**THE COURT OF APPEAL**

Neutral Citation Number: [2017] IECA 176

**Appeal No. 2014/733**

**Finlay Geoghegan J.**
**Irvine J.**
**Hogan J.**

**BETWEEN/**

**ELAINE NEWMAN**

**PLAINIFF/**

**APPELLANT**

**- AND -**

**PATRICK COGAN AND MARIE COGAN**

**DEFENDANTS/**

**RESPONDENTS**

**JUDGMENT of Ms. Justice Irvine delivered on the 16th day of June 2017**

1. This judgment focuses upon the duty of care owed by an occupier of premises to a visitor where they personally take on the task of carrying out repairs within their own home.

2. By judgment and order of the High Court (O'Neill J.) dated the 5th December, 2012, the trial judge dismissed the plaintiff's ("Ms. Newman") claim for damages for personal injuries sustained by her on the defendants' premises on the 22nd June, 2007. He also awarded the defendants the costs of the proceedings, to be taxed in default of agreement. It is against this judgment and order that Ms. Newman now appeals.

**Background**
3. Ms. Newman was born on the 13th November, 1985. Her partner, Emmett Cogan ("Mr. Cogan Jnr."), is the son of the defendants who are the owners of a property at Dugganstown, Devlin, Co. Meath ("the premises"). That premises is a traditional style farmhouse which was over sixty years old at the date of trial and which was extended in the 1960s. At the time Ms. Newman sustained her injury the upper half of the inner door of the back porch contained two glass panels. Over the years these panels had occasionally been broken as a result of the normal rough and tumble of family life. The football and the slither were cited as the main culprits. After one such incident, in or about the year 2000 or 2001, the first named defendant ("Mr. Cogan Snr."), who is a farmer, inserted two new patterned glass panels into the door.

4. At about 12:30 pm on the 22nd June, 2007, Ms. Newman and Mr. Cogan Jnr. went out into the yard at the back of the house. She wanted to have a smoke while he went out for the purpose of retrieving a bag of meat from the deep freeze which was in an adjacent shed. Ms. Newman then went back into the house not realising that Mr. Cogan Jnr. was close behind her. She closed the door and was still facing it when he tripped over clutter in the porch area. He fell forward and his outstretched left hand, which was carrying the bag of frozen meat that he had retrieved from the deep freeze, went through the glass panel on the left side of the door with considerable force. The glass shattered in an explosive fashion and one of the many glass shards that were thrust into the air went into Ms. Newman's right eye.

5. Tragically, notwithstanding the best efforts of the medical profession, Ms. Newman lost the vision in her eye and now has an artificial eye.

6. Prior to the hearing in the High Court the parties agreed that in the event of liability being found in favour of Ms. Newman the appropriate award of damages would be a sum of €200,000.

**The High Court hearing**
7. In circumstances where there is no appeal against the facts found by the trial judge concerning how Ms. Newman sustained her injuries and that these are as described above, it is not necessary to engage with the evidence that was given by Ms. Newman or Mr. Cogan Jnr.. The only other evidence heard by the Court, and to which I will later refer, was from the consulting engineers retained by the parties, namely Mr. Frank Abbott on behalf of Ms. Newman and Mr. Anthony Tennyson on behalf of the defendants. Mr. Cogan Snr. did not give evidence.

**Judgment of the High Court**
8. The trial judge was satisfied that in order to resolve the issue of liability the question he had to answer was whether or not the defendants had failed in their duty of care as occupiers of the premises in having glass of the type that caused Ms. Newman's injury in the door when the accident occurred. The engineers were agreed that the glass in the door at the time was annealed glass, *i.e.*, ordinary domestic glass, which, whilst suitable for use in windows, was unsuitable and dangerous for use in a door because if broken it fractured into shards unlike safety or toughened glass which if broken shattered into smithereens and fell directly to the ground.

9. It is important at this point to state that the within proceedings were brought by Ms. Newman founded on a claim that the defendants were liable to her in respect of her injuries by reason of the duty of care required of them pursuant to the Occupiers Liability Act 1995 ("the 1995 Act"). Thus, the trial judge was correct to start his assessment of the liability issue by seeking to identify the duty of care owed by Mr. Cogan Snr. to any potential visitor to the premises at the time he replaced the glass in 2000/2001.

