



## HIGH COURT OF AUSTRALIA

Public Information Officer

8 December 2005

### SANDRA NEINDORF v MARTA JUNKOVIC

A home owner holding a garage sale had not been negligent in failing to take measures to stop a customer tripping on an uneven driveway surface, the High Court of Australia held today.

Ms Junkovic, then 53, attended the garage sale Ms Neindorf held at her home on Saturday, 5 February 2000. As she walked up the driveway she tripped on an uneven join in the concrete. One slab of concrete was 10 to 12mm higher than the other. The difference in height was clearly visible. Ms Junkovic fractured a bone in her right foot.

She successfully sued Ms Neindorf in the Magistrates Court of South Australia. The Magistrate held that Ms Neindorf had breached the duty of care she owed Ms Junkovic and awarded damages of \$24,464. Ms Neindorf successfully appealed to a single judge of the Supreme Court but this decision was overturned by a majority of the Full Court. She then appealed to the High Court.

The Court, by a 4-1 majority, allowed the appeal. It held that Ms Neindorf had a duty to take reasonable care but in the circumstances this did not extend to taking action such as painting lines, erecting warning signs, carpeting over the join or placing a table over it. The Court said that the danger was minor and obvious and such cracks and unevenness were to be found in footpaths and driveways throughout suburban Australia. Eliminating or warning against all potential hazards encountered at most homes was not practicable.

The SA *Wrongs Act* listed factors to be taken into account in assessing the appropriate standard of care owed by an occupier such as a home owner. However, section 17(3) provided that the fact that an occupier had not taken measures to eliminate, reduce or warn against a danger arising from the condition of premises does not necessarily show that the occupier had failed to exercise a reasonable standard of care. The Court held that there was no failure to exercise reasonable care in this case.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*