THE HIGH COURT

[2008 No. 3390 P.]

BETWEEN

LORRAINE WALKER

PLAINTIFF

AND

MICHAEL LYONS, ON BEHALF

OF THE ADELAIDE AND MEATH HOSPITAL,

INCOPORATING THE NATIONAL CHILDREN'S HOSPITAL AND ISS IRELAND LIMITED TRADING AS ISS FACILITY SERVICES

DEFENDANTS

JUDGMENT of Ms. Justice Bronagh O'Hanlon delivered on the 16th day of January, 2018

Introduction

1. The personal injuries summons is dated 28th April, 2008. Pursuant to s. 17 of the Personal Injuries Assessment Board Act of 2003, authorisation was granted to the plaintiff dated the 3rd day of January, 2008.

2. The plaintiff is in poor health and does not work at this time. She resides at the home of her parents. The first named defendant is the nominated defendant for the Adelaide and Meath Hospital incorporating the National Children's Hospital, also known as Tallaght Hospital, Tallaght, Dublin 24. The second defendant is a limited liability company and is the cleaning company employed by the first named defendant at Tallaght Hospital.

3. The plaintiff's claim is that on or about the 16th day of January, 2006, when the plaintiff was a patient in the defendant's said hospital (and thus a visitor within the meaning of the Occupier's Liability Act 1995), she walked into the pantry area of the Lynn Ward in the said hospital. Owing to the presence of a wet and highly slippery and thus dangerous floor surface, she was caused to slip and to fall heavily and was thereby occasioned severe personal injuries, loss and damage.

4. The first defendant joined the cleaning company named in the title herein, initially by way of third party notice. The said defendants were later joined as co-defendants to this action. The basis of the first named defendant's claim is that the second named defendant failed to adequately clean the said area and failed to adequately warn the plaintiff of a potential danger.

5. The plaintiff's claim is that at in or about 10 o'clock on the morning of the 16th January, 2006, the plaintiff was allowed, permitted, and/or felt free to enter the said pantry area in order to obtain a drink to enable her to take some tablets. The plaintiff's claim is that there was no sign telling her not to enter the said pantry area, nor was there a warning to tell her that the area had just been cleaned. She claims that the cleaning company failed to put up a yellow man or yellow sign at the locus of the accident and that she was in the hospital as an in-patient where there was a relatively relaxed atmosphere and that she had no understanding that she was not allowed to go into the said pantry area.

The Pleadings

6. The plaintiff claims as follows;

(a) That the defendants, their servants and/or agents failed to clean and also failed to dry off the said pantry floor adequately or at all;

(b) Failed to warn the plaintiff of the wet and therefore highly slippery and dangerous nature of the said floor surface;

(c) Permitted the plaintiff to walk on a wet and thereby slippery and dangerous floor surface;

(d) Failed to place warning signs at and around the wet and slippery area;

(e) Provided a dangerous floor surface:-

The surface roughness of the floor area inside the kitchen/pantry area is 5 microns, which is low. In dry conditions this provides good slip resistance. However, in wet conditions this surface is very slippery. The floor when wet fails to provide a satisfactory slip resistance and is dangerous;

(f) Permitted and encouraged the patients, including the plaintiff, to use the said kitchen/pantry area when the defendants knew or ought to have known that same was dangerous;

(g) Washed the floor shortly before the plaintiff walked upon the same and permitted that to occur by failing to place obvious "Wet Floor" signs or to otherwise warn the plaintiff that the floor was wet and dangerous;

(h) Failed to prevent the plaintiff's access to the said area at the time the floor was wet, by, for example, the simple expedient of locking the entrance door until the floor was dried of or otherwise had become dry so that it was safe to walk upon;

(i) Breached their duty under s. 3 of the Occupiers Liability Act 1995 in failing to provide and to maintain a safe floor surface;

(j) Breached the provisions of the Safety, Health and Welfare at Work legislation including the regulations made thereunder insofar as same effects and promotes the safety of third parties such as the plaintiff;

(k) Failed to corner off the said area until the floor was dry and safe;

(l) Failed to have any or any reasonable care for the safety and health of the plaintiff while she was a visitor and patient in the said hospital;

(m) Failed to take any adequate and proper due care for the ill plaintiff;

(n) Failed to have any proper or adequate safe cleaning method or system in place;

(o) Failed to accord the plaintiff's proper care so that she was not permitted or required to walk upon a wet and dangerous floor surface.