10. From his judgment it would appear that the trial judge accepted that the duty of care owed by Mr. Cogan Snr. to Ms. Newman at the time he replaced the glass panels in 2000/2001 was to be assessed in accordance with the test suggested by the English Court of Appeal in *Wells v. Cooper* [1958] 2 Q.B. 265, a decision to which I will later return. Relying upon the head note in that decision he described the duty of a householder such as Mr. Cogan Snr. at the relevant time, in the following manner:-

> "20. As the head note in this case makes plain, the standard of work to be expected of a householder in these circumstances, who has taken on a repair of this kind, is not quite the same as that to be expected from a tradesman who is performing the task for reward and subject to contractual obligations, where the standard would be much higher. In effect, the householder will be considered to have discharged his duty of care unless it established (sic) that what he did was something which no reasonably competent tradesman, in this case, a glazier, would do."

11. Having regard to the standard of care, by which he was satisfied Mr. Cogan Snr. was to be judged, the trial judge, having considered the evidence before him concluded, as follows:-

> "23. Whilst I am quite satisfied that the evidence of the two engineers establishes that a professional glazier performing the task for reward would not have installed the type of glass which the first named defendant used, it does not follow at all that the first named defendant's choice in this regard is to be condemned simply because a professional glazier performing the task for reward would not have chosen the same glass. The evidence of the engineers does not go so far as to suggest that a reasonably competent amateur glazier, such as the first named defendant, when replacing a pane of glass in his own private dwelling, could not reasonably have believed that the glass used was adequate or suitable for the location in question.
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> 24. Insofar as the selection of the glass is concerned, the only inference that can be drawn from the evidence is that the first named defendant probably purchased it from a retail supplier of glass."

12. I pause here to make three observations regarding the last mentioned statement, albeit that these are matters to which I will later return. First, the expert testimony of both engineers was to the effect that a reasonably competent or skilled tradesman, who the trial judge treated as equivalent to the skilled amateur glazier, would in 2000/2001 have known that the glass Mr. Cogan Snr. selected for the door was unsuitable for that purpose. Second, there was no evidence to support the trial judge's finding of fact that Mr. Cogan Snr. was a reasonably competent amateur glazier. He did not give evidence and no other evidence was advanced as to his DIY or glazing competence. Third, there was no evidence from which the trial judge was entitled to infer that Mr. Cogan Snr. probably purchased the glass which he used in the door from a retail glass supplier.

13. The trial judge next referred to the fact that Mr. Cogan Snr. had carried out the installation of the glass competently whilst recording that there was no evidence as to what was in his mind at the time he effected the repair. He also referred to the technical standards and guidelines which applied in 2000/2001 which required the use of toughened/safety glass in doors and concluded that these would have been known to all professionals engaged in the building industry.

14. What follows next is how the trial judge applied the facts, as found by him, to the duty of care of the occupier of a premises who decides to take on a DIY task such as that advised in *Wells*. I will set out his conclusions in full as they are critical not only to the submissions made, but also to my conclusions on the appeal. He stated that:-

> "29. I am quite satisfied that it could not reasonably be suggested that a householder who elects to carry out a relatively simple repair, such as the replacement of a pane of glass, as was done by the first named defendant in this case, and no doubt as is done by householders day in day out up and down the country, could be expected to be familiar with the technical standards set down in the technical guidelines associated with the Building Regulations. Thus, it could not be said that a householder, who was a reasonably competent glazier, such as the first named defendant, could not have reasonably believed that the glass chosen was suitable for this location.
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> 30. To hold the defendant liable, in negligence, for choosing the glass that the first named defendant installed in this door in 2000 or 2001, would be to impute artificially to him knowledge of the technical aspects of glazing which could not be expected of somebody who was not involved in the building industry or glazing trade or to hold that he should have had this knowledge. To do this would be to impose upon the defendants a duty of care which would be artificial and which, in all probability, they had no real chance of discharging. Thus, in choosing this particular type of glass, which is in common usage in dwellings, it could not reasonably be said that the defendant failed in his duty as occupier of this premises, to the plaintiff, to take reasonable care to protect her from dangers on the premises.
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> 31. What is required by the law is that the occupier take reasonable care in all of the circumstances and, in my opinion, the plaintiff has failed to demonstrate that the defendants failed in that regard."

