

Albury City Council ats Dylan Streller

CLAIM DETAILS

- Date of incident: 26 January 2008
- Location of incident: Oddies Creek (adjoining Oddies Park)
- Claimant: Dylan Streller – student aged 17 at the date of accident.

INCIDENT DETAILS

- On 26 January 2008, the Claimant was attending Oddies Park as part of the Australia Day festivities.
- The Claimant, along with many other youths, were using a rope swing attached to a tree branch located in Oddies Creek Park on the banks of the Murray River.
- Whilst attempting to swing from the tree into the river, the Claimant's hand became entangled in the rope as he was attempting to perform a back-flip. He landed in shallow water and struck his head on the bottom of the river.
- The Claimant sustained a fracture of the C7 vertebrae resulting in quadriplegia.
- Given the severity of the Claimant's injuries, the proceedings were split with liability being dealt with first.

WHAT EVIDENCE WAS PRESENT – COUNCIL RECORDS, STATEMENTS, PHOTOS

- Council was the local authority responsible for the inspection and maintenance of Oddies Creek Park.
- As part of Council's inspection/maintenance programme, unauthorised structures including rope swings were removed when identified.
- Council identified 2 rope swings on 25 January 2008, removing one of the day and making arrangements for the removal of the second rope by use of a tree climbing contractor as the rope was not accessible to Council's staff or equipment. The contractor confirmed the work would be completed by January 29.
- Unfortunately, the Claimant was injured on 26 January 2008.

WAS COUNCIL LIABLE AND WHY?

- Was the hazard obvious? Yes.
- Did Council know about the hazard? Yes
- Did Council warn of the hazard? No
- Did Council inspect the area? Yes

- The matter proceeded to hearing before Justice Latham. She found:
 - The Claimant knew that serious injuries were likely from a dive into shallow water.
 - Council owed a duty to take reasonable care towards those entering Oddies Park who exercise reasonable care for their own safety, as opposed to ensuring no harm comes to any entrant.
 - Council did not encourage recreational use of the subject tree or any tree emanating from the riverbank. To the contrary, Council attempted to discourage persons from swimming in the river by signage, and removed rope swings, or caused them to be removed, as soon as practicable.

- Council was entitled to weigh the probability of a catastrophic injury arising out of the use of the rope swing against the prospect of using an unaccredited contractor to remove the rope swing.
- Council did not represent, through the presence of the rope swing and the absence of security guards at the tree location, that it was safe to dive and/or jump. The presence of the swing and the absence of the guards were not relevant to the Claimant's decision to undertake the activity.
- The risk was obvious and accordingly, there was no duty on the part of Council to warn.
- The fact that others had previously jumped or dived using the swing had not been injured said nothing about the risk of injury to someone using the swing to enter the water from a higher point of the arc.
- The fact the Claimant was an experienced and accomplished diver was relevant in determining whether the risk was obvious, as were matters of common knowledge.
- The harm suffered by the Claimant was the result of the materialisation of an obvious risk of a dangerous recreational activity. Accordingly, Council was not liable regardless of whether there was a duty of care and breach.
- The Claimant appealed to the Court of Appeal. Justices Meagher, Ward and Emmett unanimously found Council was not liable. They found:
 - They rejected the argument the presence of the rope represented it had been placed there by Council for recreational use. They were not prepared to draw any inference along those lines, absent some express fact on the part of the Council that was the case.
 - The risk of harm was relevantly significant so as to constitute a dangerous recreational activity within the meaning of S5L of the CLA. The probability of the risk materialising was more than trivial and could have been high.
 - Council did not have a duty to remove the rope swing on 25 January 2008 as to do so would have exposed people to unsafe work practices.
 - Council did not breach its duty of care by failing to supervise the rope swing so as to prevent its use on 26 January 2008. They accepted that any consideration of a reasonable authority as to precautions involved whether there were futile or further risks of harm. They supported the finding that a reasonable authority would not have placed a security guard at the tree. The Court found that to do otherwise would have 'set the risk apart' from the more general risk which was similar to the risk of harm others faced in using ropes in other areas of other parks during the summer months.
- The Court of Appeal dismissed the Claimant's appeal with costs. The Claimant did not file an application for special leave to appeal to the High Court.

WHAT WAS THE CLAIMANT SEEKING?

- The Claimant was seeking compensation for the injuries sustained in the accident. He was rendered a quadriplegic in the accident. Given his young age, had he been successful, damages would have been in the millions (\$10-12M).

HOW MUCH DID HE GET?

- Nil.