Neutral Citation No. [2014] NIQB 111 | *Ref:* **WEI9403**

Judgment: approved by the Court for handing down | *Delivered:* **02/10/2014**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

QUEEN'S BENCH DIVISION

_____

JOHN COEY

Plaintiff

and

AMANDA ROBINSON (TRADING AS ALADDIN)

Defendant

_____

WEIR J

Introduction

The Nature of the Claim

[1] By this action the plaintiff, a civil servant aged 23 at the time of his accident, claims damages for personal injuries and earnings advanced to him which his employer requires him to repay (if recovered) arising from an injury that he sustained to his left middle finger on 31 January 2009 when he was leaving the defendant's premises known as Aladdin's Amusement Arcade ("Aladdin") at 4 Dufferin Avenue, Bangor, Co Down. The claim is grounded in alleged negligence and breach of the defendant's liability as occupier of the premises.

[2] General damages are agreed, subject to proof of liability, at £17,500 and the amount to be repaid to the employer is agreed at £4,366 on the same contingent basis. Allegations that the plaintiff was absent from work for an unduly long period and that he was guilty of contributory negligence were not in the event pursued at the trial.

[3] The allegation upon which the claim is founded is that there was a defect in the closing mechanism of the aluminium entrance door to the premises that allowed the door to close unduly quickly and therefore dangerously and that this dangerous,

unmaintained and unrepaired defect caused the door to close upon the plaintiff's left hand. The allegation that the door was defective was denied, it being rather asserted that it closed in a safe and controlled manner.

The circumstances surrounding the injury

[4] On the evening in question the plaintiff had been assisting his girlfriend who worked in a Chinese restaurant to deliver orders. One such order had been placed by a Mr Steele, a cashier employed in Aladdin and the plaintiff went in a car driven by his girlfriend to deliver it. On entering Aladdin he presented the meal to Mr Steele who paid him for it and the plaintiff proceeded to leave with the payment held in his right hand. He therefore opened the door by pulling on the inside handle with his left hand and then placed one foot outside on the raised external doorstep. According to the plaintiff he was then unexpectedly struck by the door which had closed unduly quickly behind him and because his hand was following behind his body the door then slammed on the injured finger removing part of the distal phalanx to the extent of about one centimetre.

The Evidence

[5] The door, which appears to have been a conventional aluminium shop door set in a matching aluminium frame, was not inspected by any expert until long after the accident; by Mr Wright the engineer on 2 September 2011, on behalf of the defendant and by Mr Cosgrove the engineer on 21 May 2014, for the Plaintiff. Both engineers examined the door and took photographs. Mr Wright went so far as to let the door close upon his hand to see what would happen. Both found the door to be in proper working order. Its operating arc was 90 degrees in total with the first 77 degrees or thereabouts being followed by a slight pause and thereafter the remaining 13 degrees or thereabouts closing slowly. Both expressed the view that the proper slow movement of the door as they found it would not injure someone's finger and Mr Wright indeed had put that to the test and was uninjured.

[6] Mr Steele, the cashier for the defendant, gave evidence that he was working in the premises that evening, that the plaintiff had indeed delivered a Chinese meal to him and had sustained an injury at or near the door in question as he had subsequently found blood there. He had not witnessed the accident happen because, having received and paid for his meal, he had immediately gone to the kitchen for utensils and only became aware that something had happened when the plaintiff came back into the premises with his hand injured. The witness had tried to help clean the wound before they realised that the injury was serious whereupon the plaintiff had left to go to hospital.

[7] It was the evidence of Mr Steele that he worked in the premises between 2007 and 2010 while the defendant operated them and previously in 2005 or 2006 under the previous ownership. He estimated that between 20 and 40 persons entered and left the premises each day and he recalled no difficulties with the door. He had been

able to get in and out through it without any difficulty and he never had any complaint from customers. On the night in question the door closed as it always had. He was unaware of any modifications to the door after the accident nor did he know that the closing speeds of the two phases could be adjusted by means of two screws set in the top of the door frame. He agreed with Mr Colton QC for the plaintiff that he knew nothing about the maintenance of the premises. He said he had made a note for his employers on a sheet of paper as to what had happened but he could not now remember what he had written and he did not know what had subsequently become of the note. Since the premises had closed as an amusement arcade in 2010 they had been used by the adjoining charity shop for storage purposes.

