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008023/2018

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

MARLENE HAWTHORNE

Plaintiff

and

NORTHERN IRELAND HOUSING EXECUTIVE

Defendant

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MAGUIRE J

Introduction

[1] In this case the plaintiff is a woman now aged 66 years. She is a retired person. On 17 April 2016 she sustained injuries in an accident which occurred at her home, which is at 20 Rathgill Crescent, Bangor. In these proceedings, the plaintiff was represented by Mr Mel Power BL and Mr Stephen Elliott BL appeared for the defendant. The court is grateful to each of them for the efficient way in which the proceedings were conducted and for the assistance they provided to the court.

[2] The circumstances of the accident are not significantly in dispute and the court finds that on the day of the accident the plaintiff had been at a christening. A friend of hers had left her home and she approached her house with a view to entering it via the front door. Her husband who had been inside the house saw her coming and opened the front door for her. He then stepped back into the living room.

[3] The plaintiff sought to enter the house. In order to do so, she had to negotiate a step up from the level at the front of the house and then a further step up to take her on to the tiled floor in the hall. She successfully accomplished the taking of the first step but as she went to take the second step she caught her foot on what has

variously been described as a weather bar or sill and fell forward on to the tiles in the hallway.

[4] The accident, it appears, was witnessed by a neighbour. The neighbour gave evidence in the proceedings. The plaintiff's husband heard the plaintiff fall and came out of the living room to help her. The neighbour likewise ran across the road to help her. With both of their help, the plaintiff was moved into the kitchen and then to the living room where she rested on a settee in it.

[5] In some ways, surprisingly, the plaintiff, while in pain afterwards, does not appear to have taken the accident very seriously as she did not immediately seek medical assistance. Indeed, this step was not taken for some 5 days. However, at the end of that period she did go to the Ulster Hospital where she was x-rayed. Unfortunately, she was found to have a fracture of the right fibula and a fracture at the left knee. As a result of these fractures she had to remain in hospital for some 12 days before being allowed home. She remained in pain while at home but happily the main aspects of the injuries gradually improved and, in the view of Mr Cooke, the Consultant Orthopaedic Surgeon who reported on her, the main period of disability consequent upon the accident lasted around one year, albeit that he accepts that some lesser features of her injuries carried on beyond this. A further feature of the accident was that the injuries appear to have exacerbated a pre-existing problem she had with pain in her lower back. She also, appears to have suffered from anxiety as a result of the accident which has affected her confidence principally.

[6] The court is of the opinion, having considered two reports from Mr Cooke and a report from Dr Loughrey, a Consultant Psychiatrist, that, if liability is established in this case, the value of the claim on full liability is £45,000.

[7] The main issue contested before the court was that of liability, though a second live issue was the issue of contributory negligence. The court will deal first with the issue of contributory negligence.

[8] The issue of contributory negligence focussed on the fact that the plaintiff accepts that in the course of coming into the house she made no use of an aid which had been placed on the wall to her left hand side. This aid was in the form of a grab handle and had been placed there to make her access to the front door easier.

[9] The background to this was that the plaintiff had for long suffered from a number of medical problems and among her difficulties was one with her mobility. It would appear that prior to the accident she had been using a rollator but she was not using it on the day of the accident. She also seems to have had problems with climbing stairs. Prior to the accident there had been at one stage an intention to put a lift into the house so as to assist the plaintiff getting upstairs. But for reasons which are not clear, this plan did not reach fruition. The object of the grab handle was to enable the plaintiff better to negotiate the steps at the front of the house.

[10] The court considers that the plaintiff should have made use of the grab handle on the day of the accident. It consequently holds the plaintiff guilty of contributory negligence in respect of her failure to do so, as this facility was there to be used. If liability is established, the court will reduce any damages awarded by 25%.

Liability

[11] The court turns to the main issue which is that of liability. There is no dispute that the configuration of the front door and weather bar had been put in place by the defendant's approved contractor not long before the accident. From the records which the court has seen it would appear that it was put in place in January 2016, approximately 3 months before the accident. The works at the front door appear to have involved the installation of the door frame and a new front door as well as the weather bar or sill.

[12] The key feature of the weather bar or sill, for present purposes, was that it sat laterally on top of what was in effect the surface of the second step as you enter the house from the outside. However, the bar or sill was not laid flush with this level but over hung it. The overhang was measured by the plaintiff's consulting engineer as being in the region of 31mm. The defendant's consulting engineer measured the overhang at 27mm. The court is content to accept that the overhang was in the region of 30mm. The width of the step was 250mm. At the front door end there was a rise to the top of the bar or sill of 140mm at its highest point, and 120mm to its leading edge. Notably the bar or sill itself is curved so as to avoid their being a vertical trip edge.

