SUPREME COURT OF QUEENSLAND

CITATION:	*Hurst & Anor v Langford & Ors* [2002] QSC 228
PARTIES:	**RONALD FRANK HURST** (plaintiff) **ALLEC PTY LTD ACN 010 412 834** (second plaintiff **v** **WILLIAM ROYSTON LANGFORD and** **GRACE ELIZABETH LANGFORD and** **ANNETTE CLAIRE STRANGE** (first defendants) **ANNETTE CLAIRE KING also known as** **ANNETTE CLAIRE STRANGE and** **MARTIN FREDERICK STRANGE** (second defendants)
FILE NO/S:	SC 2083 of 2002
DIVISION:	Trial Division
PROCEEDING:	Civil Trial
ORIGINATING COURT:	Supreme Court Brisbane
DELIVERED ON:	20 August 2002
DELIVERED AT:	Brisbane
HEARING DATE:	8 August 2002
JUDGE:	McMurdo P
ORDER:	**The plaintiff's action be dismissed.**
CATCHWORDS:	**NEGLIGENCE - DUTY OF CARE – BREACH OF CONTRACT – OCCUPIER'S LIABILITY -** where plaintiff slipped and fell on sloping land while staying at first defendants holiday units – where plaintiff claims fall was due to the negligence and/or breach of contract of the defendants – whether defendants breached their duty of care **NEGLIGENCE – DUTY OF CARE – BREACH OF CONTRACT – OCCUPIER'S LIABILITY -** where evidence of berries in the area where the plaintiff fell – where the second defendants gave evidence that there were no palms on the premises producing berries of the type described – where the second defendants regularly maintained the area where the plaintiff fell – where no breach of duty of care
COUNSEL:	G D O'Sullivan for the plaintiffs K F Holyoak for the defendants

SOLICITORS: James Watt & Co for the plaintiffs
McInnes Wilson for the defendants

[1] On 10 March 1998, the plaintiff, Ronald Frank Hurst, was staying at Villa Marine holiday units at Yorkey's Knob, Cairns. The first defendants were the registered proprietors of the land on which the units were situated and the second defendant managed the business. Mr Hurst slipped and fell on a sloping lawn between his unit and the pool. He claims this was because of the negligence and or alternatively breach of contract of the defendants in causing or permitting the grass to be excessively wet and slippery; failing to keep the grass cut to a safe length; failing to remove or take reasonable care to remove with sufficient frequency palm nuts which had fallen on the grass; failing to ensure that the contour of the grassed section was reasonably safe for guests; failing to construct a safe pathway from the plaintiff's room to the pool; failing to adequately warn of the dangers of the grassed section including the dangers of the contour, slipperiness and the palm nuts.

[2] The defendants deny these allegations and alternatively claim Mr Hurst was contributorily negligent.

[3] As a result of the fall, Mr Hurst has suffered personal injuries and damage, the quantum of which has been agreed at $150,000, an amount, I note, well within the jurisdiction of the District Court. This action concerns only liability.

The facts

[4] Mr Hurst is an electrician; since 1981 he has specialised in electrical installations in floating marina systems. In March 1998, when he was 44 years old, he was working in Cairns with his trades assistant, Andrew Blake. He booked into the Villa Marine shortly before 10 March. He rented a family unit to share with his workers. On 10 March he woke up at about 6am. Because the shower pressure was poor he decided to have a swim and walked barefoot in shorts with a towel over his shoulder towards the swimming pool.

[5] His unit was in the short side of the L-shaped single level building containing the units. A path edged both the perimeter of the complex and a ten metre grassed area which sloped gently at first and then more steeply to a "common enough" bank, which, in turn, rolled down to the pool. From the middle of the long side of the L-shape, the grassed area connected to stairs, which traversed a portion of the bank and led down to the pool gate. He could not recall the weather conditions nor if there was moisture or dew on the grass. The most direct line from the plaintiff's unit to the pool was to traverse the sloping grassed area and bank directly to the pool gate, by-passing the stairs. The route chosen by the plaintiff was to walk across the grassed, gently sloping area, about 500 - 600 mm from the edge of the bank, to the top of the stairs, which were flanked by two palm trees, and descend the stairs to the pool gate.

[6] Shortly before he reached first palm tree, at the edge of the gently sloping grassy area but before the steeper bank commenced, his right foot suddenly went out from under him, his momentum carried him into the steeper part of the slope and he landed awkwardly. He had a sensation of slipping, like on oil or ice, fast with no control; he did not know what made him slip. The grass was 50-60mm high. His

ankle caused him excruciating pain. He saw a few red and yellow palm nuts, which he had not seen before his fall. He has never before fallen like this; his work requires a degree of agility and balance on narrow walkways within floating installations which move with the water. He was assisted by Mr Blake and another person. Mr Blake took him to hospital. Because of his severe pain, he had little recall of his conversation with hospital staff but he does not contest that, as recorded in the hospital records, he said he slipped on grass.

