**IN THE SUPREME MOOT COURT OF VICTORIA
AT MELBOURNE**

**COURT OF APPEALS DIVISION**

**BETWEEN**  BALLERS ON CAMPUS PTY LTD

**Applicant**

**AND** HATZIS GLOBAL (VIC) PTY LTD

 **Respondent**

**SYNOPSIS OF SUBMISSIONS OF THE RESPONDENT HATZIS GLOBAL (VIC) PTY LTD**

MAY IT PLEASE YOUR HONOUR

1. **The Respondent submits that Karlsen J erred as a matter of law in the apportionment of the damage as between the parties.**
	1. The Applicant and the Respondent were found to be concurrently liable for Mr. Wallace’s injuries.
	2. Pursuant to s129P *Accident Compensation Act 1985* (Vic) Karlsen J found the Applicant to be liable for 60% of the compensation and the Respondent for 40%.
	3. The allocation of liability between the parties ought be done according the doctrine outlined in *Podrebersek v Australian Iron & Steel Ltd* [1985] HCA 34.

The making of an apportionment ... of their respective shares in the responsibility for the damage involves a comparison both of culpability, i.e. **of the degree of departure from the standard of care of the reasonable man**.... and of **the relative importance of the acts of the parties in causing the damage**.[[1]](#footnote-1)

* 1. The burden required for this appeal against a judge’s discretionary findings is that contained within *House v The King[[2]](#footnote-2)* as was recently found by the New South Wales Court of Appeal this ruling applies to apportionment[[3]](#footnote-3).
		1. The burden is thus;

It is not enough that the judges composing the appellate court that, if they had been in the position of the primary judge, they would have taken a different course. It must appear that some error has been made in exercising the discretion.[[4]](#footnote-4)

* + 1. The burden is also meet if the judgement is ‘upon the facts ... unreasonable or plainly unjust.’[[5]](#footnote-5)
	1. It is submitted that Karlsen J made such an error by finding that ‘both defendants owed a duty of to the Plaintiff and effectively breach that duty’ as this statement implies that the duties are the same when in fact they are different.
1. **The Duty of care owed by the Applicant was that on an employer to an employee**
	1. The duty established in *O’Connor v Commissioner for Government Transport[[6]](#footnote-6)* requires an employer to

proper and adequate means of carrying out his work without unnecessary risk, by warning him of unusual or unexpected risks, and by instructing him in the performance of his work where instructions might reasonably be thought to secure him from danger of injury.[[7]](#footnote-7)

* 1. The Legislative provisions of the *Workers Compensation Act 1958* (Vic) cover ‘personal injury arising out of or in the course of the employment’[[8]](#footnote-8).
	2. The act that Mr. Wallace was completing at the time of the injury was clearly in connexion with this employer’s trade or business. And therefore does not falls within the s8(1)[[9]](#footnote-9)

an injury shall be deemed to arise out of or in the course of his employment notwithstanding ... that he was acting without instructions from his employer if such act was done by the worker for the purposes of and in connexion with his employer's trade or business.

* 1. Even if the court does not accept that s8(1)[[10]](#footnote-10) the s8(2)(a)(i)[[11]](#footnote-11) applies;

... an injury to a worker shall be deemed to arise out of or in the course of the employment if the injury occurs–

1. while the worker on any working day on which he has attended at his place of employment pursuant to his contract of employment–
2. is present at this place of employment
3. **The Respondents duty of care.**
	1. It is admitted that the Respondent owed a duty of care to Mr. Wallace as occupiers of the premises. Occupiers owe a duty to take reasonable care to ensure that persons entering the premises that they are not exposed to risk of physical injury resulting from the condition of the premises.

An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that any person on the premises

will not be injured or damaged by reason of the state of the premises or of things done or omitted to be done in relation to the state of the premises.

* s14B(3) *Wrongs Act 1958* (Vic)

*Australian Safeway Stores v Zaluzna* (1987) 162 CLR 479

1. **The Applicants’ departure from that duty was greater than that of the Respondents’.**
	1. The Respondent were not and are not experts in the ascertaining the structural integrity of the walls.
	2. The Respondents, to the extent possible by law, delegated their duty of care to the applicant, as per Karlsen J’s findings.
	3. It is common or best practice to engage a structural engineer when attaching a basketball hoop to an existing structure;
		1. The Victorian Building Authority has provided guidance in May 2014 that

If you plan to attach a ring and backboard to brickwork or any other structure, you should consult a structural engineer.