(p) Further or in the alternative the plaintiff shall rely on the doctrine of *res ipsa loquitur.*

7. The first named defendant has filed a full defence and claims that the injuries suffered were, caused by the plaintiff's own acts. They allege that the plaintiff was negligent and in breach of duty in that she:

(a) entered the kitchen area in circumstances where she had been specifically told on numerous occasions not to do so as she was not allowed to enter the kitchen area, being an area restricted to hospital staff;

(b) Was aware that patients (including the plaintiff) were not permitted to enter the kitchen area;

(c) Was specifically told not to enter the kitchen area by a member of the cleaning staff as the floor was wet;

(d) Failed to have any regard to the yellow warning sign which was in place which read "Caution – wet floor";

(e) Failed to take any reasonable care in all the circumstances;

(f) Failed to have any or any regard for her own safety;

(g) Failed to look where she was walking;

(h) Failed to have any or any proper lookout;

(i) Failed to wear safe and suitable footwear;

(j) Failed to use her common sense;

(k) Failed to act with a modicum of caution for her safety;

(l) Being the author of her own misfortune;

(m) Failed to mitigate her loss;

(n) The defendant reserves the right to furnish further particulars and the plaintiff further pleads that they will rely on such further or other evidence of negligence and breach of duty on the part of the plaintiff as may arise from the examination of the plaintiff and witnesses herein.

8. In addition the first named defendant pleads that if the plaintiff suffered personal injuries loss or damage, in the manner alleged, the same are caused by reasons or circumstances particularly within the knowledge of the plaintiff herself.

9. In addition, the first named defendant does not admit that the incident, the subject matter of these proceedings, occurred in the manner alleged or at all or that the plaintiff's alleged injuries relate to the accident alleged herein.

10. In addition, each allegation, statement and averment pleaded in the personal injury summons is denied as if each matter were set out separately and traversed *seriatim*, other than what is admitted at para. 1.1 of the said summons, and it is denied that the plaintiff is entitled to any relief.

11. The second named defendant puts the plaintiff on full proof of the matters alleged at paras. (a) to (j) inclusive of the personal injuries summons and specifically denies the allegations (a) to (l) inclusive, adding at para. 3(m) of their defence that if the plaintiff did sustain the alleged or any personal injuries, loss or damage (which is not admitted) the same were caused wholly, or alternatively where contributed to, by the plaintiff's own negligence/contributory negligence. In addition, at para. 4 of their defence, the second named defendant claim that some or all of the injuries suffered by the plaintiff were occasioned in whole or in part by the plaintiff's own negligent acts and set these out:

(a) Failing to take any or any adequate care for her own safety;

(b) Failing to exercise reasonably care;

(c) Failing to exercise common sense;

(d) Causing or permitting herself to act with reckless disregard for her own safety;

(e) Causing or permitting herself to walk into the kitchen area despite being specifically told not to go in my a member of the second named defendant's cleaning staff as the floor was wet;

(f) Ignoring the said warning and request not to enter the kitchen by the said cleaner;

(g) Causing or permitting herself to disregard the yellow warning sign that was in place which read "caution wet floor".

12. The second named defendant then reserves the right to rely on such further and other instances as may be adduced from the evidence of the plaintiff and any witness called on her behalf at the trial of the action and also to adduce further and better particulars.

13. The second named defendant denies that the plaintiff is entitled to the reliefs claimed or to any relief as against the second named defendant and further pleads that if the plaintiff is entitled to any relief (which is not admitted) it is against the first named defendant only.

The Plaintiff's Evidence
14. The plaintiff gave evidence that she had suffered from anorexia nervosa and had approximately 300 admissions to the said hospital for treatment of same. The accident occurred during an admission which began on 29th December, 2005 and continued in the Lynn Ward until May 2006.

