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1984 No. 9032P

THE HIGH COURT

BETWEEN/

JOAN JOHNSON

PLAINTIFF

AND

GRESHAM HOTEL COMPANY LIMITED

DEFENDANTS

Judgment of Mr. Justice Lynch delivered the 13th day of November, 1986.

In this action the Plaintiff, Mrs. Joan Johnson, claims damages against her employers, the Defendants, Greshem Hotel Company Limited, for personal injuries, loss and damage sustained by her in an accident that happened at about 7.20 p.m. on Thursday the 17th of May 1984. The accident happened in a kitchen and wash-up area in the Gresham Hotel as shown on the photographs and the map produced by the Plaintiff's engineer, Mr. Brian Searson.

The circumstances of the accident were that the Plaintiff had been directed by the head-waiter, Mr. Henry Allen, to put jugs of water on the tables in a room known as the Aberdeen Room for a function which was to take place that night. The Plaintiff would fill two jugs of water at the drinking water supply as marked on Mr. Searson's map and carry one jug in each hand from there out past the double sink unit and down the flight of five steps leading to the kitchen area where she would turn left and put some ice-cubes in each jug from the ice-cube machine and then go on beyond that mechine and turn left again and down the stairs

as indicated on Mr. Searson's map. On the occasion in question the Plaintiff was carrying two jugs of water and was about to descend the flight of five steps when she slipped and fell landing in a sitting position in or about the middle step.

The Plaintiff claims that this accident was due to negligence on the part of the Defendants, their servants or agents. In particular she claims that the cause of her slip and fall was that the floor immediately at the top of the flight of five steps was in a slippery condition. The Defendants deny the Plaintiff's allegations and that there was any negligence or breach of duty on their part.

I think it will be helpful if I summarise the evidence on the issue of liability. Mrs. Johnson said that the other waitresses had gone to have their tea and the head-waiter directed her to put jugs of iced water on the tables in the Aberdeen Room. She would fill each jug to about three-quarters at the drinking water supply and then go down the five stairs turning left to the ice-cube machine from which she would put in ice to the two jugs. She had done this on three or four occasions without any problem but on the occasion in question, just as she was about to descend the stairs, her foot slipped. She was descending on the left-hand side of the hand-rail and her foot slipped and she came down with a bang in a sitting position. She slipped on the bright tiles very near the edge of the stairs. She further said that obviously there must have been something on the floor to cause her to slip and fall. The floor was not spotlessly clean but it would be very hard to keep it so when people were working in the area. The floor was dry. She said that the accident should never have happened to her. In cross-examination she said that obviously there was something on the ground to cause her

to slip. She had noticed nothing unusual and the steps looked normal to her. She would expect the floor to be clean so that she could get on with her work without having to look down all the time. She slipped and therefore the floor must have been slippy.

A Mr. Anthony Daly was called as a witness on behalf of the Plaintiff. He said that he was a kitchen porter at the time having been employed from April to September 1984 and was on duty on the day the accident happened. His duties included cleaning pots and keeping the place clean. He said the floors were mainly clean and if something spilled on them he would clean it up if he saw it and if he did not see it the chef would tell him to clean it up. The pots that he would be cleaning would be left on the floor near the plastic bin nearest the camera in photograph two and would occupy about half the space between the sink and the stairway. He said that there had been a bit of a joke between him and the Plaintiff previously but that was elsewhere up at the Liffey Room where the jugs were and which the Plaintiff was unable to unlock and he had to help her. He agreed that the Plaintiff might have recalled this joke about this incident as the Plaintiff was passing by him to go down on the occasion of the accident. He said he saw nothing on the floor after the accident and as far as he was aware the floor was clean.

On behalf of the Defendant the banquetting head-waiter, Mr. Henry Allen, gave evidence. He said he was present at the time the accident happened but did not actually see the precise moment of the accident. He was six to eight feet away from the bottom of the steps when he saw the Plaintiff coming towards the top of the steps as one sees in photograph five of Mr. Searson's photographs and she had two jugs with her. He was about four

steps up when he saw the Plaintiff just at the top of the steps and she turned her head to pass some jocose remark or other to Mr. Anthony Daly. He said he got to the top step and the Plaintiff passed him by and he then heard a thump. He went down to render her assistance and in particular to remove a spiky piece of glass on the stairs which might have injured her and he noticed nothing wrong with the steps or the floor.

Mr. Anthony Wallace gave evidence that he was head chef in the banquetting kitchen. He did not notice the Plaintiff before the accident but he heard the noise to his left as he was carving meat on a hot plate in the middle of the stainless steel counter as shown on Mr. Searson's map. He looked and saw the Plaintiff sitting on the steps and that glass was broken and he went over to render assistance. He looked at the stairs and on the top of the stairs and there was nothing there.

Mr. Michael Doocey gave evidence that he was banquetting and conference manager of the Defendants. He got a bleep on his machine to tell him an accident had happened and he went to the kitchen area. There were still the remains of some of the glass and water on the stairs. He examined the top of the stairs and the first two steps to see if there was any water or grease there. He stood and looked down at it to be sure that he himself wouldn't repeat the slip and fall and he could see nothing at all on the floor or the first two steps.