[7] He would have heeded any warnings about the grassy slope because of his workplace safety training but he saw no warnings.

[8] He was discharged from hospital back to the Villa Marine because his ankle was too swollen to be placed in plaster. The pain became much worse and he was readmitted to hospital for some days, returning to the Villa Marine only to collect his bags and fly home to Brisbane. He arranged for Mr Alan Bentley, who is now his business partner, to travel to Cairns and replace him.

[9] The general area where the plaintiff fell was well documented by photographs tendered by both parties and by a video. These exhibits show a modest holiday unit complex with a pleasant sloping grassy area as described above and well maintained gardens with a tropical feel.

[10] **Mr Blake** now works for the Brisbane City Council but in March 1998 he was a labourer for the plaintiff. When they booked into the Villa Marine on the afternoon of 9 March 1998, he went immediately to the pool from the plaintiff's car beside the unit. He took what he regarded as the fastest route, traversing the steeper grassy bank directly to the pool gate. The next morning he saw the plaintiff walk towards the swimming pool stairs, across the gently sloping grassy area near the palm tree at the top of the stairs. The plaintiff suddenly fell at a point about 2-4 metres from this palm tree and in line with it. As soon as he realised the plaintiff was in pain, he went to his assistance. He noticed that at the point where the plaintiff slipped, just before the commencement of the bank, the area is steeper than it looks. Near where the plaintiff lay, he saw between 20-70 palm nuts, each about the size of a 20 cent piece; some were green and difficult to see in the grass; others were starting to rot, yellowy-orange in colour and partially obscured in the longish grass. He took the plaintiff to hospital and spoke to hospital staff there. Later that day at about 4 or 5pm he took a photograph of the area where the plaintiff fell, showing the palm tree at the top of the stairs in flower. A couple of days later he took other photographs which showed this large palm flower had been removed and the lawn mown.

[11] **Alan Bentley**, the plaintiff's business partner, travelled to Cairns whilst the plaintiff was in hospital. He, too, stayed in the unit at the Villa Marine which the plaintiff had booked and paid for in advance. At some time during the two weeks following 10 March at about 4.30-5.00pm he went to the pool from the unit and, like Mr Blake, traversed the steeper grassy bank, heading directly to the pool gate. This was an obvious route and there was nothing to discourage its use. At about 5 to 6 metres from a palm tree near the gate he slipped on the steep part of the embankment but was uninjured.

[12] **Andrew King**, the partner of Annette Strange (now King), the second defendant, was the caretaker of the Villa Marine in March 1998. He had a part-time job from 6am-10am and spent the rest of the day assisting Annette in cleaning and gardening.

During the wet season, which included March, he would mow about every five days with a standard rotary mower and catcher. In addition, he would rake the lawns each afternoon.

[13] Because the complex was small, it was important to him to keep the grounds tidy. March was not usually a busy time and he would seek out maintenance tasks. He routinely cut the large flowers off the palm trees, including the palm tree at the top of the stairs nearest the plaintiff's unit, because the dropping flowers looked untidy. He removed palm flower bracts before berries formed, although he left the fruit and flowers on some palm trees in the back corner of the property overhanging the swamp to attract birds and interest the tourists. The Alexander palm has a red berry of less than a centimetre, which is "squishy" and ages to a dark brownish black; it takes about seven or eight days from when the flowers first form to the production of berries. He mowed the grass to about three-quarters of an inch, which was long enough to discourage weed growth but short enough to look tidy. The lawn was buffalo grass and could not be cut to a centimetre (the size of the Alexander palm nuts) without revealing the grass roots. There were no Alexander palm berries or green, yellow or orangey palm nuts in the area in which the plaintiff claims to have fallen. The difference between the photo taken on the day of the fall and the photos taken a few days later showed his regular maintenance program; he did not cut the palm flower and mow the lawn because of Mr Hurst's fall.

[14] The lawn above the steps is relatively flat with an approximate six inch fall from top to bottom. The change in slope of the lawn from gentle to more steep was obvious. He has had no complaints about the slipperiness of the sloping lawn and bank or access to the pool.

[15] He saw the plaintiff sitting near his unit with a cast on his leg and asked what happened. The plaintiff said he slipped over and broke his ankle when he was going for a swim. He made no complaint nor attempted to attribute blame.

[16] **Annette King** was the owner/manager of the Villa Marine in March 1998 and she shared the maintenance with her partner, Andrew King, who did the lawn mowing and heavy gardening. Most afternoons they would rake the lawn. They regularly cut down the flower pods on the Alexander palms in the lawn area to avoid the mess when they dropped. She liked the lawn to be "totally pristine" because it was their "biggest selling point". The lawn was mown in the wet season between October and Easter every four or five days. Over the seven years she managed the property, which was sold in September 1998, she did not receive any complaint from anybody who had slipped on the lawn area. Guests enjoyed sitting and playing on the lawn. There were no green, brown or yellow palm nuts the size of a 20 cent piece on that lawn in March 1998. When shown the photographic exhibits she commented that the photos were "pretty representative" of the standard at which they maintained the premises. The point at which the slope in the grassed area became steeper was obvious, especially because the steps delineated the slope. She was happy for patrons to take the shortest route to the pool across the lawn because it was there for guests to use.