15. The plaintiff's evidence was that there was no nurse on duty at the nurses' station, that the door of the pantry was open and that she needed a warm drink to take some tablets. The plaintiff gave evidence that the normal pattern would be that she would ask the kitchen lady who would normally be in the pantry to make her a hot drink. The plaintiff's evidence was that there was no sign up nor was there any obstacle and that therefore she had been able to walk straight into the kitchen/pantry area where she asserts there was no yellow sign or yellow man. The plaintiff described the pattern/routine in that area as casual, where patients and their relatives are able to enter the pantry area to get cold or warm water. It was not her first time going into this pantry area to get a drink. The plaintiff gave evidence that people would tell her to "go ahead".

16. The plaintiff claims that she was caused to slip and that both a nurse's aide and a cleaning lady explained to her that the floor had been wet. After falling, the plaintiff said that a male nurse's aide moved her from the kitchen to a room for relatives and that she saw no nursing staff in the vicinity of the accident. The plaintiff asserted that had the door of the pantry being closed she would have knocked on same. The plaintiff stressed that people were permitted to enter the pantry and that it was a very relaxed system.

17. The plaintiff claimed that this accident significantly changed her lifestyle and that her mobility was greatly affected by such. She indicated that she was not working although she had worked previously in her father's jewellery business. The plaintiff clarified that there was no loss of earnings claim but travel expenses in the sum of €300 per annum were claimed.

18. The plaintiff claimed to have mental difficulties following the accident including depression but did accept that her left hip difficulties were not as a result of this accident. She further accepts that she does have brittle bones because of her pre-existing condition of anorexia nervosa.

19. Under cross-examination the plaintiff accepted that she understood that the words on the door of the pantry "authorised personnel only" were meant as a sign that unauthorised personnel should not enter the pantry. She added that most of the time she took this rule on board but that some nurses would allow one to enter or felt that it was okay for one to enter. On that basis, the plaintiff questioned the inconsistencies in the administration of the system.

20. The plaintiff confirmed that she had attended an inspection of the pantry area on the 13th December, 2007 with Mr. Gleeson, Engineer, who gave evidence for the plaintiff. The plaintiff denied that she had been told not to go into the pantry area on the occasion of the accident although it was put to her that she admitted same in the presence of the engineer present at the said inspection. She later denied admitting same in the presence of the engineer present at the said inspection. The plaintiff admitted that she did tell Mr. Hurson, Orthopaedic Surgeon, that she had no recollection of the events. The plaintiff again denied that there had been a yellow man/yellow sign in the middle of the doorway in the pantry area on the occasion of the said accident and she denied that she was told not to go into the said pantry. Mr. Hurson, Consultant Orthopaedic Surgeon, examined the plaintiff on the 17th August, 2017. It was put to the plaintiff that on that occasion she admitted to Mr. Hurson that she had no recollection of the accident but remembers everything before the fall.

21. The plaintiff did admit that she could not remember the fall but that up until she fell she remembered everything. The plaintiff was adamant that had she been told not to go into the said pantry area on the occasion of this accident, she would have not done so. She denied the presence of a yellow man sign and denied moving such an item. The plaintiff asserted that she would not have gone into the pantry area had she known that the floor had just been washed. It was put to this witness that the cleaning lady would say that there was a yellow man sign present. The plaintiff admitted under cross-examination that she had been quite near the water boiler in the pantry of the kitchen but beyond that she could not recall. She identified the locus as being just in front of the fridge area. It was put to the plaintiff that the cleaning lady would say that the plaintiff was closer to the doorway and not to the boiler when she found her. Under cross-examination the plaintiff admitted that she agreed with her own engineer who suggested that the door into the pantry should have been locked. In relation to the sign "authorised personnel only", the plaintiff said that there was such a sign but that she wasn't sure whether it was there on the morning in question.

Evidence of the Plaintiff's Father Mr. Walker
22. This witness admitted that he probably did see an "authorised personnel only" sign but didn't take notice of it and was not under the impression that he could not go into the pantry room. This witness said that as a visitor to the hospital he himself was never stopped from getting water in the pantry, and that there was no one to stop him going in and out. He further stated that there was no one there to warn a person that it was a restricted area and that his daughter had been taking a lot of tablets and needed warm water with which to take them.