[13] It would appear that the object of the overhang was to facilitate the drawing away of water which hits the door and drains down towards the bottom of it. By reason of the bar or sill the water can escape by making use of what were described as "weep holes" which have been built in to the bottom of the bar. In these circumstances the water can simply run out of the weep holes directly to the outside.

Technical Evidence

[14] Three witnesses were called to deal with the technical issues that arose in this case. First of all, Mr Niall Cosgrove was the consulting engineer retained on behalf of the plaintiff. Secondly, Mr Declan Cosgrove was the consulting engineer retained on behalf of the defendant. Thirdly, Mr Brian Cassidy, a Technical Officer, within the Housing Executive provided evidence, including some technical evidence, about the configuration at the front door.

Mr Niall Cosgrove

[15] Mr Niall Cosgrove visited the plaintiff's house on 6 March 2018 and took photographs. In his view there were two deficiencies in respect of the new

installation at the front door which had been completed in January 2016. Firstly, he indicated that the overhang introduced by the placing of bar or sill where it was placed was too great and had the effect of introducing a significant tripping hazard for those who occupied or visited the premises. Mr Niall Cosgrove's view was that it would not be uncommon to have a small overhang but that the overhang which he measured at 31mm was too great. In support of his argument he referred the court to a booklet described as "Technical Booklet H". This was the 2006 edition. In his view this booklet constituted guidance in respect of the placing of stairs. While no standard was laid down in the booklet in respect of stairs in private dwellings, Mr Niall Cosgrove pointed out that a guide standard had been produced in respect of stairs in non-private buildings. The standard laid down was that in non-private dwellings, there could be an overhang but that it should not exceed 25mm. This was because of the potential danger an overhang may bring with it in terms of the potential for tripping.

[16] Secondly, Mr Niall Cosgrove criticised what he viewed as the relatively sharp leading edge on the bar or sill which went downwards. He considered that this created a foreseeable risk of a toe catching under it. He could see no reason why it should be configured in this way. In his view the shape and profile of the bar promoted the risk that a foot striking against it would be likely to be held. There was an enhanced tripping hazard, consequently.

Mr Declan Cosgrove

[17] Mr Declan Cosgrove inspected the configuration at the front door on 1 August 2018. His measurement of the overhang was 27mm as opposed to Niall Cosgrove's 31mm. This was the only dispute over measurements. This witness preferred the use of the term sill to the term weather bar which had been used by his consulting engineer colleague. In his view the purpose of the sill was to gather and cast off water which had hit the door and run downwards from it. That water should, he considered, exit outside via the weep holes.

[18] In his view you could either have a flush or overhanging arrangement. He did express a concern that if the sill was entirely flush with the surface this might cause water to become trapped and so prevent the weep holes from performing their function. A configuration which was completely flush might, he thought, cause maintenance problems.

[19] This witness accepted that an overhang could cause a trip point in the context of a dragging foot.

Mr Brian Cassidy

[20] Mr Cassidy was able from a study of the records possessed by the defendant to tell the court that the new front door configuration had been put in place and then inspected by the Housing Executive by 14 January 2016. In his view the door was of

good quality and had been fitted correctly. He took no issue with the way the contractor had carried out the work. He pointed out that the door set was factory built and in effect was a complete unit including the weather bar. In this case, in his view, there was nothing unusual and his main concern was with the need to avoid water ingress in to the house.

[21] The witness was also able to indicate that there had been no complaint about the newly installed front door apparatus to the defendant prior to the accident occurring on 26 April 2016. There was a complaint thereafter which had resulted in an inspection on 28 April 2016 but no fault was found with the configuration at the front door. The witness considered that the way in which the unit was fitted might vary from case to case. He accepted that in a case where a variation was required, this was achieved not by cutting the weather bar but by altering the fabric of the building into which it was being placed.

[22] It was pointed out to the witness by counsel on behalf of the plaintiff that there was evidence before the court of different ways in which weather bars had been placed in different houses, some nearby to the plaintiff's house. Some were flush to the surface while others overhung the stair. Mr Cassidy accepted this. He also accepted that how the new configuration was put in place depended on a judgment which had regard to not just the particular physical circumstances of the door in question but also the needs of the occupants. He was prepared to accept that in this case, as the two occupants of the tenancy were getting on in years and where the plaintiff had a long history which included problems with their mobility, these matters should be taken into account.

