

No Redaction Needed

[2024] IEHC 596



**AN ARD-CHÚIRT
THE HIGH COURT**

[Record No. 2021/2360]

BETWEEN

LJUBICA DAVIDOVIC

PLAINTIFF

AND

**APLEONA HSG LIMITED, ROAD TRANSPORT REPAIRS LIMITED AND
ALDI STORES (IRELAND) LIMITED**

DEFENDANTS

JUDGMENT delivered electronically on the 21st day of October 2024 by Mr. Justice

Tony O'Connor

Introduction

1. The Court in these proceedings is requested to apportion the liability for the injury sustained by the plaintiff on 14 May 2019 at the store of the third named defendant (“Aldi”) in Sandyford (“The Store”).

Background

2. On 1 May 2019 the plaintiff commenced her employment with Aldi at the store. On 14 May 2019 the plaintiff started work at 6am. She was tasked to bring pallet cages loaded

with goods onto the store floor before removing the cardboard and plastic packaging. The cardboard was brought back to the pressing machine in the storeroom. On her way back to the storeroom she saw another pallet cage with cardboard. She decided to push one trolley and pull the other to the pressing machine. During this process her heel was pierced by a sharp object at the base of a trolley. In fact, her achilles tendon was severed. The tendon was repaired the following day at St. James Hospital.

The issue between the defendants

3. On 9 May 2024 the proceedings were struck out by consent as against the first named defendant which supplied the pallet cages to Aldi. The plaintiff also settled her claim with the remaining defendants.

4. The second named defendant (“**the Repairer**”) which had a contract with Aldi to repair the pallet cages is alleged by Aldi to have left the relevant pallet cage in a dangerous state.

5. Ultimately counsel for the Repairer and Aldi submitted on 29 July 2024 a note of the issues for determination by the Court:-

- “1. The extent to which the health and safety systems as Aldi, to include training and supervision of the plaintiff, caused or contributed to the accident suffered by the plaintiff.
2. Whether, as a fact, [the Repairer] carried out a repair to trolley no. 3 (photograph 18) on 7 May 2019, one week before the accident and whether that trolley was the trolley which injured the plaintiff.
3. If a repair was carried out to trolley no. 3 by the second defendant, the extent to which (if at all) any such repair caused and contributed to the accident and injury suffered by the plaintiff.”

Breach of duty by Aldi

6. There was no disagreement effectively among the independent engineers called to give evidence that Aldi fell below certain duties owed to the plaintiff in the area of training and supervision, particularly when pushing and pulling trolleys simultaneously in the store. So, the Court moves to decide issue two in order to ascertain whether it can decide issue three.

Repair process

7. Mr. Elton Daly who has worked for more than 25 years with the Repairer explained to the Court without contradiction the process for him to attend at the store. Aldi contacted the first named defendant which in turn called the Repairer to attend for repairs. Mr. Daly was the engineer who attended the store from 2017 to 2019. Trolleys were left out for repair by an Aldi manager who did not necessarily meet Mr. Daly in person during his visits. The callouts were identified in worksheets and invoices generated by the Repairer.

CCTV

8. Excerpts from CCTV footage maintained by Aldi were played at the trial. The footage was taken from different cameras between 11.38am and 12.44pm on 7 May 2019. It captured intermittently two gentlemen and particularly Mr. Daly working on trolleys. A second line of footage showed a van backing up in an area which Mr Daly also used. There was also CCTV coverage of the plaintiff pulling and pushing the two trolleys. Ultimately the Court found the CCTV of little persuasive value in deciding the discrete issue as to whether Mr. Daly repaired the trolley which Aldi alleged as having caused the plaintiff's injury.

Repairs on 7 May 2019

9. The worksheet completed by Mr. Daly on 7 May 2019 had the words "broken trolley, straighten frames, reweld frames, reweld wheel brackets". This sheet was signed by Mircin Jurkowski for Aldi. Mr. Daly explained to the Court that he fixed a bracket identified in photograph numbered 19. The rest of his work involved correcting the wheels and frames of

the four trolleys which had been left out for his attention. It was clear from Mr. Daly that he had not repaired on 7 May 2019 the trolley which Aldi identified as having caused the injury to the plaintiff on 14 May 2019.