23. Mr. Connor Gleeson, Engineer, described the locus of the accident on his site examinations. He said that the surface of the floor of the pantry was very slippy when wet and had insufficient water texture. This witness made the point that the sign on the door to the pantry area was not visible when the door was open and that a simple solution would have been to close the door , when a floor was wet as it did have a lock and keypad. This witness referred to photograph 4 and said that this would not have prevented authorised persons coming into the pantry area and that there should have been a sign or a yellow man. Under cross-examination, this witness stated that the appropriate action would have been the placing of a yellow man in the doorway. He further agreed that this would have meant that had such a sign been present, then no person ought to go in onto the floor surface. This witness noted that the sockets in the pantry were not for public use and agreed that it was highly unlikely that the plaintiff did not know that there was a sign on the door. The witness agreed that there was no reason to believe that the sign was not there. Mr. Gleeson said that the plaintiff was often in the kitchen and that signs alone do not provide an adequate control where some staff might have said not to go into the kitchen but other staff took no notice.

24. By analogy, the engineer compared smoking areas in a hospital where there are no smoking signs but he says people smoke in these areas regardless. His theory was that if signs in general are ignored, they become ineffective. The signs were inadequate of themselves to prevent the plaintiff going into the pantry area.

Evidence of Ms. Reilly, Claims Co-ordinator at the Hospital
25. This witness indicated that she was responsible for feeding claims to the risk management system. However, she described herself

as being employed under the direction of the second named defendant cleaning company and further indicated that there were 125 staff in that company with about 60 of them being staff of the hospital.

26. This witness described the policy that only authorised staff were allowed into the pantry and that patients were not allowed into same. This witness described the cleaning arrangements as being made on each particular ward. This witness said that she remained outside the pantry area during the site examination while the plaintiff and her father went into the area, whilst wearing the slippers she wore on the occasion of the accident. A slip test was done on the plaintiff's slippers when they were both dry and wet, by the engineer. The floor and floor surface responded well in both tests.

27. Under cross-examination this witness confirmed that her role was administrative and that she was the person who informed the insurance company of an accident but that she herself was never involved in terms of forming allegations against a third party. This witness said the general rule was that only household staff are permitted to go into the pantry. She stressed that the hospital is a kilometre long and that it has to be a reasonably relaxed place in order to operate effectively. This witness said that one could not guarantee that people do not enter the pantry and that there is signage outside the doors but, again, she stressed the size of the hospital. She did agree that the signs must be up to the task in question. She further agreed that the signage was inadequate for the indented purpose and that the door was open and was not a good way to go about keeping people out of the pantry. She agreed that if the door to the pantry had been closed it would have been an effective method and that if it had had a keypad it would have been even more effective. In relation to the idea of keeping the pantry doors shut, this witness said that the doors to the pantry areas needed to be open to enable the staff to serve the meals. A comparison was made at this point between access by patients, for example, in intensive care areas, theatres and laboratory sections of a hospital, ICU and coronary care. She described the pantries in the hospital as being reached within a ward before one reaches the bed sections of the ward.

28. Both engineers were in agreement with the analysis of the plaintiff's engineer, regarding floor and floor surfaces in that the particular floor was slippy when wet but safe when dry. Both engineers agreed that this particular surface was widely used in hospitals and had good hygienic qualities and very good traction when dry.

29. Mr. Cathal Maguire agreed with the foregoing findings of Mr. Gleeson, Engineer, and added that a yellow man, if used, was an appropriate way of dealing with the matter. This witness said that if warning devices were not used by cleaners, there would be a multiplicity of accidents and that the same rule should apply to all rooms in terms of the approach to cleaning. Mr. Maguire accepted that the cleaning lady gave a warning to the plaintiff. He accepted that there had been a yellow man and stated that his understanding was that the aim would have been to have the area dry as quickly as possible as a wet floor was a very serious hazard. This witness accepted under cross-examination that once an adult was told they were not allowed into a room one would expect that adult to obey the direction. It was further accepted that when a rule is not adequately enforced, it compromises the effectiveness of such. This witness stressed the necessity of the adult concerned being willing to obey the rule. He said that the yellow man and verbal warnings were adequate safeguards. This witness also agreed that a safe way to prevent an accident was to close the door when the floor was wet; however, this witness felt that a yellow man or yellow sign was a perfectly satisfactory solution.

