Neutral Citation No. [2013] NIQB 151 | *Ref:* **GIL9056**

*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **12/12/2013**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

LUCINDA MAGINESS

Plaintiff;

-and-

ROSALEEN McCRORY

Defendant.

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GILLEN J

Introduction

[1] In this matter the plaintiff seeks damages for personal injury, loss and damage sustained by her in the course of a fall at the home of her parents on 25 December 2010. It is her case that the defendant is liable both in negligence and for breach of the Occupiers' Liability Act (Northern Ireland) 1957.

Background

[2] The facts of the case can be briefly stated. The plaintiff, now aged 39, attended at the home of her parents at 15 Ballynahinch Road, Dromore with her husband and two children aged 5 and 7 on Christmas Eve 2010 about 6.30 pm.

[3] It was common case that there had been a bad spell of winter weather. A report from the Meteorological Office recorded as follows:

> "Very cold on 17th with occasional snow showers giving accumulations of 10-15 cm quite widely and over 20 cm in the east. The 18th was exceptionally

> cold a daytime maximum of -11 degrees C at Castlederg …. Cold and bright with snow showers on 19th and then the temperature at Castlederg dipped to -18 degrees C overnight. Very cold on 20th and 21st mainly dry although a few coastal snow showers and patchy freezing fog. Temperatures overnight 21st/22nd fell below -12 degrees C. Remaining very cold, dry and bright from 22nd to 25th with further local freezing fog. The temperature at Castlederg fell to a new record low for Northern Ireland of -18.7 degrees C on the morning of 23rd."

In short this cold spate of weather set new records for Northern Ireland.

[4] Having arrived in the course of the evening of 24 December 2010, the plaintiff then attended evening Mass at 9.00 pm in the local church. She and her husband returned home about 10.00 pm. Her husband had gone to bed at about 11.00 pm. Her father, who had also been to Mass with her, had gone on to visit some friends.

[5] About 1.00 am her father called to home to say that his car had been stuck in snow and requested, through her mother, the plaintiff to assist him. The plaintiff thereupon left the home and went out through a pillared gateway onto a concrete area immediately outside the pillars. These were well recorded on photographs produced to me by engineers on behalf of both the plaintiff and the defendant.

[6] As the plaintiff walked in the concreted area she slipped and fell sustaining a serious injury to her mid-humerus. The area where she fell had snow compacted and was hard and icy. It was her case that there was no grit or salt used on this area.

[7] The house was a farm and was situated with a substantial farmyard immediately adjacent to the house. The plaintiff had parked her car in the farmyard about 20 metres or thereabouts from the house when she and her husband had arrived.

[8] In the course of a skilful cross-examination by Ms McGinley who appeared on behalf of the defendant, the plaintiff accepted:

- That she had traversed this gateway upon her arrival and before and after attending Mass.
- No one had been expected to the house apart from her father after Mass.
- The weather probably did get even colder after her return from Mass.

- She did not expect her mother to go out and salt the yard and this would have been left entirely to her father.

[9] The plaintiff's brother also gave evidence on the plaintiff's behalf. He recalled attending the house at about 4.00 pm on that date and recalled the entrance being cold and icy. He did not recall any salt or chippings spread over the entrance area. He also said no one had shovelled the slippery area away from the entrance of the gate.

[10] It was his evidence that the entrance did give him cause for concern because it was icy and slippery. He had put down some stone chippings from a pile of such material in the yard so as to facilitate cars getting a grip when coming up the lane to the house and when parking. He had done this along with his two brothers and father. However he was adamant that there were no stone chippings over the concrete area at the entrance to the gate.

[11] Mr Magill, consulting engineer on behalf of the plaintiff made the following points on her behalf:

- The gradient where the accident happened was 1/5. Accordingly there was a steep area where the accident occurred.

- In his view simply spreading some chippings on this area would have been insufficient because it would not melt the ice. It would have been necessary to remove the ice etc and then proceed to lay down some chippings so that there was virtually a new sufficient path. It was a waste of time to lay only a few smatterings.

- He accepted that the use of salt is probably only really effective up to -7 degrees C and thereafter in colder temperatures it becomes decreasingly effective. In short it was his case that there should have been a pathway cleared, some chippings put down and thus an effective path created in this weather condition. The yard itself was approximately 400 square metres but the length of a pathway between the house and the area where the cars were parked would have been about 20 metres. This was the area which the plaintiff insisted through counsel ought to have been treated by the defendant.

