



## HIGH COURT OF AUSTRALIA

Manager, Public Information

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ADEELS PALACE PTY LTD v ANTHONY MOUBARAK  
ADEELS PALACE PTY LTD v ANTOIN FAYEZ BOU NAJEM  
[2009] HCA 48

Adeels Palace should not be held liable for injuries arising from violent conduct, in the circumstances where the evidence did not establish there was action it could have taken which would, on the balance of probabilities, have prevented that conduct from occurring, the High Court held today.

In the early hours of New Year's Day 2003 a dispute arose on the dance floor of the Adeels Palace Restaurant, after a female patron accused another of brushing her hand with a lighted cigarette. Fighting erupted and became "more ferocious very quickly". One of the patrons left the restaurant after he was struck in the face. He returned soon after with a gun. In an unprovoked act he shot Mr Bou Najem in the leg in the restaurant's kitchen. He then went into the restaurant proper and found Mr Moubarak, the man who had struck him. He shot Mr Moubarak in the stomach. Mr Moubarak and Mr Bou Najem both sued Adeels Palace, alleging that they had suffered their injuries as a result of the negligence of Adeels Palace in failing to provide any or any sufficient security during the New Year's Eve function. Both men were successful in the NSW District Court. The Court of Appeal for NSW dismissed appeals filed by Adeels Palace. The High Court granted Adeels Palace special leave to appeal.

The High Court held that the issues in the case had to be determined in the light of the relevant provisions of the *Liquor Act* 1982 (NSW) and the *Civil Liability Act* 2002 (NSW). The High Court concluded that, concomitant with its responsibilities under the *Liquor Act* to not permit indecent, violent or quarrelsome behaviour on licensed premises and to eject persons who engaged in such behaviour, Adeels Palace owed a duty to all of its patrons (including Mr Moubarak and Mr Bou Najem) to take reasonable care to prevent injury arising from the violent, quarrelsome or disorderly conduct of other persons. However, the High Court held it was unnecessary to determine whether there had been a breach of the duty. That was because the evidence did not establish that the provision of greater security, to the level which Mr Moubarak and Mr Bou Najem argued should have been provided, would have either deterred or prevented the gunman from re-entering the restaurant. Section 5D of the *Civil Liability Act* required Mr Moubarak and Mr Bou Najem to establish that the restaurant's negligence in failing to provide any or any sufficient security was a necessary cause of the damage they each suffered, but the evidence only went so far as to establish that if there had been more security in the restaurant on New Year's Eve that *might* have prevented the damage caused by the gunman. It did not show that more security *would*, on the balance of probabilities, have prevented their injuries.

The High Court allowed each appeal and ordered that the decisions of both the Court of Appeal and the District Court be set aside.

- *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.*