foreseen the possibility of somebody being injured on the stairs and would they have taken reasonable steps to prevent the injury? The Court found that Newbee Investments was indeed negligent.

The opposing side argued that the residents were not obliged to use that staircase

and could easily make use of another staircase. The Judge ruled that it was the quickest and most convenient route and the residents were thus entitled to use the stairs. The opposing side then argued that Mr Newbee should have foreseen that the stairs were dangerous due to the rain. The court, however, ruled that Mr Newbee had used the stairs earlier that same day and his wife had successfully climbed them just before him and therefor dismissed this argument.

Newbee Investments was thus found to be liable and had to compensate Mr Swinburne for his medical expenses and pay his legal costs.