

Neutral Citation No.: [2007] NIQB 123

Ref: HIGF5819

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

Delivered: 23/05/07

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Between:

JACQUELINE BOVAIRD

Plaintiff;

-and-

WESTFIELD SHOPPINGTOWNS

Defendant;

HIGGINS J

[1] The plaintiff is a nurse engaged by a shipping line on cruise liners. The defendant is the owner of Castlecourt Shopping Centre in Belfast. On 24 March 2005 the plaintiff was exiting the Shopping Centre at the main entrance at Royal Avenue when she tripped on a raised mat and fell heavily against the edge of an open door. She sustained a serious and extensive laceration to the side of her head which required sixteen sutures as well as an injury to the anterior aspect of her left knee. There were associated soft tissue injuries from which she made a reasonable recovery. She has been left with a permanent semi circular scar on the right side of her head. It is several inches long and lies within the hairline and though mostly obscured by her hair, it is visible if the hair is wet or blown. She was due to report for duty to a cruise liner but was unable to do so due to her injuries. There is a claim for financial loss in the agreed sum of £4723.

[2] Entrance to Castlecourt from Royal Avenue is gained by passing through two sets of double glass doors. Between the doors is a porch covered with matting laid in wells. After passing through the second set of glass doors a visitor steps on to a ceramic tiled floor. The owners of the shopping centre have placed additional free standing matting a few feet beyond the doors to catch any moisture remaining after customers have passed through the porch.

The basic facts of the plaintiff's accident are not in dispute. Her fall which occurred shortly after 4pm on 24 March 2005 was captured on the internal CCTV system. This was viewed by the court in DVD format. According to the timer on the CCTV at 16.09.20 one of the mats just inside the inner doors was rolled back partially as it was caught by the high heel of a ladies' black boot as the lady entered the store. She noticed she had caught her heel on the mat but walked on. This left a portion of the mat sitting up and presenting a tripping hazard for other customers. At 16.09.32 the plaintiff is seen making her way towards the exit. As she crosses the mat her right foot catches on the upturned portion of the mat and she falls heavily striking her head against the door. The wound bleeds profusely. Eventually some customers come to her aid and she is taken to a first aid point for treatment. The mat remains with a corner upturned. At 16.10.29 a young woman enters in the company of other people. She trips on the upturned mat but does not fall. She moves on a pace or two and then returns and replaces the upturned portion of the mat. Other persons who had observed it before her were not so public spirited.

[3] Mr Ewing a Security Contractor completed the defendant's Accident Report Form in respect of the plaintiff's accident. He did not give evidence. The entry in Section 8 states that the area where the fall occurred is cleaned every twenty minutes. This follows section 7 relating to slips and falls/spillages. Appendix 2 of the report was completed by the Shopping Centre Manager the following day. Part G states - 'corner of mat fixed down to prevent further accidents'.

[4] The mats are rectangular in shape and measure 2.36m (7' 9") by 1.47m (4' 10"). They are thin rubber based with a layer of absorbent carpet on top. The rubber edge presents a vertical height of either 1.5mm or 2.4mm. The Consulting Engineers Mr Magill and Mr Wright gave different measurements for this, but nothing turns on that. The carpet layer is 5mm in depth and compresses to 2.5mm when stood on. The under surface is dimpled rubber. It is a standard mat seen in many large department stores, shopping centres and public buildings. There are three entrances to Castlecourt at ground floor level and one at first floor level from the rear car park. Each entrance is serviced with similar mats. The matting in the porch area is a standard mat of different construction which is laid in wells and secured in place. Both types of mats are supplied throughout the UK by PHS Treadsmart Group PLC . They have a customer base of 25,000 and service 90,000 mats per week. Both types of matting are replaced regularly and the used mats removed for cleaning. An instruction document entitled Servicing Loose-lay Mats on Customers Premises dated July 1998 details the equipment to be used as including 'Mat tapes/stabitex/anchor grips'. The Method Statement in the same document states - ' the replacement clean mat is laid on the floor. The mats may be secured in place using mat tape, stabitex or grips if the contract so requires'. A Risk Assessment dated April 1996 contains a Summary Sheet of the work involved in the removal and replacement of mats. This states -

'Mats are unloaded at customers premises and transported to service location where exchange takes place. Dirty mat is lifted and clean laid in its place, mat may also be secured with tape, stabitex or similar . Dirty mats are then returned to service vehicle'.

