Neutral Citation No. [2014] NIQB 18 | *Ref:* **MAG9162**

Judgment: approved by the Court for handing down | *Delivered:* **12/02/2014**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

SEAMUS STENNETT

Plaintiff

and

DUNNES STORES (BANGOR) LTD

Defendant

MAGUIRE J

Introduction

[1] The plaintiff in this action is a man of 63 years of age. He was the victim of an unfortunate accident which befell him on 22 May 2006 around 12:35 hours. At this time he was shopping in Dunnes Stores in Enniskillen. In essence, he says that while walking in an aisle he slipped and fell injuring, in particular, one of his knees. He thought that it was spilt sugar on the aisle floor which caused the accident. After the accident he spoke with the defendant's checkout supervisor. The plaintiff came up to her and said he had fallen due to spilt sugar in an aisle. At this time the checkout supervisor was at or near the checkout area. When told about the accident by the plaintiff she went to the foyer of the store and brought from it a chair for the plaintiff to sit in. The plaintiff sat down for a time but later got up and went towards the foyer to have a smoke. Subsequently, the plaintiff left the store and went to the hospital. At the request of the parties, this judgment is only concerned with the issue of liability.

[2] There is no real dispute between the parties about the circumstances of the plaintiff's accident as described above. The court has no difficulty in accepting the plaintiff's account. It therefore finds that while shopping the plaintiff's accident occurred when he slipped on spilt sugar which was located in an aisle where the plaintiff had been shopping. From evidence given on behalf of the defendant by Kathleen Wilson, who was a cleaner working in the store on that day, it can be established that subsequent to the accident she found spilt sugar in an aisle and then

a trail of sugar leading from the area of the spill to a checkout. She said when she discovered this she swept it up, although it is unclear at what time her discovery was made.

[3] The defence in the case is based on the evidence of the checkout manager and to a lesser extent on the evidence of the cleaner, already referred to.

[4] The checkout manager told the court that one of her duties was to carry out checks for spillages and the like. She did this by looking down each aisle from the area of the checkout. If anything irregular was seen by her she would take action. In the event of a spillage, she would either clean it up herself or would contact a cleaner to clean it up. She said she carried out these inspections some four times an hour. In support of this, a record of the times of each such inspection on the day of the accident was produced. This record discloses that inspections were carried out four times each hour, as the witness said. The checkout supervisor also made it clear that, in addition, to these inspections, all staff working on the shop floor had been told to keep an eye out for any hazards and if any were observed, to ensure that remedial action, for example to clean up a spill, was taken. As already recounted the checkout manager accepts that she was approached by the plaintiff just after the accident around 12:35 hours. Interestingly, the inspection records show that between 12:33-12:37 hours, she was carrying out one of her inspections.

[5] Kathleen Wilson, the cleaner, gave evidence that she came on duty at midday and worked until 3 pm. She believes she was on duty on the day of the accident and she did locate a sugar spill in an aisle as the court has already described, though she could not say at what time she located it. She had no dealings with the plaintiff and did not witness his accident. This witness described her routine. After clocking in she said she would clean the public toilets which would take her 10 to 15 minutes. After that she would clean the aisles in the grocery part of the store. This was done with a brush, dustpan and small brush. She would then do the same in the drapery area of the store. The cleaning operation in the grocery and drapery areas might take in total around half an hour. This, however, could alter depending on whether a spillage or a breakage or any other hazard was found. When she finished these cleaning duties in the public part of the store she said she would go upstairs to clean the staff toilets. After doing all of the above, she said she would effectively begin again. Over a shift of 3 hours she said she would clean the grocery area twice or three times. The witness said when cleaning the grocery area she would often come across spillages.

[6] In his submissions to the court Mr Good QC argued that the defendant had shown that a reasonable system of inspection and cleaning had been in operation at the time of the accident. This was not a case of strict liability, he argued, and while he accepted that the accident occurred as the plaintiff described, this was a case which the court should reject in terms of liability.

[7] For the plaintiff, Mr Colton QC, criticised the checkout manager's evidence in two respects. First, he said that her description of her inspections – limiting herself to a visual inspection of an aisle from the checkout area – demonstrated that no proper inspection was in fact carried out by her. She could and should have walked the aisles as inevitably much may be missed if reliance is placed only on what is seen in the sort of visual inspection she described. Secondly, Mr Colton argued that the witness's evidence in any event was unreliable on the issue of whether she had in fact carried out her visual inspections. This was shown, he argued, by the inconsistency between her account that she spoke to the plaintiff at 12:35 on that day of the accident and her records which record that at that time she was in fact carrying out an inspection. Both her evidence and the record could not be right, counsel suggested.

The Law

[8] Both counsel drew the court's attention to the well-known case of Ward v Tesco Stores Ltd [1976] 1 AER 219. In that case the plaintiff had slipped on some yoghurt which had been spilt on the floor of a store belonging to the defendant. The plaintiff recovered damages for her injuries notwithstanding that there was no evidence before the court as to when the floor had been last brushed before the accident.

