

SUMMARY OF THE JUDGMENT

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>> PROPERTY LAW UPDATE

GUESTS FALLING FROM STAIRS: OWNERS / LANDLORDS LIABLE?

Pauw v Du Preez (20197/2014) [2015] ZASCA 80 (28 May 2015)

When is a homeowner, who rented out her seaside home over the holiday period, liable for injuries sustained by a guest of the tenant? This judgment found the owner liable for all the guest's damages when she fell off an outside stairway where there was no hand-railing. Although there was no evidence indicating how exactly the accident happened, there also was no proof of contributory negligence on the side of the guest. Owners and landlords should take note!

The Judgment can be viewed [here](#).

FACTS

Pauw is the owner of a house in the Strand. On Christmas Eve 2005, Du Preez and her mother went to visit relations who had hired Pauw's house over Christmas. They stayed until about 11 pm. It was when leaving and descending the stairs that Du Preez fell and was injured.

Access from the street is provided by way of a fairly lengthy but straight flight of stairs leading from the street frontage and passing between a garage and a retaining wall. The entire length of the stairway is flanked on the right by a wall fitted with a handrail. On the left, it is flanked for approximately half its length by the side wall of the garage. At the level of the front wall of the garage there is a security gate across the stairs, hinged on the right hand side and secured by way of a latch on the garage wall on the left. The fall from the bottom of the edge of the gate to the level of the ground is approximately 1,2 metres. Below the gate the stairs on the side of the garage are not fitted with any safety rail or other form of protection. It was from this unprotected portion of the stairway below the gate that Du Preez fell.

The gate was closed when they descended and, closed as it was against the rise of a step, had to be opened away from persons descending, towards the road. After both she and her mother had passed through it, Du Preez closed the gate. In order to do so, she first had to proceed down several steps to provide space to close it behind her, and then turned around and moved back up a few steps to secure the gate's latch to the clip mounted on the garage wall. No sooner had she done so when she lost her balance and fell, not down the stairs themselves, but off the stairway to end up lying between it and a motor vehicle that was parked parallel to the stairs facing the garage door.

In due course Du Preez instituted action for damages resulting from her injuries in the Western Cape High Court, contending that Pauw had negligently failed to protect that portion of the stairs from which she had fallen with a railing that would have prevented her fall. The trial court concluded both that Pauw had been negligent and that she had failed to establish contributory negligence on the part of Du Preez.

Pauw accepted that the lack of protection on the garage side of the stairs below the gate was an inherently dangerous state of affairs and that she ought to be held liable to Du Preez for failing to fit a safety railing to secure that portion of the stairway. She also accepted that had there been such a safety railing, Du Preez would probably not have fallen off the stairs and been injured.

Pauw however appealed the judgment arguing that the trial court had erred in not finding contributory negligence on Du Preez's part. Her appeal was dismissed but, with special leave, she appealed to the Supreme Court of Appeal contending, once again, that Du Preez's own negligence had contributed to her fall.

HELD:

- The onus fell on Pauw to prove contributory negligence.
- Du Preez herself did not know what had caused her to fall and her mother who was with her at the time, did not see the fall and could therefore not elaborate. According to Pauw, she had just closed the gate but still had her hands on it when she lost her balance, her hands slipped off the gate, and she fell. She was unable to say how or why she lost her balance.
- Pauw contended that Du Preez ought not to have closed the gate at all but should have left it to her mother to do, as she (Du Preez) suffers from a physical disability (hemiplegia) that resulted from a head injury sustained as a young child. As the latch of the gate was on the side of the garage wall, she had to move towards the open side of the stairway in order to close it, particularly as she was left-handed. In these circumstances she had exposed herself to the obvious danger of the unprotected side of the stairway instead of having remained on the opposite side where there was a handrail available for her to support herself.
- The contention had no merit. Du Preez had indeed suffered an injury that had left her with a permanent right-sided hemiplegia and an associated limp on that side, and admitted that in order to compensate for her weak right leg she descended the stairs by angling herself towards her left. But despite her gait being compromised, Du Preez has accepted her physical disability with courage and

determination. She was a long distance runner who, in 1999, had been a member of an invitation team that attended a para-olympic event in Australia where she had won three medals, two gold and a silver. And, importantly, as part of her training she used to, at times, run up 10 flights of stairs.

- Accordingly, despite her physical disability and the necessity for her to be cautious when traversing non-level terrain, Du Preez's hemiplegia was not so severe that the stairs at the house constituted a challenge that she ought not have accepted without assistance.
- The evidence fell short of establishing that Du Preez's disability was such that it was inherently dangerous for her to have attempted to close the gate herself, or that she was negligent in not having her mother do so.
- Pauw's further argument that Du Preez was negligent, in that she had failed to keep a proper lookout, and as a result must have stepped back and off the edge, thereby losing her balance, was not substantiated. Had the evidence established that Du Preez had indeed fallen in this manner, there may have been room for an argument that she had been negligent. But there was no evidence that this was in fact how Du Preez came to fall, nor can it be so inferred. There are a myriad of potential reasons why persons might lose their balance: a person doing so, and falling, does not, without more, in itself give rise to any inference of negligence on his or her part.
- Thus the reason why Du Preez lost her balance remains unexplained. It is impermissible however to speculate on what led to her doing so. That being the case, the necessary facts from which a conclusion can be drawn that she acted negligently were not established and the court had to conclude that Pauw failed to prove contributory negligence on Du Preez's part.

The appeal was dismissed.

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