* *About...Basketball rings,* Victorian Building Authority (Issued May 2014) [www.vba.vic.gov.au](http://www.vba.vic.gov.au)
	+ 1. Similar guidance is available at the Basketball Victoria and Building Commission at their websites. A basic Google search on the safe installation of basket ball hoops will lead to at least 10 such documents from the various states and territories in Australia which all say to consult a structural engineer.
	1. Under the test established in *Wyong Shire Council v Shirt* (1980) 146 CLR 40 and the stricter alternative test proposed in *New South Wales v Fahy* (207) 232 CLR 486it must be concluded that the Applicant had greater knowledge as to the foreseeability of the risk.
	2. The Respondent was not in a position to appreciate the significance of any risk present.

*s 48(3) Wrongs Act 1958* (Vic)

* 1. Under the text in *Podrebersek v Australian Iron & Steel Pty Ltd* [1985] 59 ALR 529 the Respondent is both more culpable and has committed acts of relatively grater importance in causing Mr Wallace’s injuries.
	2. The Applicant was or ought to have been in the position to appreciate the presence of a foreseeable risk and to appreciate the significant of that risk. The Respondent was not in such a position and could not be expected to have had that knowledge.

**ORDERS SOUGHT:**

1. That the appeal be dismissed; and / or
2. That the apportionment of liability for Hatzis Global be reduced to 10%; and / or
3. That the apportionment of liability for Hatzis Global be reduced by an amount deemed appropriate by the court; and / or
4. That costs follow the event; and / or
5. Any other orders that the court deem appropriate.

**P Melican (Co Counsel) – 12 minutes**

**J Hope (Co Counsel) – 15 minutes**

**Save three minutes for rebuttal**

**THE ABOVE SUBMISSIONS ARE SUPPORTED AS FOLLOWS**

**Appellant’s List of Authorities**

Statue:

1. *Accident Compensation Act 1985* (Vic).
2. *Workers Compensation Act 1958* (Vic).
3. *Wrongs Act 1958* (Vic).
4. *Occupational Health and Safety Act 2004* (Vic).

Cases:

1. *Bostik Australia Pty Ltd v Liddiard* [2009] NSWCA 167.
2. ***Victorian Workcover Authority v Stoddard* BC201520976.**
3. ***British Fame (Owners) v Macgregor (Owners)* (1943) AC 197.**
4. ***Podrebersek v Australian Iron & Steel Ltd* [1985] HCA 34.**
	1. Podrebersek is the employee who was injured
5. ***O’Connor v Commissioner for Government Transport* (1959) 100 CLR 225.**
6. *Bull v Schweppes (Aust) Pty Ltd* [1960] WCR 67.
7. ***WB Jones Staircase & Handrail Pty Ltd v Richardson & Ors* [2014] NSWCA 109.**
8. ***House v The King* (1936) 55 CLR 499.**
9. ***Australian Safeway Stores v Zaluzna* (1987) 162 CLR 479.**
10. *Wyong Shire Council v Shirt* (1980) 146 CLR 40.
11. *New South Wales v Fahy* (2007) 232 CLR 486.
1. *Podrebersek v Australian Iron & Steel Ltd* [1985] HCA 34, Para 10. [↑](#footnote-ref-1)
2. (1936) 55 CLR 499. [↑](#footnote-ref-2)
3. *WB Jones Staircase & Handrail Pty Ltd v Richardson & Ors* [2014] NSWCA 109. [↑](#footnote-ref-3)
4. *House v The King* (1936) 55 CLR 499, 505. [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)
6. (1959) 100 CLR 225. [↑](#footnote-ref-6)
7. Ibid, 229. [↑](#footnote-ref-7)
8. s5(1) *Workers Compensation Act 1958* (Vic). [↑](#footnote-ref-8)
9. *Workers Compensation Act 1958* (Vic). [↑](#footnote-ref-9)
10. Ibid. [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)