[23] Mr Cassidy was cross-examined about a current proposal for further work to be done at the plaintiff's house. The plaintiff had received a letter on 19 September 2018 from a firm of contractors indicating that there were remedial works to be carried out to her home. With the letter a schedule of works was provided which included works to the front door. The phraseology used in this regard in the schedule was "Build up threshold to door set". When asked about what this meant Mr Cassidy accepted that this probably entailed work to reduce the overhang. Its presence on the schedule must, he thought, have resulted from the independent contractor's inspection of the house and what appears on the schedule will, he thought, have been approved by Housing Executive staff.

[24] In the course of giving his evidence, Mr Cassidy produced to the court a weather-bar or sill which, he thought, would have been similar to that installed in the plaintiff's house prior to the accident. Interestingly, when the bar or sill was laid flush with a surface, the weep-holes appeared to be able to operate without obstruction.

The court's assessment

[25] There is no dispute between the parties that the court is obliged in this case to apply the standard of reasonable care in the circumstances to the actions of the defendant and its servants or agents.

[26] The question for the court therefore is whether the defendant, in installing the new front door furniture as it did in or about January 2016, met this standard.

[27] Where new furniture of this nature is being put into place in an existing dwelling it seems clear that the crucial factor will be how it is fitted. In particular, the weather bar or sill comes in the form of a factory made fitting and the installer will not usually seek to alter it. Rather the installer has the task of marrying it with the environs of the door in question. In respect of this, judging by the variety of photographs the court saw in the course of the hearing, a good deal is left to the installer and sometimes a bar or sill may be flush or almost flush and sometimes, and no doubt to a greater or lesser extent, an overhang may be built in.

[28] It is the court's view that in this case the installation of the sill or bar fell below the standard referred to above having regard to the circumstances, including the circumstance that the dwelling into which it was being installed was that of long term tenants, one of whom had mobility problems which the defendant was aware of.

[29] In the court's view, there was a need in this case, if not to avoid an overhang altogether, to ensure it was kept to a minimum. The court does not believe this occurred and is of the view that the particular features of this case when taken together support the conclusion the court has reached.

[30] The factors which have influenced the court to its conclusion include:

(a) The defendant's knowledge that the occupants of the dwelling should have meant that the bar or sill was fitted in a way which, so far as possible, avoided the creation or maintenance of a tripping hazard.

(b) The belief that had care and attention been exercised in respect of this installation an overhang of in the region of 30 mm would have been avoided. Such a step would be consistent with what is described earlier in this judgment as the requirements of document H, albeit that this document does not strictly apply to a private dwelling house. Document H contains, however, a helpful pointer which reinforces, in the court's view, what might be viewed as common sense *viz* that if you create an overhang of substantial dimensions there will be likely to be a greater risk of a foot catching on a step as the person ascends.

(c) The court has not been presented with any evidence in this case which would support the conclusion that it was necessary to have the bar or sill installed in the way in which it was. The evidence was to the contrary and, judging by what was put in place in terms of much flusher installations in other NIHE properties - including that of the plaintiff's neighbour across the road – the court has no reason to believe that the same approach could not have been taken in this case.

(d) While not in any sense a definitive factor, the court notes that the defendant's own independent contractor for upcoming works in this case has programmed work to be done which probably will involve the reduction of the overhang which is currently in place. The court makes it clear that it has no evidence that the contractor reached this view because of anything said to it or its staff by the plaintiff or her husband.

(e) Having seen a similar bar or sill in the course of the hearing, the court finds the defendant's argument that laying the bar flush might cause obstruction of the weep-holes unconvincing, as it appears to be able to rest on top of the level surface in a way which largely, if not entirely, enables the weep-holes to continue to function.

Conclusions

[31] The court in this case holds:

(a) That the plaintiff should succeed in terms of liability. In other words, the court is satisfied to the civil standard of proof that there was a lack of reasonable care in the way in which the weather bar or sill was installed in this case in or about January 2016.

(b) That in the circumstances of this case the court is of the opinion that the plaintiff was guilty of contributory negligence. It, therefore, reduces her award of damages by 25%.

(c) The court values the plaintiff's claim at £45,000 on full liability. After the 25% reduction aforesaid it will make an award of £33,750.