HIGH COURT OF AUSTRALIA

6 April 2022

TAPP v AUSTRALIAN BUSHMEN'S CAMPDRAFT & RODEO ASSOCIATION LIMITED
[2022] HCA 11

Today, the High Court, by majority, allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales. The appeal concerned whether the respondent breached its duty of care, whether that breach caused the appellant's injuries, and whether the harm was the result of the materialisation of an obvious risk of a dangerous recreational activity.

The appellant, Ms Tapp, was an experienced and very able horse rider and campdraft contestant. On 8 January 2011, during a multi-day campdrafting event organised by the respondent, in a time period of around 45 minutes, four other contestants had falls while competing. After the first three falls, an experienced campdrafter, Mr Stanton, approached one of the event organisers and said that the competition should be stopped because the ground was becoming slippery. After discussing the ground condition and speaking with two of the contestants who fell, the organisers continued the competition. After the fourth fall, Mr Stanton again approached an organiser and said that he thought the ground was "unsafe". The organisers delayed the competition to discuss the conditions, but decided to continue. Shortly thereafter, Ms Tapp competed and fell when her horse slipped on the ground of the arena. She suffered a serious spinal injury. The four falls prior to the appellant's fall were described in the Open Draft Draw as "bad falls".

The Supreme Court of New South Wales held that the respondent had not breached its duty, that any breach had not caused Ms Tapp's injuries, and that Ms Tapp's injuries were the result of the materialisation of an obvious risk. A majority of the Court of Appeal dismissed Ms Tapp's appeal.

The High Court, by majority, allowed Ms Tapp's appeal, holding that the respondent had breached its duty of care, that breach of duty caused Ms Tapp's injuries, and Ms Tapp's injuries were not the result of the materialisation of an obvious risk of a dangerous recreational activity. A reasonable person in the respondent's position would have foreseen a probability that harm would occur if the competition were not stopped until the arena could be inspected for safety. Given that the probability of physical injury could be catastrophic, the competition could be easily stopped, and there was minimal social disutility of disadvantage to contestants who had already competed, the respondent should have stopped the competition until the arena was inspected and found to be reasonably safe. The inference that the condition of the ground caused Ms Tapp's fall was drawn from the following: the evidence of four falls in a short period of time where falls in campdrafting were rare; Mr Stanton's warnings; the organiser's concessions (including that the ground was dangerous); and the time taken to subsequently remediate the ground. While campdrafting was a dangerous recreational activity, the harm was not the materialisation of an obvious risk of that activity. The risk was properly characterised as a substantially elevated risk of physical injury by falling from a horse that slipped due to the deterioration of the arena surface. That risk would not have been obvious to a reasonable person in Ms Tapp's position, so the respondent was liable in negligence.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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