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

Delivered: **13/8/08**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

KATHERINE McKEAVENEY

Plaintiff;

and

ARGOS LIMITED

Defendant.

STEPHENS J

[1] The plaintiff, Katherine McKeaveney, then 72, now 77 sustained a fracture of the neck of her right humerus together with other injuries when she fell at approximately 1.00 pm on 4 July 2003 in Victoria Square, in proximity to the premises of Argos, in William Street South, Belfast. The defendant, who operates a catalogue retail business, sells goods not only in packaging but also in rough brown external cardboard packaging. The cause of the plaintiff's fall was that she tripped over rough brown external cardboard packaging which had been discarded on the surface of the road in Victoria Square. That cardboard packaging was for a product, a radiator cover, which had been sold by the nearby Argos store to a customer. Accordingly prior to the sale the packaging had belonged to Argos but at the point of sale it became the property of the customer.

[2] Since the plaintiff's accident the area where the plaintiff fell has been subject to considerable redevelopment. A description of the location at the time is that the main entrance to the Argos store was onto William Street South, a pedestrian street. If a pedestrian left the main entrance to the Argos store into William Street South and then turned right he would, within a short distance, of some 15 metres have been in Victoria Square. Victoria Square was

not reserved to pedestrians. At the junction of William Street South and Victoria Square, Montgomery Street would have been on the pedestrian's right-hand side. Montgomery Street also bounded the Argos Store. Access could be gained to Arthur Place by entering the Argos Store through the main entrance in William Street South and using the side entrance into Arthur Place which was another pedestrian street. In Victoria Square there was an entrance to the old Victoria Centre which was a shopping arcade with a car park above it. The entrance to that centre essentially formed the edge of retail use in the Cornmarket area of Belfast. The Argos store was therefore close to the margin of the retail area. The buildings surrounding Victoria Square were thereafter predominantly used for offices and the Square itself was used for car parking and as a means of access for vehicles including delivery vans to the retail premises. The goods entrance to the Argos store was in Montgomery Street. The main entrance of the store being used by customers, staff and occasionally persons using it as a shortcut through to Arthur Place. If a member of the public wished to be collected by car from the vicinity of the Argos store or if a customer wished to load purchases into a car, then by far the closest point at which this could be done, was the junction between William Street South and Victoria Square. I will call that point the "vehicle collection point". That point was just 15 metres from the main entrance to the Argos store. It was at this point that the plaintiff's accident occurred. The defendant could and should have anticipated that, in particular, elderly or physically infirm persons would wait to be collected at the vehicle collection point.

[3] The plaintiff and her daughter, Louise Thompson, had been shopping in an Iceland store which was on the opposite side of William Street South from the Argos premises. The plaintiff waited at the vehicle collection point, whilst her daughter went with two carrier bags of shopping to collect her car thereby relieving the plaintiff of having to walk to where the car was parked.

[4] The entire carriageway of William Street South was designed for pedestrians and very occasionally used by vehicles. Accordingly bull-nosed kerbstones were used between the carriageway for vehicles in Victoria Square at its junction with William Street South. The plaintiff was standing just off those bull-nosed kerbstones, on the double yellow lines which control parking at this junction, waiting for her daughter to return. She was standing stationary in that position for what I find was an appreciable length of time. The discarded cardboard packaging was directly in front of her and within inches of her feet. It was lying flat on the road surface. In order to arrive at the position in which the plaintiff was standing she had to walk directly towards the discarded cardboard packaging and over some metres of pavement with a clear view of the area. The plaintiff stated in evidence, and I accept, that she did not see the packaging prior to tripping on it. As her daughter approached in her car the plaintiff stepped forward and one or other of her feet caught in the packaging. She tripped and fell forwards. A

traffic warden, Ms Heighton, came to her assistance together with a number of other individuals including, of course, her daughter. Her daughter was told by someone at the scene that the packaging came from the nearby Argos store and accordingly she went into the store and spoke to the manager, a Mr Stather. There was an Argos ticket on the side of the box and the manager confirmed that the packaging had come from the Argos store. The plaintiff's daughter kept the packaging taking it away in her car. The packaging was produced in court.

[5] The packaging was brown in colour and its dimensions are 460 millimetres long by 1,030 millimetres wide. When lying flat on the ground, as it was on the day of the accident, it would have been about 75 millimetres high. There was some dispute at the trial as to whether the plaintiff had established, on the balance of probabilities, that she had tripped on the packaging or whether she had fallen for some other reason. I resolve that issue in favour of the plaintiff and find that she tripped on the discarded packaging. It was undisputed that the discarded packaging would create a tripping hazard. Whoever discarded it would be liable to the plaintiff in negligence subject to a potential reduction for contributory negligence. That person cannot be identified. The plaintiff would have had a clear view of the packaging as she approached the point where she waited for her daughter's return. The packaging was large and clearly visible. If at any time she had glanced down whilst standing on the double yellow lines she would have seen the packaging. Due to its size the packaging would have extended some distance in front of her and accordingly she wouldn't have had to look vertically downwards at her feet in order to see it. I conclude that the plaintiff should have seen the packaging.

[6] Questions arise as to by whom, when and exactly where the packaging was discarded. In the nature of this case the plaintiff and her witnesses could give no direct evidence as to any of these questions.

