STRONG v WOOLWORTHS LIMITED T/AS BIG W & ANOR (S172/2011)

Court appealed from:	New South Wales Court of Appeal [2010] NSWCA 282
Date of judgment:	2 November 2010
Date of grant of special leave:	13 May 2011

On 24 September 2004 the Appellant (an amputee who uses crutches) fell and injured herself at the Centro Taree Shopping Centre. The accident occurred indoors, in a "sidewalk sales" area occupied by Woolworths Limited ("Woolworths") trading as "Big W". In the proceedings before Judge Robison, the Appellant submitted that her fall had resulted from the Second Respondent's negligence (in failing to keep the floor area clean), or alternatively Woolworths' failure to do likewise. The sole dispute in this matter was whether the Appellant had established causation.

Judge Robison accepted that there had been grease on the floor (from a fallen chip) which had caused the Appellant to slip. His Honour also found that Woolworths, as "occupier", had the responsibility for cleaning the area in question. He noted however that Woolworths had no cleaning system in place. Judge Robison then went on to conclude that Woolworths was liable in negligence and he awarded the Appellant a substantial sum of damages. His Honour also dismissed the claim against the Second Respondent.

Upon appeal, Woolworths disputed Judge Robison's conclusion that there was a causal connection between its breach of duty and the damage suffered by the Appellant. On 2 November 2010 the Court of Appeal (Campbell & Harrison JJ, Handley AJA) unanimously agreed. Their Honours held that even if a reasonable cleaning system had been in place, the Appellant still may have slipped and injured herself.

Their Honours held that the Appellant, while keeping a careful lookout for potential hazards, was partly distracted by the pot plants on sale in the "sidewalk sales" area. In asking whether she would not have been injured even if Woolworths had a reasonable cleaning system in place, the Court of Appeal said that the answer was *"maybe"* and not *"more likely than not"*. In the circumstances then, their Honours held that the Appellant had not established causation.

The grounds of appeal are:

- The New South Wales Court of Appeal erred in its finding that causation had not been established by the Appellant.
- The New South Wales Court of Appeal erred in its findings as to causation relating to:
    a) What was available to be found by way of inference in the circumstances;

b) The correct application of principles governing legal and evidential onus;

c) The correct interpretation and application of ss 5D and 5E of the *Civil Liability Act* 2002 (NSW) in so far as they may have applied to the case; and

d) The failure to direct itself as to the proper legal and evidential questions which arose in the case.