

Neutral Citation No: [2019] NIQB 95

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Ref: MAG11074

Delivered: 4/10/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

DEIRDRE WILLIAMSON

Plaintiff;

-and-

ASDA STORES LIMITED

First named defendant;

-and-

COMPASS GROUP UK AND IRELAND LIMITED

Second named defendant.

MAGUIRE J

Introduction

[1] The plaintiff in this case is a woman, now aged 45 years of age, called Deirdre Williamson. Unfortunately, she was involved in an accident on 5 February 2011 when she was out shopping with a friend. Each of the two were accompanied by a child.

[2] The accident happened at the cafeteria at the Asda store in Enniskillen. It occurred around 12.45 pm.

[3] What the plaintiff said happened was that she had been shopping in the main Asda store and had gone to the cafeteria for lunch. She had used the lift to the cafeteria which was on the first floor. She got out of the lift and was walking towards the counter of the cafeteria when at a point just before she was due to move to her left she suddenly, close to a refrigerated drinks unit, found that her feet went from beneath her. She fell down on her right side. The plaintiff said that at the time

of the accident she had her child by the hand and that she had no advance warning. She thought that the floor was dry at the time.

[4] After the accident the plaintiff was assisted to a table nearby by a lady called Tracey and the person whom she described as a young gentleman. Tracey, she thought, was a manager and the young gentleman an employee of the cafeteria. Later a lady with blonde hair approached her and took the details of the accident together with her details from her. This lady used a book in which to record these details.

[5] Following this, the young man drove her to a nearby hospital where she was treated.

[6] The first named defendant in this case is Asda Stores Limited. It owns the part of the building where the cafeteria is. However, the day to day administration of the cafeteria is the responsibility of the second named defendant, Compass Group UK and Ireland Limited.

Assessment of the plaintiff

[7] The court can say at once that it regarded the plaintiff as a witness of truth. She was, in the court's estimation, an impressive witness. She gave her evidence clearly and concisely and showed no hesitation about what she was saying. In particular, the court did not notice any form of exaggeration and is satisfied that she did not try to embroider her account of what occurred in order to improve her prospects of establishing liability.

[8] In short, the court has no difficulty in accepting her evidence. After describing the accident, she told the court that she had not had a fall like this before and the court had no reason to disbelieve this.

The cause of the accident

[9] The question which arises is as to what caused the accident.

[10] On this issue the court very much doubts that the cause can be related to any omission or failure on the part of the plaintiff. While the issue of contributory negligence has been canvassed by the first named defendant, it is the court's opinion that there is no evidential basis for it.

[11] It appears to the court that far more likely the cause of the accident was the presence of some source of water or moisture on the floor of the cafeteria close to the refrigerated unit referred to above. Support for that conclusion can be garnered from two sources:

- (a) Records of accidents in the cafeteria for a period of approximately two years prior to the accident; and
- (b) The expert evidence given at the hearing.

Accident records

[12] It is not in dispute that in the period preceding the accident there had been some ten incidents in relation to the floor of the cafeteria. Five or six of these may be viewed as being in a similar area to the location of the plaintiff's accident that is close to the refrigerated drinks unit.

[13] The following accidents occurred, in chronological order:

- (i) An accident on 13 December 2008 involving a lady called Regina Gallagher who slipped on the floor of the restaurant.
- (ii) An accident on 5 May 2009 which involved Adrine Urch who likewise slipped on the floor which was wet.
- (iii) An accident on 2 November 2009 in which Elizabeth Connolly slipped and fell.
- (iv) An accident on 23 November 2009 in which Cecilia Sheridan slipped on the floor near to the drinks cabinet. In this case the accident report by a member of the Compass staff noted that "floor was dry and free of debris. It is a wooden floor and is prone to people slipping".
- (v) An accident on 1 January 2010 where Sandra Purvis slipped and hurt herself.
- (vi) An accident on 30 March 2010 when Mary Boyle slipped at the front door of the restaurant. A member of the Compass staff stated on the accident form "floor needs replaced".
- (vii) An accident on 6 April 2010 involving a lady called Donna Cassidy who slipped on the floor.
- (viii) Another accident on 6 April 2010 when Claire Foster slipped beside the drinks cabinet.
- (ix) An accident on 1 October 2010 involving a lady called Maureen Herbert.