[8] The defendant, Ms Robinson, gave evidence that while she was not in the premises very much she had never encountered any difficulty with the door. There was nothing out of the ordinary and she was not aware of its slamming. Any repairs would have been the responsibility of the landlord. She was not aware of any other complaints about the door and no modifications had been carried out to it in the period until she moved out in 2010. Cross-examined by Mr Colton she said she believed her husband looked at the door after a letter of claim had been received but she knew of no work being done to it. She had not seen the note that Mr Steele had left concerning the accident.

[9] Finally, Ms Joanne Kelso gave evidence that her firm was the letting and managing agent for the property. She confirmed that any repairs to the mechanism of the door would have been the lessor's responsibility but said that no report of any defect had been made to her firm. Had it been, a form would have been completed, the landlord's authority to engage a repairer would have been obtained and a repairer then engaged. Thereafter his account would have been debited to her client, the landlord. She had examined her file, which was with her in court, and no such defect had ever been reported nor any repair commissioned.

Discussion

[10] There is no question but that the plaintiff's finger was injured by contact between the door and its frame. I was impressed by the honesty of all the witnesses in the case who I am satisfied gave evidence to the best of their ability. Counsel for both parties concurred in that assessment.

[11] The crucial question is whether there was anything wrong with the manner of the door's closing that caused or contributed to the plaintiff's accident. Both experts agreed that the injury was consistent with the door closing too quickly as the plaintiff alleged that it had. Mr Wright posited, and photographed, another possible mechanism of injury which involved the plaintiff placing his hand around the leading edge of the door and pulling it closed so that his fingers came into contact with the doorframe. I find it difficult to see how, under that hypothesis, injury would not have been sustained by more than one finger.

[12] I am not however satisfied on the evidence that the door was defective when the plaintiff sustained his injury. Mr Steele and Ms Robinson say there had been no complaints before the accident and that it operated normally. Mr Steele says that it operated normally after the accident. Both say that nothing was done to repair or alter it after the accident and Ms Kelso confirms that no report of a fault was made to her firm on behalf of the landlord whose responsibility any necessary repair would have been. The engineers agree that in 2011 and in 2014 the door was found to operate normally. In short, there is no evidence of any problem with the door apart from that of the plaintiff and, on the contrary, considerable evidence that it had no defect.

[13] I have already recorded my finding that the plaintiff's injury is consistent with a fault in the door such as he alleges. I also accept that the plaintiff genuinely believes that there was such a fault. However, while his injury is, as I say consistent, there is no evidence that it is *only* consistent with such a defect. Few of us have not at some time caught one or more of our fingers accidently in a perfectly serviceable door for no reason that we could subsequently explain and it may well be that the plaintiff has done just that. However his accident happened I am not satisfied to the requisite standard or at all that it was due to any defect in the door.

[14] Mr Colton sought to make something of the fact that at some time a small alloy block had been screwed to the top of the door frame in order to prevent the door from swinging beyond the midway point on the door frame. An examination of the photograph shows this to be so but no witness could cast any light upon when this was done nor indeed had they ever noticed its presence. The relevance of this block to the circumstances of the injury is difficult to see as that must have been suffered by a pinch between the outside leading edge of the door and the inside edge of the door frame and therefore have occurred before the door could have moved on out to engage with the doorstop. Mr Colton also sought to rely upon the apparent subsequent disappearance of the note left by Mr Steele to inform his employers of the accident although he conceded that there was no positive duty to preserve it. I see nothing sinister or probative in this. Finally, Mr Colton surmised that the fact that the door opened correctly for both engineers meant that "someone came along and adjusted the door" – presumably after the accident but before the first of their inspections. There was no evidence to support this theory but rather evidence to the contrary and, as I have said, there was clear evidence that the door was functioning correctly both before the accident occurred and after it from Mr Steele. None of these matters causes me to alter my conclusion that the plaintiff has failed to prove that any defect of the door caused his injury notwithstanding his honestly-held belief that it did. Accordingly, the plaintiff's claim is dismissed.

[15] Having heard counsel on the question of costs and being informed that the plaintiff is legally aided I make no orders to costs as between the parties and order that the plaintiff's costs be taxed under the second schedule as those of an assisted person.