[7] The traffic warden who came to the assistance of the plaintiff was Ms Heighton. She was an independent witness. In her evidence she stated that she had been employed as a traffic warden in Belfast for some 23 to 24 years prior to the date of the plaintiff's accident. She worked as a traffic warden in different areas in the city centre but on the day of this accident she was on patrol in the Cornmarket, Victoria Square area. Some 10 to 15 minutes prior to the plaintiff's accident she had herself caught her toe in the packaging but regained her balance and did not fall. Her evidence confirms that the discarded packaging was a tripping hazard.

[8] Mr Stather the manager of the Argos store gave evidence that the most likely cause of the packaging being on the roadway in Victoria Square was that it had been discarded by an Argos customer. The customer would have left the Argos store with the commodity inside its external cardboard

packaging. Once outside the Argos store, the customer had taken the product out of its external packaging prior to loading it into a vehicle. He had just left the packaging on the ground. I heard evidence as to the method of disposal of external packaging within the Argos store. All purchases are usually sold in their external packaging but for instance for an item to be put on display the external packaging would have to be taken off and disposed of within the store. I find that the system is such as to exclude, on the balance of probabilities, that any employee of the defendant caused or permitted this packaging to be discarded outside the store. I find as a fact that it was discarded by a customer in the manner described by Mr Stather. The product inside the packaging can be identified from the codes on the packaging. The last sale of this product from the store was on 3 July 2003. Accordingly I find as a fact that the packaging was discarded by a customer at some time on 3 July 2003 within a metre or two of where the plaintiff tripped and fell on 4 July 2003 at approximately 1.00 pm. The discarded packaging would have been on the roadway therefore for a period of say approximately 24 hours.

[9] Mr Stather's experience was that some customers who take their purchases outside the store to load them into vehicles found that if the object did not fit into the vehicle then they removed the cardboard in order to make the product fit. Some people then had a tendency to discard that refuse on the pavement or roadway. The location at which this would ordinarily occur was at the vehicle collection point. Mr Stather stated that he would have been aware of this occurring about once every month or once every two months. However he accepted the difference between being "aware of it occurring" and "it actually occurring". The defendant took no steps to monitor the frequency with which it occurred. They had no system of inspections. Mr McLaughlin, an engineer retained on behalf of the plaintiff, inspected the defendant's premises and on the day of the inspection found discarded Argos packaging in a large refuse bin in Arthur Place. That packaging was discarded by a customer because it was outside the waste disposal system operated by the defendant. I do not consider it was just pure coincidence that this waste packaging was found on the day of the engineer's inspection. I find that the frequency with which customers discard waste and specifically the frequency with which they discard waste on the ground at the vehicle collection point was greater than the once or twice per month estimated by Mr Stather. In arriving at that conclusion I also take into account that the some 25 members of defendant's staff entered the defendant's store on the morning of 4 July 2003. A proportion of those would have come via Victoria Square. There was no evidence that any of them was "aware" of this particular piece of packaging which had been discarded on 3 July 2003. This is but an illustration of the fact that packaging can be discarded on the road without the defendant being aware of it. As I have indicated I do not accept the implication from the evidence of Mr Stather that this "occurred" once every one or two months.

[10] I find as a fact that the defendant, prior to the plaintiff's accident knew that their customers were discarding packaging on the roadway and pavement at the vehicle collection point. That the frequency that this was occurring was substantially greater than once per month. That it was an incident of the defendant's business that packaging was being discarded at that particular location. That the packaging that was being discarded was overwhelmingly, if not exclusively, substantial packaging for large sized products. That the defendant's were aware that the discarded packaging was creating a hazard to pedestrians. That the defendant's took no steps to inspect the area or to collect the discarded packaging. That in the words of Mr Stather it would not "have taken much to implement" an inspection system and this evidence was given despite knowing that the size of the Argos stickers on the packaging was relatively small in comparison to the size of the packaging. I also find as fact that a large number of the defendant's employees would have walked past the discarded packaging on which the plaintiff tripped on the morning of the accident on their way to work and indeed on the balance of probabilities, the same number would have done so on leaving work the previous day. That the problem of discarded packaging in respect of this store overwhelmingly happens at one location some 15 metres from the front entrance to the store. It was suggested that the defendant should have a system of inspection of the vehicle collection point at the end of each working day. No evidence was called by the defendant as to the frequency of street cleaning in this area by the local council. Accordingly there was no evidence that in the circumstances of this case the defendant could rely on street cleaning to dispose of discarded packaging which was an incident of its business and which particularly affected the vehicle collection point. In view of the lack of any evidence as to the frequency of street cleaning and in view of the frequency with which the packaging was discarded at the vehicle collection point I hold that the vehicle collection point required the inspection system suggested on behalf of the plaintiff. That inspection system would have prevented the accident. I find in favour of the plaintiff on the grounds of the defendant's negligence in failing to have a system for inspecting and removing discarded packaging from the vehicle collection point.

[11] I also find in favour of the plaintiff on the ground of the negligence of those servants and agents of the defendant who must have passed and ignored the discarded packing on their way from work on 3 July 2003 and on their way to work on 4 July 2003. Alternatively that the manager of those employees was negligent in not training staff in relation to the risks from discarded packaging at the vehicle collection point and instructing staff to collect that waste if they saw it on their way to or from work.

[12] I assess general damages at £22,500.

[13] I find that the plaintiff was guilty of contributing negligence and make a 20% reduction.

[14] I award the plaintiff £18,000 damages.

[15] I also order the defendant to pay interest at the rate of 2% from the date of the issue of proceedings until today, the date of judgment.

[16] I will hear counsel in relation to the question of costs.