**Submissions of the appellant/plaintiff**

15. Mr. Devlin S.C., on behalf of Ms. Newman, submits that the duty of care owed by Mr. Cogan Snr. as occupier of the premises was to take such care as was reasonable in all of the circumstances as per s. 3 of the 1995 Act. In circumstances where Mr. Cogan Snr. took on the task of replacing a glass panel in the door of his porch, his duty of care was to be determined in accordance with the principles laid down in *Wells*. That being so, whether Mr. Cogan Snr. had discharged his legal obligations was to be tested against the standard to be expected of a reasonably competent tradesman or glazier. Counsel submits that the trial judge incorrectly applied that test to the evidence. The evidence of Mr. Abbott and Mr. Tennyson was that in 2000/2001 a reasonably skilled tradesman would have given due consideration to the suitability of the glass to be used at the particular location and having done so would not have installed glass of the nature which was installed by Mr. Cogan Snr.

16. Mr. Devlin further submits that there was no evidence to support the trial judge's finding of fact that Mr. Cogan Snr. was a competent glazier for the purposes of applying the reasoning in Wells to the liability issue in the case. The evidence was that he was a farmer and had managed to install the glass in the door in question. No evidence was adduced to establish what if any competence he had in carrying out DIY tasks or if any steps were taken by him to take care for the safety of persons such as Ms. Newman whom might visit the premises at the time he replaced the glass in the door.

17. Based on the evidence of Mr. Abbott and Mr. Tennyson that no reasonably competent tradesman in 2000/2001 would have installed ordinary glass in the door the trial judge was bound to find the defendants to have been in breach of their statutory obligations.

**Submissions on behalf of the defendants/respondents**
18. Mr. Turlough O'Donnell S.C., on behalf of the defendants, submits that the trial judge was correct as a matter of law when he concluded that Mr. Cogan Snr. had discharged his duty as occupier to Ms. Newman. His client was not to be judged by the standards to be expected of a professional glazier or even by those to be expected of a competent tradesman or amateur glazier. Whether he had discharged his statutory obligation was to be judged by the standard of care to be expected of a farmer in Mr. Cogan's Snr.'s situation who considered himself capable of carrying out the replacement of a pane of glass. Thus, the onus was on Ms. Newman to establish that Mr. Cogan Snr. knew or ought reasonably to have known that there were standards governing the use of glass in doors or that he might reasonably have been expected to know that to render the door safe he would have to use toughened glass.

19. Mr. O'Donnell submits that there was no evidence called to establish that Mr. Cogan Snr. had any actual knowledge of the prevailing standards or regulations or that he ought reasonably to have known of the requirement for toughened glass in the door. It was for the plaintiff to call evidence from a farmer or a person of like competence to that of Mr. Cogan Snr. to demonstrate that such an individual ought reasonably to have known of the danger of installing non-toughened glass in the door in 2000/2001 and she had not done so.

20. Counsel for the defendants quite properly accepted that insofar as he had, in the course of his oral submissions, urged this Court to reject the test advised in Wells, the same was in conflict with the respondents notice and the written submissions lodged on their behalf. That said, he submits that in the High Court the defendants did not accept that the duty of care owed by Mr. Cogan Snr. as an occupier of the premises at the time he effected the repair to his door in 2000/2001 was to be determined in accordance with the test identified by the Court of Appeal in *Wells*.

**Discussion and decision**
21. The starting point for a consideration of the trial judge's conclusions in respect of the liability issue must be the provisions of the 1995 Act as it is the defendants' alleged breach of their obligations thereunder that forms the basis of Ms. Newman's claim.

22. That being so, the first matter of significance is that it is not disputed that Ms. Newman was a "visitor" and the defendants were the "occupiers" of the premises for the purposes of the 1995 Act. Second, Mr. Abbott and Mr. Tennyson were agreed that any door containing glass poses a potential danger to persons who may use it. However, the door on the Cogan's premises would not have been a danger if it had contained toughened or safety glass. It constituted a danger because it contained glass which if broken was destined to shatter into shards with the potential of causing serious injury. The state of the premises was accordingly dangerous within the meaning of the 1995 Act at the time of Ms. Newman's visit. In that context, it is relevant to note that the definition of a "danger" in relation to a premises is defined in s. 1 of the 1995 Act as, "a danger due to the state of the premises" and that the definition of a "premises" includes "any fixed or moveable structures thereon", which would, of course, include a door.