Recall on 17 May 2019

10. Mr. Daly met one of the managers on his return to the store on 17 May 2019 who said that a girl had cut her leg. Mr. Daly was asked to blank off the sharp point on the offending trolley by this manager whose name was apparently Mircin. Curiously no allegation was made on 17 May 2019 by or on behalf of Aldi that the sharp end had been created by Mr. Daly. That trolley was taken away on 22 May 2019 for a bracket to be attached. It was returned to the store on 28 May 2019.

Witnesses as to fact called by Aldi

11. Mr. Jani Niskanen, area manager with Aldi for over seventeen years heard of the plaintiff's injury about two hours after it had occurred on 14 May 2019. He attended the store on 16 May 2019 and took the photographs relied upon by Aldi to implicate the Repairer. He told the Court that he took photographs of all eight trollies which were in the store. Under cross examination he accepted that Aldi did not tag or track trolleys. Mr. Niskanen verbally instructed a Mr. Anton Burihchin to identify the trolley which injured the plaintiff on 14 May 2019 from available CCTV footage. Mr. Niskanen reluctantly acknowledged a possibility that there were more trolleys on the premises when he took the photographs. He agreed that assumptions should not be made when identifying the relevant trolley and conceded that he ought to have taken photographs of all 32 corners of the eight trollies which he had photographed. Mr. Niskanen suggested that an inference could be drawn from the CCTV that the relevant sharp edge in photograph 18 had been created by the Repairer prior to the injury.

Mr. Anton Burihchin

12. Mr. Burihlin was assistant manager in the store in May 2019 and had been asked by Mr. Niskanen to identify the cause of the plaintiff's injury. He telephoned for an ambulance and the plaintiff's husband following the incident. He testified that he then went to view the CCTV available for the incident and he put the trolley into a locked cage.

13. Under cross examination he could not explain why Mr. Niskanen then had to take photographs of eight trollies if the trolley had been isolated by Mr. Burihlin. He said that his memory of five-year-old events was not good and that his evidence on 30 July 2024 was the first time to "give any statement" about the event.

14. Mr. Zigmars Egle was another assistant manager in the store in May 2019. He told the Court that he could not identify the trolley in photograph no. 18 from the CCTV footage. Mr. Egle fairly accepted that he could not attribute the cause of the plaintiff's injury to repairs undertaken by Mr. Daly.

15. Mr. Mircin Jurkowski was deputy manager in the store in May 2019 but was not at work on 14 May 2019. He acknowledged his signature on the docket describing Mr. Daly's work on 7 May 2019. The height of assistance to Aldi's case against the Repairer offered by Mr. Jurkowski is that there could have been a sharp edge on one of the trollies repaired on 7 May 2019. He said that he did not routinely view the trolleys once repaired.

Engineers

16. Mr. Steven Farnan is a consulting engineer who attended an inspection at the store, furnished a report and gave evidence at the request of the Repairer. He agreed with the impression expressed by the Court that Aldi had decided to lay the plaintiff's claim off on whoever may have worked on the trolley through inferences drawn from CCTV footage retained. No evidence was produced to him or to the Court about a process to check trolleys.

17. Mr. Daragh Mooney, chartered engineer was engaged by Aldi to attend the joint inspection with other engineers. He submitted an addendum report dated 2 May 2024 which

was a week before the commencement of the trial of the plaintiff's claim. Mr. Mooney acknowledged that Aldi was responsible for the duty of the first named defendant to inspect as had been suggested by Aldi's area manager to Mr. Mooney. Mr. Mooney also accepted that the inference which implicated the Repairer had been undermined by Mr. Daly's sworn evidence which he had heard earlier.

Determination

18. The above summary of the evidence speaks for itself and points only one way – the Court is not satisfied on the balance of probabilities that Mr. Daly on 7 May 2019 worked on the relevant trolley prior to the plaintiff suffering her achilles tendon injury on 14 May 2019. The absence of a process to track, count or secure unsafe trolleys along with the inconsistency between the evidence of Mr. Niskanen and Mr. Burihinn leads the Court to its conclusion. Therefore, the Court dismisses the claim for contribution and indemnity made by Aldi against the second named defendant.

Costs

19. If the registrar of this Court and the solicitors for the Repairer do not receive written submissions limited to a thousand words from the third named defendant within fourteen days from the electronic delivery of this judgment together with a request for a date to hear oral submissions, the Court will make an order on the expiration of those fourteen days directing the third named defendant to discharge the costs of the second named defendant in defending the plaintiff's claim and the claim for indemnity and contribution, such costs to be adjudicated in default of agreement. Those costs will include any reserved costs and the costs of making any discovery by the second named defendant in the proceedings.

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