Evidence of Ms. Ludmili Ivanova – Witness for the Second Named Defendant

30. This witness confirmed that she worked in the Lynn Ward after the accident until 2016 and that she had seen the plaintiff a number of times in that ward. The general procedure she described for cleaning was that she had a special hook on the trolley for yellow signs and that she herself was obliged to wear special clothing for this work. The witness stated that she had had safety training, and that during the training they were taught protection techniques and were trained to make their presence as cleaning staff known. Her recollection was that she put the sign in the middle of the pantry floor. She described this with reference to Photograph 1. She stated that she herself was in the middle of the corridor outside the door when the accident occurred but that she was close to the door and had told the plaintiff before the accident that the pantry had just been cleaned and to wait until the floor had dried. Her evidence was that the plaintiff was facing forwards when she said this, carrying a mug or cup in front of her, and that the plaintiff had moved the yellow man a little to the right and that it was possible that the plaintiff had not heard her. She stressed that she asked the plaintiff to wait, that she had just finished her task and did not want the plaintiff to fall. She said that she ran to a botanist for help as the plaintiff had fallen on the floor and both of them helped the plaintiff into a TV room. Under cross-examination, this witness confirmed that she herself had cleaned the floor and that she had a lot of yellow men on her trolley, five in all. She confirmed that she started her shift at 8:30am having thirty-two rooms to clean and that she did know the code on the pantry door which she had been given by her supervisor. She described it as customary to leave the door open in order to allow a wet floor to dry and that the doors have to be locked when there is no one in the room. She confirmed that when she is finished and the floor is dry, she can then close the door. She confirmed that on the morning of the accident there was no time for her to close the door as the plaintiff had walked in. She said that at all times the cleaners use a dry mop.

31. This witness confirmed that it was not the first time the plaintiff had walked into the pantry and that she was not surprised that the plaintiff walked past her. She made the general point that people ignore what cleaners say. She confirmed that a yellow man was inside the door on the floor of the pantry and that it was fully inside the room and that anybody who turned into the kitchen would have seen that sign. This witness says that the plaintiff did not look at her but turned into the kitchen/pantry. She repeated her words but the plaintiff was already in the kitchen/pantry saying she needed warm water to take her tablets and not to worry. This witness stressed that if a patient or a visitor needs something they ought to go to a nurse, that she herself was not authorised to touch anything in the pantry or take anything from the pantry.

Findings of Fact

32. In considering the order of the various submissions made, it is quite clear to this Court that neither the first nor the second named defendant could be held liable for this accident. The system of cleaning as described by Ms. Ivanova shows that reasonable care was taken for the safety of the plaintiff. This Court believes that the second named defendant carried out her duties on the occasion in question in accordance with her training and the system of cleaning in the hospital. In terms of the hospital's management of the site, this Court is quite clear that Ms. Ivanova's evidence of what occurred on the occasion of the accident is clear, cogent and consistent both in her direct evidence and under cross-examination. The plaintiff on the other hand had admitted on a number of occasions thorough her evidence to other parties that she could not remember the accident, that she could remember before but not after the accident.

33. On the issue of liability, the court has to decide whether the plaintiff has made out a case in negligence against the first named defendant in terms of their control of the area in question and management of the hospital. The cleaning lady gave very clear evidence as to her method of cleaning and as to the procedure she adopted on the occasion of this accident. The plaintiff said that her recollection up to the point of the accident was clear but that after the accident, she both recognised and stated that she did not have any or any great recollection of the events. It is clear to the court that the plaintiff was in what might loosely be described as one of the more open areas of the hospital. The court takes into account the fact that the plaintiff, on her own evidence, had

many admissions to the hospital and was on a long-term stay at that time. The plaintiff clearly said that most of the time she observed the rule not to enter the pantry and it is clear from her evidence that she was well aware of the existence of such a rule. It seems to this Court that a system was in place at the hospital in respect of the fact that patients were not permitted to enter the pantry areas and that there was a sign on this pantry door saying "authorised personnel only". It has not been proven to this Court that the particular pattern of signs used on the particular door were not present on the date of this accident.