[9] It was held by the majority in the Court of Appeal that it was the duty of the defendants to see that floors were kept clean and free from spillages so that accidents did not occur. In particular, it was for the defendant to give some explanation to show that the accident had not arisen from any want of care on its part. As Lawton LJ put it at page 222:

> "In this case the floor of this supermarket was under the management of the defendants and their servants. The accident was such as in the ordinary course of things does not happen if floors are kept clean and spillages are dealt with as soon as they occur. If an accident does happen because the floors are covered with spillage, then in my judgment some explanation should be forthcoming from the defendants to show that the accident did not arise from any want of care on their part; and in the absence of any explanation the judge may give judgment for the plaintiff. Such burden of proof as there is on defendants in such circumstances is evidential, not probative. The trial judge thought that prima facie this accident would not have happened had the defendants taken reasonable care. In my judgment he was justified in taking that view because the probabilities were that the spillage had been on the floor long enough for it

> to have been cleaned up by a member of the staff. The next question is whether the defendants by their evidence gave any explanation to show that they had taken all reasonable care. The only explanation which they gave was that to which I have already referred. The judge weighed the evidence and decided as a matter of fact from which in this case there can be no appeal that the precautions taken were not enough and that the plaintiff in consequence had proved her case."

[10] Megaw LJ in the same case at page 224 said as follows:

> "It is for the plaintiff to show that there has occurred an event which is unusual and which, in the absence of explanation is more consistent with fault on the part of the defendants than the absence of fault; and to my mind the Learned Judge was wholly right in taking that view of the presence of this slippery liquid on the floor of the supermarket in the circumstances of this case: that is that the defendants knew or should have known that it was not an uncommon occurrence; and that if it should happen, and should not be promptly attended to, it created a risk that customers would fall and injure themselves. When the plaintiff has established that, the defendants can still escape from liability. They could escape from liability if they could show that the accident must have happened, or even on balance of probability would have been likely to have happened, irrespective of the existence of a proper and adequate system, in relation to the circumstances, to provide for the safety of customers. But, if the defendants wish to put forward such a case, it is for them to show that, on the balance of probability, either by evidence or by inference from the evidence that is given or is not given, this accident would have been at least equally likely to have happened despite a proper system designed to give reasonable protection to customers. That, in this case, they wholly failed to do."

[11] The Tesco judgment has been applied in many other cases where a member of the public has suffered a slip or fall in shops or other premises of public resort.

Conclusion

[12] The issue the court must decide is whether the defendant has put in place a reasonable system designed to avoid accidents of this kind. Mr Good, in his submissions, relied on three elements which, he argued, represented the defendant's system. First, he referred to the evidence that all staff were told to be on the look out for spills and to take action in the event of a spill or other hazard being located. Notably the only evidence before the court about this came orally from the check-out supervisor. No protocol or other document confirming the above practice was produced. The court finds this surprising and would have expected an issue of this type to be the subject of an internal formal procedure. One might have expected that there would be a direct instruction to all staff as to what they should do if a spillage was found (for example, an instruction to tape off the area forthwith or put down a warning bollard, and then to clean up). However, nothing of this nature was put before the court. While the court has no reason to doubt that an oral instruction of the type referred by the check-out supervisor was given to staff, it seems to the court that its efficacy is somewhat limited as its effectiveness depends on the happenstance of a member of staff simply coming across the hazard and then doing something about it. This informal procedure, therefore, is of limited value especially when no evidence was adduced before the court of the number of staff working in the shop or evidence as to where staff worked or matters of that type. Secondly, Mr Good relied on the check-out supervisor's visual inspections and the record of those produced to the court. Unfortunately, the court was not impressed with the check-out supervisor's evidence which was that she simply inspected from the check-out area by looking down each aisle – which could be a distance of 20-25 yards. It seems to the court that Mr Colton's criticism of this type of inspection is well made. Looking down the aisle without walking down it, in the court's estimation, is not likely to be an effective way of picking up potential or actual hazards. It would be only too easy for the supervisor to miss spillages on the floor, especially as often there will be customers with trollies walking up and down the aisle. Thirdly, Mr Good relied on the work done by the cleaner, Kathleen Wilson. She said she would clean in the grocery area twice or three times in a three hour shift. While the court is satisfied that if Kathleen Wilson came across a spill (which she said she often did) she would clean it up, the question arises as to whether, given the nature of a large supermarket of this type, there ought not to be a regime of inspection which is more frequent than that she referred to. The supermarket is the main outlet of the defendant in the Enniskillen area and no doubt is busy. The defendant itself envisaged a four times hourly inspection but for the reasons already alluded to this did not work effectively in this case.

[13] The court concludes on the facts of this case that the defendant has not demonstrated that there existed on the day of the plaintiff's accident an effective and reasonable system of inspection. Each of the elements relied upon by the defendant above has its limitations but, even if all are viewed, as a composite, in the court's estimation, the composite is below standard.

[14] For the above reasons, the court finds on the liability issue, in favour of the plaintiff and is satisfied that, viewing the matter globally, the plaintiff has established negligence on the part of the defendant. He should, therefore, recover damages.