The defendant's evidence

[12] Mr McLaughlin, consulting engineer gave evidence on behalf of the defendant and made the following points:

- The effect of salt on snow is grossly diluted when temperatures fall below -7 degrees C.

- It is necessary to remove the bulk of the material i.e. skim it off and then lay down something in the nature of the chippings which were present in this farm if effective steps are to be taken. However on a 20 metre path a huge number of chippings would have been necessary. The problem is that if the ice is not entirely removed, it can become even more slippery. Moisture in the area may well freeze contributing to this.

- These chippings amounted to quarry dust and if spread on ice will embed slightly and be a little better than the smooth compacted snow.

- In short, the use of rock salt or even chippings might not have left the surface in a non-slippery state.

- Even laying down chippings might not prevent further moisture in the area freezing as ice which had not been totally removed thus still leaving an under surface of smooth compacted slippery icy snow.

- Two wheelbarrows would be required for every metre to be covered.

[13] Mr McCrory gave evidence that he had spread some tar chippings, as he described them, about 11.00 am that morning. He had spread these about the yard but readily accepted that he had not spread any of these on the concrete area outside the house where the plaintiff slipped. He had put some domestic salt on the pathway inside the gateway, but not on the area where she slipped. He said that he had been in and out of the house along with other members of the family several times that day. Everyone did have to be careful walking in those conditions. He recognised that it had become more slippery with people walking in and out of that gateway.

Conclusion

[14] The Occupiers' Liability Act 1957 imposes upon an occupier the common duty of care:

> "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."

[15] It does not of course necessarily follow from the fact that the plaintiff slipped that the defendant is liable. The question is whether the defendant took such care as in all the circumstances was reasonable to see that the plaintiff would be reasonably safe in exiting these gates. The duty of care is therefore only to take reasonable steps

in the circumstances. It does not extend to ensuring the safety of a visitor to premises such as the plaintiff encountered in every circumstance. Unfortunate accidents will always happen.

[16] In this case, I am satisfied however that the duty of care did extend to taking reasonable steps to ensure that egress from an entrance to the house was as safe as reasonably possible. It is of course a prerequisite of the existence of a duty of care that the risk, and damage resulting from that risk, should have materialised and must be foreseeable. In this case I am satisfied there was knowledge of the hazard on the part of the defendant and her husband for whom she is vicariously liable. I am satisfied that the hazard was not only foreseeable but indeed it had been foreseen.

[17] The plaintiff's father had taken steps to address the inclement conditions by throwing chippings across the yard but he had done this in my view solely to address the issue of vehicles being stranded by the ice. He had failed to address the matter of visitors on foot entering and egressing from the house. He ought to have taken reasonably practicable steps to keep that area as free from icy/snow conditions as was possible in the circumstances. This he did not do. Not only did he fail to address the question of providing a pathway for the short distance to the vehicles free of snow and ice and cover it with chippings which he had readily available, but he took no step whatsoever to address the slippery area of concrete at the gate exit. Having addressed the pathway inside the wall with salt and thus being well aware of the danger of slipping, he completely ignored the area of concrete immediately outside. Even that would not have been enough because he then should have addressed the question of a narrow pathway leading to the vehicles. This should have been dealt with by means of shovelling up the ice/snow, putting salt thereon and covering the pathway with the chippings which he had spread over the rest of the yard.

[18] In all the circumstances I am satisfied that the defendant as occupier of the property was in breach of her duty (to be carried out through the physical work of her husband) to ensure that the exit/egress was reasonably safe for the plaintiff and that this has been the cause of her injury. I therefore find for the plaintiff.

Quantum

[19] The plaintiff suffered a fracture of the shaft of her right humerus as a result of the fall. This was treated conservatively and although union was moderately slow, the fracture did unite satisfactorily and she now has satisfactory function of her right arm. However there is still some aching discomfort and some tenderness at the fracture level in the mid-humeral area which can reasonably be attributed to the injury. These residual symptoms will probably diminish in the future and may settle fully with time although the possibility of some minor residual discomfort does exist. Almost three years after the accident she still complains of a niggling

pain in the right arm extending towards her elbow which troubles her mostly at night in bed. She describes this as a dull ache.

[20] I value her general damages at £22,500 to which will be added interest at 2% over the conventional period.