34. The methodology in terms of the cleaning and use of the pantry was clearly described by Ms. Ivanova. There is logic to her evidence. This Court notes the evidence of Ms. Reilly who described the necessity of leaving the door of the pantry open so that the work of the hospital could be done in terms of feeding patients. The patient in this case was well acquainted with the Lynn Ward. The plaintiff gave evidence that she "did not keep doing it", with reference to her entering the pantry. This implies to this Court that most of the time she obeyed the rule and did not enter the pantry area. This Court accepts the evidence of the cleaning lady in general and in particular when she says that the plaintiff did not look at her and that when the plaintiff entered into the kitchen, the cleaning lady repeated her words of warning but that the plaintiff in effect disregarded her because the plaintiff was already in the kitchen. That, in the view of this Court, is a clear rejection of the warning given to her.

Written Legal submissions on Behalf of the Plaintiff

35. The plaintiff referred to a High Court decision *Sharon Kelly v. Lackabeg Limited t/a the Arc* [2016] IEHC 63. In this judgment of Barr J. delivered on 19th January, 2016 concerning the operation of the general cleaning system on the premises, the judge found that those working in the premises were unable to take sufficient care to keep the floor dry and clean. He continues to say that, having regard to the fact that complaints had been made about the condition of the ladies' toilet and the parquet floor in the Lobby Bar prior to the time of the plaintiff's fall, he was satisfied that there was a failure on the part of the defendant to take reasonable care for the safety of the plaintiff while on the premises. He also found that the plaintiff was entitled to expect the floor to be dry and safe for her to walk across and he found liability must rest with the defendant in that case. This Court however distinguishes the reported decision from the instant case in terms of the factual circumstances of the two accidents. In the decision of Barr J. it is quite clear that the plaintiff was in an area where she was perfectly entitled to be and that is not true of the case before this Court.

36. The case of *Margaret Daly v. Health Service Executive* [2014] IEHC 560 is also referred to. In this case the plaintiff walked into the kitchen carrying a dirty cup in her left hand. Her evidence was that as she approached the sink her right foot slipped forward and she fell to the ground landing in a twisting fashion on her right hip. She says that the cause of her fall was that there was water on the floor which she saw and felt. The finding of the trial judge was that there was no dispute about the facts of this accident and that the plaintiff fell on a wet floor. The trial judge found that the defendant produced no evidence to contradict the plaintiff's account, and on the contrary the defendant's evidence confirmed it. He found therefore on the balance of probabilities that the floor on which the plaintiff fell was wet from soapy dishwater which rendered it moderately slippery. In this case there was also found to have been a very significant movement of perforated trays containing large amounts of crockery recently rinsed with soapy water into the dishwater and that this occurred up to 40 times in an average day. The judge found that this made it virtually inevitable that the floor would become wet and slippery in the absence of constant vigilance by the kitchen staff responsible for loading the dishwasher. It is the view of this Court that the circumstances are quite different to the present case in that the plaintiff insisted upon entering into an area where she should not have been, where she was warned not to enter and where there was appropriate signage and a system in place to prevent entry by patients.

37. The plaintiff referred also to the case of the *Jessica Moore v. Westwood Club Limited and Templeville Developments Limited t/a Barcode, Fusion Fun and Fortune* [2014] IEHC 44 in which the plaintiff was returning from the restrooms in the defendant's premises and was crossing the floor of a restaurant area carrying a glass in her right hand. During this journey the plaintiff fell on the floor, landing on the front of her body, and the glass shattered and she suffered an injury to her finger. Despite an allegation that the plaintiff was pushed to the ground, the court was satisfied that she in fact fell and had not been pushed. In this particular case, the judge found that there was an impairment of the slip resistance of the floor in the area and that it may well have contributed to her fall and found a breach of duty of care on that basis.