23. Given the danger that existed on the Cogan's premises at the time Ms. Newman sustained her injury it is next important to consider the nature and extent of the duty owed by the occupiers of that premises to their visitor. This is provided for in s. 3 which states:-

> "3.(1) An occupier of premises owes a duty of care ("the common duty of care") towards a visitor thereto except in so far as the occupier extends, restricts, modifies or excludes that duty in accordance with section 5.
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> (2) In this section "the common duty of care" means a duty to take such care as is reasonable in all the circumstances (having regard to the care which a visitor may reasonably be expected to take for his or her own safety and, if the visitor is on the premises in the company of another person, the extent of the supervision and control the latter person may reasonably be expected to exercise over the visitor's activities) to ensure that a visitor to the premises does not suffer injury or damage by reason of any danger existing thereon."

24. Because there was a danger on the premises, namely the door which contained glass that was volatile, the question the High Court judge was obliged to consider was whether the defendants in light of the presence of that door could be said to have discharged their duty to take reasonable care for those who might visit the premises in all of the circumstances. The relevant circumstances in this case of course, as was correctly observed by the trial judge, centre upon the conduct of Mr. Cogan Snr. when he installed glass that was objectively unsuitable for use in the door in 2000/2001.

25. It is clear from the judgment of the High Court judge that having correctly identified the duty of care owed by the Cogans under the 1995 Act, he next considered the standard by which Mr. Cogan Snr.'s actions were to be judged in circumstances where it was his actions in undertaking the task that had caused the danger which in turn was responsible for Ms. Newman's injury.

26. Notwithstanding the defendants' submission that the test identified in *Wells* should not be applied to the facts of the present case, given that the trial judge clearly formed the contrary view and set out to apply it for the purposes of determining the liability issue, it is necessary to engage with the relevant facts and principles which emerge from that decision particularly as it is heavily relied upon by Ms. Newman in support of her appeal.

27. In *Wells*, the plaintiff, a fishmonger, was in the habit of calling to the defendant's house to take orders from him. On one such occasion when leaving the defendant's house Mr. Wells fell a number of feet from a small platform immediately outside the back door when the handle came off in his hand. A stiff pull was ordinarily required to shut the door and on the day in question a strong wind had made the door somewhat stiffer than usual.

28. The defendant, who was an amateur carpenter of some experience, had replaced the handle in question some months earlier securing it with ¾ inch screws, screws which he considered sufficient to withstand the force of the pull required to close the door. He considered that he had effected an improvement when he had changed the handle and this was borne out by the fact that notwithstanding constant use during the months prior to the accident the handle had shown no signs of loosening. It was not disputed that the handle came away because the anchorage afforded by the screws was insufficient to withstand the force necessary to shut the door on the day in question.

29. The plaintiff maintained that ¾ inch screws were unsuitable for the repair and that in order for the door handle to be properly secured 1 inch screws were required. Accordingly, the question the Court had to decide was whether the defendant was to be found liable for the plaintiff's injuries because he had used the shorter screws.

30. On behalf of the plaintiff it was contended that the defendant was in breach of his duty as an invitor to the plaintiff, who was an invitee, for two reasons. First, the insecure handle was an unusual danger about which the defendant knew or ought to have known and ought to have guarded against. Second, that irrespective of the invitor / invitee relationship, in carrying out the work of affixing

the handle himself, he had assumed a duty towards the plaintiff to take reasonable care to protect against any danger created by the insecurity of the handle.

31. On the appeal brought by the plaintiff against the dismissal of his action the English Court of Appeal considered that there was little difference between the two grounds upon which liability had been advanced stating that the duty owed by the defendant was to take reasonable care for the plaintiff's safety and the question was whether, on the facts of the case, he had done so.

32. The Court in *Wells* was satisfied that it was clearly foreseeable that if the handle came off the door injury might occur. Thus, the question was whether the defendant ought to have known that the screws which he used were not adequate to fix the handle firmly enough to prevent any likelihood of injury. The Court stated that its decision involved a consideration of the standard of care to be demanded of the defendant in relation to the fixing of the door handle. The occupier was not, it decided, to be held liable because he undertook the work himself instead of employing an expert to do it because the work in question was of a type within the competence of a householder accustomed to doing small carpentry jobs around their own home. However, it behoved him, if he was to discharge his duty of care to a person such as the plaintiff, to do the work with reasonable care and skill.

