

RED GARTER RESTAURANT PTY. LTD.
AND ANOTHER

V.

CHOMENTOWSKI

REASONS FOR JUDGMENT

Oral
Judgment delivered at Sydney
on Tuesday 31st August 1971

131

RED GARTER RESTAURANT PTY. LTD.
AND ANOTHER

v.

GEORGE CHOMENTOWSKI

ORDER

Appeal dismissed with costs.

RED GARTER RESTAURANT PTY. LTD.
AND ANOTHER

v.

GEORGE CHOMENTOWSKI

JUDGMENT

(ORAL)

BARWICK C.J.

RED GARTER RESTAURANT PTY. LTD.
AND ANOTHER

v.

GEORGE CHOMENTOWSKI

The appellant, a restaurateur, employed the respondent as a manager and head waiter of its restaurant in Crown Street, Sydney, south of Cleveland Street. His duties included the carriage of the takings of the restaurant after the close of business each evening from the restaurant to a night safe in Cleveland Street.

There was evidence from a police officer that, and I quote it - "armed robberies and assaults and robs - that type of offence in the street against persons carrying money and other places" - have been on the increase in recent years. Another police officer in fact gave statistical evidence of the growth of armed robberies in the last five or six years.

The respondent did take the takings nightly and late at night in his own car from the restaurant to a point adjacent to the night safe. He then carried the money in a bag in his hand from his car to the night safe, which he had to unlock with a key. On the evening in question the respondent was assaulted the money grabbed from him and seriously injured as he was about to deposit the money in

the safe.

In an action at law between the parties in the Supreme Court of New South Wales the appellant moved unsuccessfully for a verdict by direction on the basis that there was no evidence that injury to the employee in the performance of his duty in carrying the money to the night safe was foreseeable by the employer.

The jury found a verdict for the respondent for an amount of \$30,000. An appeal to the Court of Appeal Division of the Supreme Court on the ground that there was no evidence to support the verdict was dismissed.

The appellant in this Court has repeated the same submission. In my opinion there is no substance whatever in it. The jury, it seems to me, on the facts I have outlined were entitled to take the view that this employer ought to have foreseen that there was a real risk of injury to a man carrying what an interested observer would expect to be a considerable sum of money late at night, and approaching with it the site of a night safe. That his carriage of such money was done regularly, to my mind, adds to the circumstances to which the jury might advert.

It seems to me that the employer ought to have had in mind, and indeed, in obtaining the night safe, did have in mind that there was a risk to his property, the money, from theft. He ought to have thought that there was a risk to his employee. He did nothing whatever by way of protection of the employee. A suggestion made by counsel that the employee had authority to engage a person

to accompany him is, in my opinion, unfounded.

The question, to my mind, was essentially a jury question and the jury's verdict ought not to be disturbed.

Further, in my opinion, it needs no reference at all to authorities to dispose of the matter.

In my opinion the appeal should be dismissed.

RED GARTER RESTAURANT PTY. LTD. AND ANOTHER

v.

CHOMENTOWSKI

JUDGMENT
(ORAL)

McTIERNAN J.

RED GARTER RESTAURANT PTY. LTD. AND ANOTHER

v.

CHOMENTOWSKI

I agree.

RED GARTER RESTAURANT PTY. LIMITED
AND OTHERS

v.

CHOMENSTOWSKI

JUDGMENT
(ORAL)

MENZIES J.

RED GARTER RESTAURANT PTY. LIMITED
AND OTHERS

v.

CHOMENSTOWSKI

In my opinion, the learned trial judge and the Court of Appeal were correct in deciding that there was evidence upon which a jury could find that the servant's injury was contributed to by the negligence of the master.

I do not wish to add to what has been said by the Judges in the Court of Appeal.

RED GARTER RESTAURANT PTY. LIMITED
AND ANOTHER

v.

GEORGE CHOMENTOWSKI.

JUDGMENT
(ORAL)

WINDEYER J.

RED GARTER RESTAURANT PTY. LIMITED
AND ANOTHER

v.

GEORGE CHOMENTOWSKI

I agree. The matter was essentially a jury question and there was evidence on which the jury could find as they did.

RED GARTER RESTAURANT PTY. LIMITED
AND ANOTHER

v.

GEORGE CHOMENTOWSKI

JUDGMENT
(ORAL)

OWEN J.

RED GARTER RESTAURANT PTY. LIMITED
AND ANOTHER

v.

GEORGE CHOMENTOWSKI

I agree.