Mr. Brian Searson, the Plaintiff's engineer, had given evidence before the Plaintiff to prove his map and his photographs and gave further evidence after the Plaintiff had given her evidence and in the light of the Plaintiff's evidence. He said that there should be a system whereby if spillages occurred whoever caused the spillage would clean up. He pointed out that

the presence of the sinks would mean that water splashes would be likely and also food particles. Emptying scraps of food into the bin meant that it was inevitable that some would end on the floor unless the person emptying them was very accurate. The stairway was a high risk area requiring extra care and the presen of the food bins for scraps created a hazard for the stairs but he had no other criticism of the general layout of the place.

Mr. Searson further gave evidence that on the 24th of February, 1986 he had in his possession one of the shoes which the Plaintiff was wearing on the occasion of the accident. He described this as a low heeled fashion shoe. He said he tested the shoe on the floor tiles at the bottom of the stairs, these tiles being similar to those at the top of the stairs. The reason he could not carry out his test at the top of the stairs was that by that time alterations were taking place on the stairs

Mr. Searson was testing for the coefficient of friction as between the shoe and the tiles forming the floorway in the place in question. He tested on dry tiles, wet tiles, greasy tiles and fourthly wet and greasy tiles. The highest or best coefficient was .32 on the dry tiles. The lowest was .19 on the wet and greasy tiles and then .24 on the greasy tiles. He said that this slip resistance was below acceptable safety limits which had a minimum value of .4 according to British Standard 5395. He agreed, however, that this was a test as between the sole of the particular shoe and the tiles. He would not describe the shoe as a safety shoe but it could be described as a reasonable shoe to wear when working as a waitress. In cross-examination Mr. Searson agreed that a system whereby the porter would clear up spillages was as satisfactory as a system whereby the person who spilt anything would clear it up.

The duty of the Defendants as employers is to take reasonable care for the safety of their employees in all the circumstances of the case. The employers are not insurers of the safety of the employees, that is to say just because an accident happens to an employee does not mean that the employers are automatically liable to pay damages to the employee. As Henchy J. says in Bradley .v. C.I.E.:

> "The law does not require an employer to ensure in all circumstances the safety of his workmen. He will have discharged his duty of care if he does what a reasonable and prudent employer would have done in the circumstances."

The onus is on the injured worker to show that the employer was at fault in some way or other if the worker is to recover damages from the employer.

I find as a fact that the Plaintiff, Mrs. Joan Johnson, honestly believes that there must have been something slippery on the floor to cause her to fall. However, I also find that in fact there was nothing extraneous or slippery on the floor at the time in question. I am satisfied that the floor was in a reasonable condition similar to the way it appears in the photographs taken and produced by Mr. Searson. It may be that the floor is not spotless but I am also satisfied that it is not and was not on the occasion of the accident grubby. The floor was reasonably clean and there was no grease or extraneous matter of any sort to render it dangerous and slippery. I accept the evidence of the head-waiter, Mr. Allen, that just as she was about to descend the steps, Mrs. Johnson turned her head to pass some remark to Mr. Daly, probably recalling the incident of shortly beforehand when she had been unable to open the Liffey Room to get at the jugs and as a result of this momentary

inattention she lost her footing and slipped and fell.

So far as the evidence of Mr. Searson about the coefficient of friction between the shoe and the floor is concerned I find it of little help. What was used to get the coefficient figures was the shoe. Obviously the British Standard figure must be obtained by using some particular substance which will be constant in all tests of all floor coverings. Otherwise the British Standard which is set apparently at .4 would be meaningless. As I pointed out to Counsel for the Plaintiff in the course of the legal submissions at the end of the case a block of ice tested on any floor substance would give a very much lower coefficient of friction than a treacle pudding tested on the same floor substance.

In any event these recommendations B.S. 5395 are not part of the law. Neither is it shown to my satisfaction that they are directed to occupiers of premises. It seems to me that these sort of standards are set for the guidance of architects and engineers who will be employed in the construction of floors and stairways to which they might apply. On this aspect of the case it seems to me that what was said by Mr. Justice Kingsmill Moore of the Supreme Court in the case of Christie .v. Odeon (Ireland) Limited (1957) 91 I.L.T.R. page 25 at page 29 is applicable to the circumstances of this case:-

> "It is of little avail to show, after an accident has happened, that such and such a precaution might in the circumstances have avoided the particular accident. The matter must be considered as it would have appeared to a reasonable and prudent man before the accident. Such a man would take into account the probability of an accident, its probable seriousness should it occur, the practicability

of measures to avoid it. An employer is not an insurer, and to make accidents impossible would often be to make work impossible. In the opinion of the Court there was no evidence of any failure on the part of the employer to take any precaution which a reasonable and prudent man would think it was folly to omit, nor was there evidence of any failure to exercise all reasonable care in providing a proper system of working."

I too am of the opinion that there is no evidence in this case of any failure on the part of the employer to take any precaution which a reasonable and prudent employer would think it was folly to omit or as the modern authorities put it (Bradley .v. C.I.E. 1976 I.R. 217 @ p. 221) which a reasonable and prudent employer would think it was unreasonable to omit: nor was there evidence of any failure to exercise all reasonable care in providing a proper system of working and a safe place for the work.

In the circumstances I have come to the conclusion that there was no negligence or breach of duty on the part of the Defendants and I must dismiss the Plaintiff's claim

SIGNED Kevin Lynch

KEVIN LYNCH