33. As to the standard by which the plaintiff was to be judged, the Court considered that the degree of care and skill required of him was to be measured, not by reference to the degree of competence that he personally happened to possess, but by reference to the degree of care and skill which a reasonably competent carpenter might be expected to apply to the work in question. If the position were to be otherwise, the extent of the protection that the invitee could claim in relation to work done by the invitor himself would vary according to the capacity of the invitor who could free himself from liability merely by showing that he had done the best of which he was capable, however good, bad or indifferent that best might be. The following is how the Court expressed the standard of care to be applied, at p. 271: -

> "Accordingly, we think the standard of care and skill to be demanded of the defendant in order to discharge his duty of care to the plaintiff in the fixing of the new handle in the present case must be the degree of care and skill to be expected of a reasonably competent carpenter doing the work in question. This does not mean that the degree of care and skill required is to be measured by reference to the contractual obligations as to the quality of his work assumed by a professional carpenter working for reward which would, in our view, set the standard too high. The question is simply what steps would a reasonably competent carpenter wishing to fix a handle such as this securely to a door such as this, have taken with a view to achieving that object."

34. The Court went on to state that on the facts of that case the question to be answered was "whether a reasonably competent carpenter fixing this handle would have appreciated that three-quarter inch screws such as those used by the defendant would not be adequate to fix it securely and would accordingly have used one inch screws instead".

35. In *Wells*, of critical importance to the Court's decision was the fact that the defendant was found to be a man who had experience of domestic carpentry work sufficient to justify his inclusion in the category of the reasonably competent carpenter by whose standard of care he was to be judged. It is of significance also to record that the trial judge had rejected the expert evidence to the effect that any reasonably competent carpenter would or ought to have foreseen that the ¾ inch screws would prove inadequate as being in the nature of wisdom after the event. Thus, in circumstances where the evidence was that the defendant, in doing his best to make the handle secure, had used ¾ inch screws which he considered adequate to fix the handle, he had to be taken to have discharged his duty of care to the plaintiff. The plaintiff was accordingly unable to establish that no reasonably competent carpenter could have used ¾ inch screws believing them adequate for the purposes of securing the handle. It was these factors which lead to the dismissal of the plaintiff's appeal.

36. Returning to the facts of the present case, I can find no fault on the part of the trial judge in his decision to consider whether Mr. Cogan Snr. had discharged his duty to potential visitors to his premises based on the standard of care advised in *Wells*, namely, against the standard to be expected of a reasonable carpenter or in this case the reasonably competent tradesman or amateur glazier who might, if Mr. Cogan Snr. had not decided to undertake the work himself, have been engaged to carry out the task.

37. Of particular significance in this regard is the fact that the duty of care under consideration by the Court of Appeal in *Wells*, namely, that owed by an invitor to an invitee, is described by the Court in precisely the same terms as that which is stated to govern the relationship between the occupier and the visitor in s. 3(2) of the 1995 Act. That being so and having regard to the fact that both cases concern injuries caused to visitors to a premises consequent on failed DIY repairs carried out by the occupier, I consider the *Wells* decision persuasive authority for the proposition that whether Mr. Cogan Snr. can be stated to have acted with reasonable care in all the circumstances should be judged by the standard of care to be expected of the reasonably competent tradesman who might have been asked to replace the glass in 2000/2001.

38. It follows that I would reject the submission rather belatedly made by counsel for the defendants that Mr. Cogan Snr.'s obligations ought to have been judged, not by reference to the standard of the reasonably competent tradesman, but rather by the standard that might reasonably have been expected of a farmer who considered himself capable of replacing the glass. That is precisely the test that was rejected in *Wells*. If an occupier's duty of care when carrying out a task of the nature under consideration in this case was to be measured by reference to the degree of competence that they personally happened to possess rather than by an objective test such as the degree of care and skill to be expected of a reasonably competent or skilled tradesman, the protection which s. 3 of the 1995 Act seeks to afford the visitor from dangers on a premises would be wholly undermined with the occupier able to argue that they should be relieved of liability for dangers which they created in reliance upon their own incapacity.