[5] The Castlecourt shopping centre is visited millions of times over the course of a year. Mr P E Relf the Building Services Manager stated that approximately 18 million footfalls would occur per year, equating to approximately 9 million visitors (not 36 million as thought at the time he gave evidence). The shopping centre has been open since 1990 and keeps records of accidents for three years. He was aware of four accidents involving these mats the earliest of which was not documented. The other three are. The first of these occurred on 17 February 2004 when an elderly man alleged that he had tripped on a mat and fallen. The store record of the incident was that the man had tripped but that there was no turned over edge or corner observed. The second incident occurred 31 December 2004 when a married lady alleged her toe caught on the mat and she tripped and fell. The store record of the incident was that the lady pushed the mat forward with her crutch causing it to curl up and her foot then caught on the upturned part. The third incident occurred on 27 January 2005 when a man alleged that he had tripped on a mat and fallen. The store record of the incident was that the mat was not damaged and that there were no turned up edges. It was the evidence of Mr McCullough, Operations Manager of PHS, and who has been with the company five years, that the mat has a good safety record and that he was only aware of four allegations or claims relating to it.

[6] Mr Magill contended that there were proprietary means of preventing such mats from curling or rising up. He referred to the materials outlined in the Service document and the Risk Assessment document namely, tape, stabitex and grips. Stabitex is a double sided tape designed to prevent rugs moving when placed on carpet. He referred also to Allstop, a double sided underlay for rugs to prevent them slipping on polished floors or ceramic or stone tiles. Either of these would in his opinion be a satisfactory means to adopt to prevent mats curling or rucking up. This underlay would be fixed to the entire underside of the mat right to the edge. He maintained that the mat had an edge that would move or slide with contact, but accepted that it was unlikely to curl up with contact with footwear. He thought most people will have seen them rise up and that it may be the volume of traffic over them that contributes to this, particularly when that traffic is channelled through specific entry points. He disagreed that the risk of such curling up or rucking up is infinitesimal.

[7] Mr Wright found the dimpled rubber under-surface to provide good resistance against slipping and the thickness of the mat a low profile, which would prevent tripping. It is possible to lift the edge of the mat but this is unlikely to happen due to its low profile and he thought it unlikely that one

would be 'kicked up' by a customer walking normally. He identified the risk with mats as two-fold - either the mat sliding or someone tripping on the edge of it. Stabitex was designed to prevent mats or rugs sliding. His examination of many shopping centres over many years never revealed any mats that had been stuck down on hard surfaces. He considered these mats to be fit for purpose and not requiring any tape or underlay. They were widely used in heavily trafficked areas without significant difficulty. He considered the chances of an upturn so small that the use of tape or stabitex was a counsel of perfection. The tape would not be expensive but the labour of applying and removing it would involve large costs. His inquiries revealed no user of the mats taking this step. If there was a risk with these mats he considered the Health and Safety Executive would have picked this up and issued a publication on it, but they had not. He accepted that once a mat was rucked up it presented a tripping hazard but as the mat was flexible it was not as significant as a hard upstand. During cross-examination he said he understood there was a system for checking whether mats were upturned and for them to be turned down by staff. He did not ascertain from the staff the number of times they had to replace upturned mats, but was told (from another source) that none of them had.

[8] Mr Lyttle QC, who with Mr Higgins appeared on behalf of the plaintiff, submitted that it was foreseeable that mats would turn up and when they did so they present a tripping hazard. It was submitted that the defendants were aware of the risk from the previous incidents, two of which had occurred in successive months. The risk could have been removed by applying to the underside of the mats a double sided tape or underlay or by amending their contract and requiring this to be done by PHS. It was argued that if the suggestion on behalf of the defence was that the application of tape was too expensive, then detailed evidence in support of this contention should have been adduced for this and none was. In addition Mr Lyttle QC highlighted the number of people of different ages and sex using the entrance and thereby exposed to this risk, as well as the risk of serious injury and argued that these were important factors to be taken into consideration in determining whether the mats constituted a danger to those entering and exiting the shopping centre. In addition it was submitted that the defendant was in breach of its duty of care by failing to produce documents to show that they had carried out a health and safety assessment as to the potential hazards of using these mats. Mr Lyttle QC was critical of the defendant for failing to call the author of the accident report form to explain what was meant by the phrase 'corner of the mat fixed down to prevent further accidents'. Furthermore he submitted that the defendants had failed to provide any evidence of their system for dealing with upturned mats.

[9] Mr Aldworth, who appeared on behalf of the defendant, submitted that the plaintiff had failed to establish any breach by the defendant of its duty of care towards the plaintiff. He submitted that the mats were of

standard specification, widely used and of minimal thickness. It was unlikely that a foot would catch on such an edge. Evidence of four mishaps involving mats at this store over a number of years was strong evidence that the mats are reasonably safe and fit for purpose. No evidence had been produced that it is the practice to attach tape or underlay to the mats when used on hard surfaces and in any event such risk as existed was so low as to render this action unnecessary.