Findings

[17] I accept that all the witnesses gave honest evidence but there are some conflicts which need to be resolved. I am satisfied the plaintiff fell as he describes in

evidence but he is unable to say what caused him to fall. It is puzzling that the description of the palm nuts or berries seen by the plaintiff and Mr Blake appear to be different to those produced by the Alexander palm closest to the area where the plaintiff slipped. There were no palms on the premises which produced the nuts described by Mr Blake. Mr and Mrs King knew the garden well because of their regular maintenance of it. I accept their evidence that there were no orangey palms nuts the size of a 20 cent piece on the lawn on the day of the accident and that the palm flowers were regularly removed before the formation of most berries. The plaintiff's recollection of berries after his fall, supported in some ways by the recollection of Mr Blake, satisfies me that there probably were some Alexander red and browny-black palm berries partially concealed in the three-quarter-inch long buffalo grass, although these were not obvious to the plaintiff as he walked across the lawn, or to the Kings who maintained these lawns and gardens to a pleasing standard. I think Mr Blake's memory of their colour, size and quantity is inaccurate. I am not persuaded however that those berries were the cause of the fall. Nor has the plaintiff satisfied me as to what caused him, a man ordinarily steady on his feet, to suddenly slip and fall awkwardly. There is no direct evidence that the lawn was wet or slippery with rain or dew, although it seems likely that it would have been moist with dew at 6 am. Certainly the fall occurred on the area of grass just before the contour changes from a gradual to a steeper slope. I accept the Kings' evidence that this contour was obvious and was further delineated by the stairs; it was not in itself inherently dangerous. The bank was, as the plaintiff frankly conceded, "common enough".

[18] As Mr Bentley's fall was on a different part of the bank on a different day and at a different time, his evidence is of no assistance in determining the issues between the parties.

[19] There is no doubt that the defendants, as occupiers of the premises, owed a duty to the plaintiff, their guest, to take reasonable care for his safety, both in negligence and as a contractual obligation. The defendants had a duty in tort and a contractual obligation to keep the premises as safe for their guests as the exercise of reasonable care and skill can make them.

[20] The issue is whether the defendants breached that duty of care. It was foreseeable that a guest, including the plaintiff, could fall and be injured whilst walking on the grassed area or, indeed, anywhere at all on the premises. I am satisfied, however, that the defendants' response to that risk was adequate. They maintained the grass at an acceptably safe length and they acted reasonably in eliminating any potential accentuated risk caused through debris by regularly raking the lawn and removing palm flowers from the palm trees before most berries formed. The contour of the sloped grassed area was not itself inherently dangerous and was obvious enough to guests. A route to the pool using the perimeter path, a small area of reasonably level grass and stairs was available to guests who did not wish to use the grassed, sloping areas to reach the pool. Guests like the plaintiff, who chose to use the grassed, sloping area to reach the pool, can be expected to take reasonable care to avoid slipping. It was obvious to the reasonable person that the grassed area was sloping, may not be entirely even, and may contain concealed berries, seeds, prickles, ants or like items regularly found in lawns; lawns may be slippery, especially when damp and on or near an obvious slope. These are all matters of common human experience and are ordinary risks frequently encountered by people enjoying their own or others' gardens.

[21] Sometimes, even where, as here, the risk of injury is low, a warning, which costs very little, may be appropriate. The plaintiff's counsel, in his closing address, suggested the defendants should have placed warnings in the unit, like "watch out for nuts" or "beware of slope". The former would not have assisted because of my conclusion that the nuts or berries did not cause the fall; it may even be confusing as to the type of "nuts" about which care was required! As for the latter, I am not persuaded the grassed slope was so dangerous as to require a warning. The slope was obvious; in the seven years during which Mrs King managed the premises, she received no complaints about anyone falling or being injured on the grassed area. It was also unnecessary in the circumstances here to require the defendants to fence or plant a garden along the top of the bank of this pleasant small lawn. None of the various options which the plaintiff contends would have eliminated or substantially reduced the risk of the plaintiff's fall could be said to be reasonably required in this case. The defendants have not breached their duty of care to the plaintiff.

[22] Nor has the plaintiff discharged his onus in persuading me that any act or omission of the defendants caused his fall. It seems he simply had the misfortune to slip on the sloping lawn in the early morning, breaking his ankle with considerable resulting pain, cost and inconvenience to him.

[23] It follows that the plaintiff's claim fails and it is unnecessary to consider the defendants' claim of contributory negligence. The plaintiff's action must be dismissed.