39. It follows that I reject Mr. O'Donnell's submission that Ms. Newman was required to call as a witness a farmer or an individual possessed of the type of skills expected of a farmer to say that in 2000/2001 if placing glass in a door they would have known that only toughened glass might safely have been used.

40. Satisfied as I am that the trial judge was correct in law when he decided to measure the care that Mr. Cogan Snr. afforded to potential visitors to his premises when he changed the glass in the door in 2000/2001 by reference to the test in *Wells*, it is perhaps necessary to consider in slightly greater detail the standard of care identified in that decision. What is crystal clear from the Court's decision is that the occupier of premises who decides to undertake a household repair, such as the task of changing a handle on a door which later causes injury, is not to have the care they afforded in carrying out that task measured against the standard of care to be expected of the professional carpenter who might have been retained to do the job. Applying that reasoning to the facts of this case, Mr. Cogan Snr. was not to be found negligent for his failure to meet the standard of care that would have been expected of the professional glazier who might have been retained to change the glass in his door. However, neither was the care taken by an occupier in carrying out the task in question to be measured against their own individual competence. Otherwise the protection afforded to the visitor would vary according to the capacity of the occupier who could avoid liability by merely demonstrating that he

had done his best in all of the circumstances, regardless of the result.

41. What is clear from the decision in *Wells* is that the Court of Appeal was intent on identifying an objective standard by which the care taken by an occupier carrying out a DIY job on their premises was to be considered in the event that an invitee was subsequently injured as a result of that work. Thus, it was that the Court settled on the standard of care to be expected of the reasonably competent workman or tradesman who would have the necessary skill to undertake the job in question. The difference between that standard and the standard of the professional who might have been retained for reward to carry out the repair, which the Court rejected as being too high, is not elaborated upon in the judgment. That said, I consider it likely that the Court was seeking to draw a distinction between the professional, who would be expected to be aware of the most up to date requirements, regulations and standards and to carry out the work required in accordance with best practice, and the reasonably competent tradesman who would not necessarily be expected to know of the most up to date requirements, regulations or standards, but who nonetheless would have the skill to carry out the job competently and safely, even if not necessarily in accordance with the prevailing best practice expected of trade professionals. Thus, it was that the Court created an objective test by which the standard of work to be expected of a householder who takes on DIY repairs of a relatively routine nature might be tested. It should be said that the Court also made clear that there were certain types of jobs where the householder might be considered negligent for merely embarking on the task, such as certain electrical works or the like, but the task undertaken by Mr. Cooper did not fall within that category, it being of a type that was commonly carried out by householders.

42. In *Wells*, Mr. Cooper had given evidence as to his competence and experience in carrying out carpentry work. Based on that evidence the trial judge was satisfied to conclude that he was a competent carpenter who had skills equivalent to those of any reasonably competent carpenter who might have been called upon to carry out the task that had caused the plaintiff's injury. Those facts are to be contrasted with the facts in the present case where Mr. Cogan Snr. gave no evidence as to what, if any, competence or experience he had in respect glazing activities either in the home or elsewhere.

43. While the Court had evidence that Mr. Cogan Snr. had replaced the glass in the door and that it was still in position many years later, it could not be inferred from those facts that he could be considered, as was the case with Mr. Cooper in *Wells*, to fall within the category of person who might be considered a reasonably competent tradesman or amateur glazier. In light of Mr. Abbot's testimony, not only would that evidence have been required to absolve the Cogans of liability, but Mr. Cogan Snr. would then have to have given evidence to the effect that it was his reasonably held belief that in inserting ordinary glass that he was not exposing anyone who might be later on the premises to any risk of injury. However, as we know, there was simply no evidence as to the care, if any, deployed by Mr. Cogan Snr. at the time he changed the glass in the door in 2000/2001. These were all circumstances of importance when it came to the application of the test in *Wells* to the facts of the present case.

44. Regrettably, when the trial judge came to apply the decision in *Wells* he did so in reliance upon two findings of fact that were not open to him on the evidence. The first was his finding that Mr. Cogan Snr. was a reasonably competent glazier and the second that Mr. Cogan Snr. had likely purchased the glass from the retail supplier.

