

Forest Fires and Liability

A recent decision by the Court of Appeal serves as a useful summary of how liability is determined for forest and rural fires.

Leisure Investments NZ Limited Partnership v Cecile Grace & Ors was an unsuccessful appeal by Leisure Investments NZ Limited Partnership (**Leisure LP**) to the Court of Appeal of the High Court's decision to find Leisure LP liable under section 43 of the Forest and Rural Fires Act 1977 (**FRFA**), in negligence and in nuisance.

Background to the case

The case relates to two fires in the Port Hills in Christchurch that occurred from Tuesday 13 to Thursday 15 February 2017. One of the fires was started by an arsonist and spread onto Leisure LP's land, which had an adventure park on it. The park had a chairlift that ran in a 12-20 metre wide corridor for 1.8 km. The fire started to engulf the chairlift on the afternoon of 15 February, melting the plastic coating on the chairs. This in turn caused the "slash" below the chairlift to catch fire.¹ This resulted in spot fires that eventually merged with the main fire and spread to the respondent's properties. If the chairs had not caught on fire, the main fire would have passed south of the respondent's properties, leaving them unaffected.

Court of Appeal on negligence

The Court of Appeal found that a reasonable chairlift operator, armed with the knowledge of Leisure LP, would have realised that since the encased plastic core of the haul rope could be damaged, then the unprotected plastic on the chair would catch fire even

quicker. The Court noted that the burden of taking precaution by removing the chairs did not outweigh the risk of leaving the chairs attached.

The Court also noted that a reasonable chairlift operator in Leisure LP's position would have started removing the chairs on the Tuesday afternoon, at the latest, not Wednesday morning as Leisure did.

Court of Appeal on nuisance

The tort of private nuisance looks to protect the right of an owner or occupier of land to the quiet use and enjoyment of their land free from unreasonable interference.

The Court found that, while the fire was not started by Leisure LP, they allowed it to continue and escalate. Leisure LP had knowledge of the nuisance and failed to take reasonable steps to remove or abate it.

Legislative scheme

The Court of Appeal also upheld the High Court's finding that Leisure LP was liable under section 43 of the FRFA, considering the fire to be an outbreak pursuant to the FRFA.

The FRFA is no longer in force, having been replaced by the Fire and Emergency Act 2017 (**FEA**). The FEA removed the imposition of civil liability in respect of forest and rural fires, only imposing criminal sanctions.

Sections 60 and 61 of the FEA most closely resemble section 43 of the FRFA. Section 60 imposes liability on a person who causes or allows a fire to get out of control and spread to vegetation or property. On conviction, an individual will be liable to a term of imprisonment not exceeding two years, or a fine not exceeding \$300,000. In any other case other than an individual, liability is for a fine not exceeding \$600,000. Section 61 imposes the same liability for those who

¹ "Slash" is a waste product from commercial forestry, anything from small branches to whole trees that have been left behind on the land when other wood is harvested.

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causes, or allows a substance to burn or smoulder in open air and leaves the substance burning or smouldering in a way that increases the likelihood of harm or damage arising from the start or spread of fire.

This case serves as a useful reminder that, while the legislative regime only imposes criminal sanctions for forest and rural fires, civil liability still exists through negligence and nuisance.

Want to know more?

If you have any questions about forest fires and liability, please contact our specialist [Forestry](#) team.