38. The case of *Eileen Monahan v. Dunnes Stores and Dunnes Stores (Ilac Centre) Limited* [2013] IEHC 79, delivered on 15th February, 2013, concerned the display of large and rather unstable Christmas gift bottles of olive oil which were on a tiered table. The manager of the defendant's store destabilised the display causing anything between six and ten bottles to come crashing to the ground creating a hazard and a spillage of oil that covered an area of 6x10 ft. The plaintiff claimed that the defendant was negligent in its management of the aforementioned spillage in that it failed to warn her of its presence or protect her from inadvertently walking into the area. As a result she fell heavily as she approached Mr. Tully, the manager, to speak to him before clocking out of work that evening. The defendant, on the other hand, maintained that it had acted with reasonable care for the plaintiff's safety. The defendant asserted that it immediately set about cordoning off the area and erecting warning signs, which it maintained were sufficient to protect both its staff and members of the public from injury, assuming they were acting with due care for their own safety. There was also a plea of contributory negligence. In this case at para. 10 of the judgment Irvine J. said that the onus of proof was on the plaintiff in this case to establish that the defendant was negligent in failing to protect her from the spillage which it had created on the floor of its premises on the 1st December, 2006. She said that the extent of the defendant's duty of care must be one which is proportionate to the risk generated by the spillage. As to the foreseeability of any potential injury, she found a number of matters material to that. The court took the view that one could not equate the risk emanating from an oil spillage with that generated from a spillage of a drink such as coffee, water or a soft drink. Spillages of that nature once the immediate surplus is removed and the pedestrian warned that the floor remains wet, leave the floor wet or damp but relatively safe for those who approach using reasonable care. The same cannot be said of a floor where there has been a spillage of oil. Likewise a floor with an oil spillage is to be contrasted with a floor which remains wet because it has been recently washed and which will not be hazardous provided adequate warning of that fact is given.

39. At paragraph 21 the judge notes that claimants all too often, in what she describes as "slip and fall" type cases, seek to make other parties liable for the failure to take reasonable care for their own safety. With ever increasing frequency, those who are injured in such circumstances try to shift or transfer their own personnel responsibility to an occupier or employer often relying on standards of care that are entirely artificial and amount to a demand that others act in a manner which amounts to a counsel of perfection. All that is required of them by law is that they take reasonable care. Irvine J. sets out that this was not one such case and that because of the nature of the hazard and the foreseeable consequences for anyone who might mistakenly access an area upon which oil has been spilt, she was satisfied that the defendant failed to act with reasonable care for the plaintiff's safety. This case is quite different to the instant case where the plaintiff chose to ignore not only a yellow man sign placed inside on the floor of the pantry, but also the rules of the hospital, that do not permit general access to the pantry and where the sign clearly stated "authorised personnel only". This is compounded by the fact that the cleaning lady asked her to desist from entering, a warning she choose to ignore.

40. The plaintiff also refers to a decision of Gilligan J., *Patricia Coleman v. Shoneys Diner* (unreported, High Court, Gilligan J., 8th July,

2003). This was a trip and fall accident where the judge found there to be two principal issues, namely the condition of the fall area in the defendant's premises in the vicinity of the entrance door prior to retiling, and on the date on which the retiling was actually carried out were interwoven. The judge went on to say that the plaintiff's case was quite simple on the basis that the floor was in the condition described by her. The brass bar had to be contaminated so that when she put the sole of her left shoe on the brass bar, she slipped, causing her to fall as a result of which she sustained the injury complained of. She makes the case that the cleaning system was inadequate, although she had made no complaint as regards the floor area of the premises either on the day of her accident or at any time previous during her numerous visits to the premises.

41. The judge stated that the onus of proof is upon the plaintiff to satisfy the court on the balance of probabilities that the floor was in the condition, as described by her, on the day of the accident. The judge found that on any interpretation of the evidence, her recollection had to be incorrect. He found that, as a matter of probability, the floor was in fact retiled on specific dates in June 2000. Insofar as the plaintiff fell on or about the 11th August, 2000, she fell on the floor in its retiled condition. He was satisfied that, in the circumstances, having regard to the plaintiff's description of the events, no case was made out for the defendant to answer on the basis of negligence or breach of duty or breach of statutory duty. Accordingly he dismissed the plaintiff's claim.