45. As it happens, it is not of critical importance that the trial judge impermissibly concluded that Mr. Cogan Snr. was a reasonably competent glazier or that he likely considered him to have skills equivalent to those enjoyed by Mr. Cooper in *Wells*, the only difference being that in the case of Mr. Cooper his skill was classified as that of a reasonably skilled carpenter as opposed that of a reasonably skilled glazier. Where the trial judge went wrong was in his failure to measure Mr. Cogan Snr.'s duty of care to potential visitors by reference to the care, knowledge and skill to be expected of the reasonably competent tradesman or amateur glazier tasked with replacing the glass in the door in 2000/2001 rather than by reference to his own knowledge of prevailing standards (para. 29) or what might have been expected of the professional glazier (para. 23). In so doing he failed to apply the test in *Wells* and also ignored the expert evidence of both engineers which was to the effect that a reasonably competent tradesman in 2000/2001 would not have installed ordinary glass in the door in question. Mr. Abbott said that a reasonably competent craftsman would have avoided the use of the type of glass that was in place and that only a "cowboy" would have done so. Further, a reasonably competent craftsman would have known to reject this type of glass if offered to him in a hardware shop for the purpose for which it was intended.

46. As for the defendant's expert testimony on the same matter, the following was the final exchange between counsel for Ms. Newman and Mr. Tennyson:-

> "Q. Mr. Devlin: ….Well, just in relation to my reasonably competent tradesman, I think I'm asking you, would you classify as reasonably competent a tradesman who would put in that type of glass, which you yourself say would not be suitable?
>
> A. No".

47. In circumstances where Ms. Newman established that no reasonably competent tradesman would have inserted non-toughened glass into the door in question in 2000/2001 and that the premises was dangerous by reason of the condition of that door, the High Court judge erred in law in failing to find the defendants liable in respect of her injuries.

48. Whilst perhaps unnecessary in light of the last mentioned finding, for completeness I feel it appropriate to refer to the conclusion of the trial judge which is identified in the last sentence of para. 29 of his judgment which reads as follows:-

> "Thus, it could not be said that a householder, who was a reasonably competent glazier, such as the first named defendant, could not have reasonably believed that the glass chosen was suitable for this location."

49. The first matter to be observed is, as I have already stated, that there was no evidence to support the finding that Mr. Cogan Snr. was a reasonably competent glazier or, for that matter, a reasonably competent tradesman. The second is that the belief of the occupier as to the appropriateness or safety of their approach to the task is immaterial. The test to be applied is not a subjective one - it is objective. The householder's reasonable belief is only of potential relevance if he can first establish, as was the case in *Wells* that he possessed skills equivalent to those of the reasonably competent tradesman that might in other circumstances have been asked to carry out the work in question. In this case, there was no evidence as to Mr. Cogan Snr.'s competence or as to his belief in the correctness of his approach to the task at issue.

**Conclusion**

50. For the reasons outlined earlier in this judgment I am satisfied that the trial judge was correct as a matter of law in seeking to apply the test enunciated by the English Court of Appeal in *Wells* when he came to consider the liability of the defendants to Ms. Newman in respect of her injuries pursuant to the provisions of s. 3 of the 1995 Act.

51. While the High Court judge made a number of findings of fact which were not supported by the evidence it was not these findings that led him into error. His mistake was in his failure to faithfully apply the test as advised in *Wells* to the evidence.

52. Mr. Cogan Snr.'s duty of care as an occupier of the premises when he changed the glass in the door in question in 2000/2001 was to carry out that task with the level of care and skill to be expected of a reasonably competent tradesman. Whilst many a householder may consider himself or herself capable of performing this type of task, when they do so they assume a duty to all who might subsequently be affected by their actions to carry out that task with the care and skill that is required to complete the task safely. If a visitor later suffers injury as a result of a danger caused by the act or omission of the occupier their liability for such a consequence will be judged against the standard of care that would have been expected of the reasonably competent tradesman asked to carry out the same task.

53. The uncontested evidence in the High Court was that no reasonably competent tradesman if asked to replace the glass in the door in question in 2000/2001 would have used anything other than safety glass. Regrettably, that was a standard that was not met by Mr. Cogan Snr. when he undertook the task. In such circumstances the trial judge was obliged to find the defendants were in breach of their obligations under s. 3(2) of the 1995 Act such that he should have found them liable to Ms. Newman who was injured by reason of the installation of glass that did not comply with that standard.

54. For all of those reasons I would allow the appeal.