[14] It seems to the court that the occurrence of so many accidents at or about the place where the plaintiff fell as a result of a slip strongly suggests that there was something wrong with the floor in question.

Engineering evidence

[15] The papers before the court indicate that at different times no less than three engineers had reason to attend at inspections of the floor in question. Only one of these related to the slip and fall of the plaintiff but others related to accidents within the list above.

[16] There was no dispute between the engineers that the floor consisted of vinyl interlocking planks. Equally there was no dispute that there was no significant danger when the floor was dry. However, when it was wet, each of the engineers was of the view that the floor became significantly dangerous and slippery (“very slippery”). Even if the floor was simply damp it would create this outcome.

[17] The experts also were concerned that the floor was not being particularly well cleaned as at each of their inspections there was concern that dirt on the floor when combined with moisture or water could create an even more slippery surface.

[18] The expert’s evidence should have rung alarm bells when read in the context of the number of accidents which had occurred at or about this location.

Causality

[19] The court, having regard to the sources of evidence available to it, is of the view that the plaintiff’s accident, on the balance of probabilities, occurred by reason of the floor in question having become wet due to the presence of moisture on it. It was quite evident from the report of the experts that the amount of moisture or water needed to render the floor very slippery was minimal. While the plaintiff did not herself say that she thought the floor was other than dry the nature of her slip (taking the feet from under her) suggests that unbeknown to her there was water or moisture on the floor.

Liability

[20] In considering the issue of liability in this case, the court is of the view that the context in which the accident occurred is of considerable importance. That context derives from the frequent incidents of accidents of this nature in connection with the floor in question combined with the reality that, as all the experts agreed, this floor once it had moisture or water on it became extremely slippery.

[21] In simple terms, all of the evidence of the past accidents on this floor suggests something creating problems in relation to it.

[22] Interestingly, the existence of such a problem appears to be acknowledged in the comments of the Compass staff who attended in the aftermath of accidents, as earlier set out. One of the staff referred specifically to persons being prone to slip on the floor and another referred to the need for the floor to be replaced.

[23] Disappointingly, there is no evidence before the court to show that at managerial level either defendant in fact ever considered the question of taking remedial action to deal with the problem. Certainly, the court has not been shown a single record of any such consideration by either defendant. This, in the court's opinion, from the point of view of either defendant taking reasonable steps for the safety of the users of the floor, is unsatisfactory.

[24] The court would have expected attention to have been given to the question of how best to limit, if not rectify, what appears to have been a recurring problem.

[25] Instead the problem was left unconsidered and as a result the plaintiff sustained her accident.

[26] The court is quite satisfied from the evidence of Mr Preston for the first named defendant and the evidence of Ms Harrigan for the second named defendant that each was on notice of the pattern of accidents which have been described above.

[27] If thoughts had been given to the use of slip retardant surfaces, to the movement of the fridge away from its location, to the replacement of the floor as it was, or to the erection of warnings or the use of carpeting, the accident may not have happened.

The issue as between the defendants

[28] In the court's opinion, each defendant bears a measure of liability in this case because of the inertia of each of them in dealing with the problem.

[29] While it has been suggested to the court by counsel for the second named defendant that it should regard Asda as the sole responsible party, the court rejects this view for the reasons already given.

[30] In the alternative, counsel for Compass suggested that the lion's share of liability should rest with Asda because the floor belonged to it and it therefore should be the party on whom the obligation to effect change should fall.

[31] The court accepts there is some strength in this point but ultimately the court is not persuaded by it.

[32] The Compass staff were present on the ground in the cafeteria during opening hours of the cafeteria. Their own staff members knew there was a problem

but no one from Compass raised the issue directly with Asda despite the fact that it was Compass's customers who were sustaining the falls.

[33] To the court's mind, the suggested failure by Compass to take action to highlight the matter to Asda put, from the liability point of view, each defendant at par with one another.

[34] The court will therefore regard both defendants as equally liable to the plaintiff.

[35] While there are other criticisms that the court could make as to the performance of each of the defendants, as they have been ventilated orally in the course of the hearing the court sees no reason to repeat them here.

Conclusion

[36] The court finds that each of the defendants was guilty of negligence which caused or occasioned the accident which befell the plaintiff.

[37] The court will defer consideration of the issue of the quantum of damages as the defendants have not unreasonably sought some time to respond to late amendments in this regard to the plaintiff's statement of claim.