Fixed Open Blade Knives Fatality Report

‘That’s not a knife’: accidental stabbing not employer’s fault

An earthmoving contractor has been sued for a stabbing wound from the owner’s son to a co-worker at a Redbank Plains construction site during a lunch break.

Joshua Boon, a labour-hire employee deployed to Downer EDI’s civil works site at Highbury Drive who operated an asphalt laying paving machine, claimed $200k in injury compensation for the injury.

The wound was inflicted at the hand of Tim Sommerfeldt, a bobcat driver for Downer subcontractor Big Bill’s Bobcats, owned by his father Bill.

On 16 September 2011, they both took their lunch break on a grassy knoll adjacent to the site. Summerfeldt was using the blade of his Leatherman Multi-tool – which was 18cm fully extended – to peel an orange. As he stood up from a crouching position – blade and orange in hand – Boon approached.

That innocent motion resulted in the unfortunate penetration of Boon’s left hand by the “extremely sharp” blade.

Boon sued Big Bill’s for his injury – and the resulting three rounds of surgery – on grounds it had allowed personnel to bring dangerous weapons, such the “9 inch knife” by which he thought he had been wounded, onto the site.

Accepting the “weapon” was none other than a Leatherman – containing among other devices, pliers, screwdrivers, a file and a saw that had everyday on-site applications – Boon nevertheless contended that Big Bill’s ought to have implemented sufficient measures limiting the use of such tools to ensure the safety of co-workers and others.

Because of the potential danger of the sharp blade, he argued,

Summerfeldt (for whom he asserted Big Bill's was also vicariously liable) owed a duty to ensure it was retracted whenever there was any risk of physical contact.

Summerfeldt had after all, ascended from the crouching position with the blade extended without checking to see whether anyone in the vicinity who might be injured by such action.

But it was Boon who was moving towards Summerfeldt and must have seen him rising, observed Justice Ann Lyons in the three day Brisbane Supreme Court trial.

"The accident did not happen simply because Summerfeldt had a knife in his possession," ruled Justice Ann Lyons in Brisbane's Supreme Court, "but because Boon had moved very close when he had used it to peel an orange".

She accepted the defendant's argument that he acted reasonably and the risk of injury from "rising on the spot" was insignificant. "No reasonable person in his position would have taken additional precautions," she wrote in her 25 page judgment.

Boon's $200k claim was rejected and he was ordered to pay Big Bill's legal costs.

Boon appealed and on 26/02/2016, the appeal judges reversed Justice Lyons' decision because of an "inescapable conclusion that there was a foreseeable risk that a passer-by might have been struck by the blade of the knife".

"A reasonable person would have taken the simple precaution of looking properly to see if there was any person approaching his vicinity before he began to rise or would have retracted the blade on the knife".

Damages to $225k were ordered in Boon's favour.