[10] In any case involving a fall on premises the starting point is the Occupier's Liability Act 1957. It is accepted by the defendant that the plaintiff was a visitor to the shopping centre and as such was owed a duty of care by the defendant whilst she was on the premises. The amended statement of claim alleges that the defendant was in breach of that duty of care in a number of alternative ways. The Particulars of Negligence allege -

- a. Causing and or allowing the Plaintiff to trip.
- b. Causing and or allowing the Plaintiff to fall.
- c. Causing or allowing a door mat to become dislodged and double over thereby constituting a hazard to persons lawfully visiting the area.
- d. Failing to maintain the area adequately or at all.
- e. Failing to inspect the area adequately or at all.
- f. Failing to provide any, or any adequate warning, to the Plaintiff of the condition of the area or the hazard located therein.
- g. Causing or permitting a partially protruding piece of mat to exist and remain thereby constituting a hazard to persons using the area.
- h. Res ipsa loquitur.
- i. Failing to place any adhesive tape or grips to the underside of the mat.
- j. Failing to recess the said mat.

[11] The Occupier's Liability Act (NI) 1957 replaced the common law rules relating to the duty owed by an occupier of premises to his visitors 'in respect of dangers due to the state of the premises or to things done or omitted to be done on them ' - see section 1(1). The extent of the occupier's duty of care towards visitors is set out in section 2 of the 1957 Act. Section 2 states -

“2.- (1) An occupier of premises owes the same duty, the “common duty of care”, to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise.

(2) The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

(3) The circumstances relevant for the present purpose include the degree of care, and of want of care, which would ordinarily be looked for in such a visitor, so that (for example) in proper cases-

(a) an occupier must be prepared for children to be less careful than adults; and

(b) an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.

(4) In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances, so that (for example)-

(a) where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe; and

(b) where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance or repair by an independent contractor employed by the occupier, the occupier is not to be treated without more as answerable for the danger if

in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps, if any, as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done.

(5) The common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor (the question whether a risk was so accepted to be decided on the same principles as in other cases in which one person owes a duty of care to another).

(6) For the purposes of this section, persons who enter premises for any purpose in the exercise of a right conferred by law are to be treated as permitted by the occupier to be there for that purpose, whether they in fact have his permission or not."

[12] Thus the common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

[13] It was not suggested that the mats were intrinsically dangerous or presented a hazard to pedestrians entering or leaving the shopping centre. Central to the plaintiff's case was the submission that the defendant was aware from the three incidents referred to above that in certain circumstances the mats might present a tripping hazard. On the instant occasion the mat became upturned when a lady's heel caught on it and rucked it up. The known facts of the three incidents referred to above are no foundation for the suggestion that the defendant was aware that a mat could be upturned easily by a woman's heel. In none of them is there evidence that the rucking up of the mat occurred or that the complainant tripped over a hazard created by it. On the other hand it is a matter of commonsense that a mat laid on a surface may ruck up if it is caught in some manner. There are probably many ways that might happen, and one of them would be if footwear caught on the rug in some way. Thus it can be said in a general way that a mat may ruck up and that such was foreseeable. The next question is whether in laying mats and these mats in particular the defendant created a danger on the premises or otherwise failed in his duty to see that customers would be reasonably safe in using the premises when these mats were present. These are standard mats which present a minimal edge and have a dimpled rubber under-surface to prevent slipping or sliding. They are in widespread use. The defendant has

knowledge of four complaints of unclear origin relating to them. The use of such mats and placing them several feet inside the inner doorways did not create a danger or a hazard on the premises nor does it prove that the defendant has failed to take such care as in all the circumstances is reasonable to see that customers visiting the shopping centre would be reasonably safe when there. It was reasonable to use such mats. Such risk as there is of such mats rucking up is low and so low in comparison with their use and the traffic on them, that there was no duty on the defendant to take any steps to guard further against rucking up other than to ensure they had a dimpled rubber under-surface. This is sufficient taking into consideration the volume of traffic and the age and sex of the customers. The stabitex is used on rugs or mats laid on carpet and a requirement to cover the entire floor in mats laid in wells like the entrance porch would not be reasonable. In recent years spillages causing a slipping hazard in food halls in shopping centres have given rise to claims for compensation. Yoghurt pots and pieces of fruit like grapes and cherries appear to be frequent culprits. It has been held that spillages of such and the resulting slipping hazard are foreseeable and that shopping centres will be liable if they do not have in place a reasonable system of inspection and prompt cleaning - see, for example, Ward v Tesco Stores Ltd, [1976] 1 W.L.R. 810; Chidgev v Asda Stores Ltd 2004 CLY 3847 and Dobson v Asda Stores Ltd 2002 CLY 4551. I have considered whether this line of authority is of assistance to the plaintiff. However the evidence does not support the proposition that it is reasonably foreseeable that rucking of such mats will occur sufficient to require a system to prevent this being in place. The defendants in any event do have an inspection system at regular intervals.

[14] The plaintiff has failed to establish that the defendant failed in all the circumstances to take reasonable care to see that the plaintiff would be reasonably safe when using the shopping centre. The plaintiff's case is dismissed.