42. The plaintiff refers to the case of *Ann Timbs v. Templeogue Taverns Ltd.,* a High Court judgment of Morris J. (as he then was) delivered on the 18th December, 1992. The plaintiff's claim was that the weather was wet and because of the weather conditions, the tiles on while she fell were slippery and accordingly dangerous. It was argued that there was a failure on the part of the defendant as an occupier of the premises to use all reasonable care for the plaintiff while she was on the premises to protect her from an unusual danger in the premises. It was argued that the condition of the titles were such that they were a danger and thus the defendant was negligent in failing to have safe tiles in the area.

43. The argument was that ideally the titles would be of a non-slip "category". However, the tiles which existed at the time of this accident could only be faulted if one was looking for 100% safety. It was acknowledged that while the tiles were not ideal, they were reasonably suitable for the circumstances and conditions in which they were laid and to be used. The evidence on behalf of the defence was that the tiles were in the British standard definition of "good" and fell into the category of generally satisfactory for normal use.

44. The engineering and architectural evidence confirmed that the tiles were safe irrespective of whether they were wet or dry. The judge found that there was no case made out by the plaintiff that the premises in question were dangerous or unsatisfactory or that the hallway was in the circumstances an unusual danger. He accordingly dismissed the plaintiff's claim.

45. Authorities were filed on behalf of the first named defendant, the first of these being *Kathleen Crowe v. Merrion Shopping Centre Ltd. and Southside Contract Cleaners Ltd.* This was a Circuit Court action heard by Judge Spain (as he was then). He found as a fact that Southside Contract Cleaners Ltd. were engaged in cleaning the premises of the Merrion Shopping Centre on the date of the accident. He further found that it was their employee who was responsible for the cleaning duties which lead to this accident. He found that the cleaning duty involved the employees mopping down the side panels of the travellator leading from the carpark to the shopping mall and that a pool of water formed at the bottom of the travellator and on the tiles on which the plaintiff slipped . He found that they were responsible for the cleaning duties that day and that they were negligent in the performance of those duties.

46. He then looked at the issue of whether Merrion Shopping Centre Ltd. as occupiers of the centre were also liable. It was pointed out to him that liability would only arise in circumstances where the occupiers had themselves undertaken a piece of work and in consequence of having done it negligently they caused an accident. Liability would be imposed on an independent contractor solely where that independent contractor was brought in by the occupier to perform the task and the negligent performance of that task later lead to the accident. The principles of common law were outlined to indicate that an occupier is not entitled to escape liability for defects on his premises where these were caused by an independent contractor, save in circumstances where the service for which the independent contractor was engaged required some specialised technical knowledge or expertise, such as the repair of the lift, for example.

47. The judge took the view that the shopping centre engaged contract cleaners where they could have undertaken this cleaning themselves. The fact that they had contracted out the work did not absolve them of their primary responsibility to ensure that the premises were reasonably safe for those persons to whom they had opened their centre and who were effectively invited to come in as customers. The judge made a decree against both defendants with an order for indemnity. It is noted in this report that the Occupiers Liability Act 1995 now supersedes the common law duties discussed in that case.

48. The next case referred to is *Michael Connolly v. Dundalk Urban District Council and Mahon and McPhillips (Water Treatment) Ltd.* [1990] 2 IR 1, a Supreme Court Decision where judgment was delivered by O'Flaherty J. This decision arose out of an appeal from Blayney J. (as then was), whereby the trial judge had found that the joint between the two pipes in question had been inadequate for a considerable time prior to the accident and that this inadequacy should have been noted and acted upon when the periodical servicing of the equipment was taking place. The judge further found that the second defendants owed an obligation to the first defendants to keep them informed as to the changes that modern standards might require in the system from time to time.

49. In the High Court, Blayney J. decided to divide liability equally between the defendants but the Supreme Court held that the degree of fault on the second defendant was the greater. The court held that they failed to exercise the appropriate degree of care in carrying out what they had been retained to do and the Supreme Court apportioned 80% of the liability to the second defendants and 20% of the liability to the first defendants.

50. *Prokop v. The Department of Health and Social Security and Cleaners Ltd.* [1983] Lexus Citation 339 is also referred to. In that instance, the learned trial judge rejected the case and found support for the plaintiff's account of her falls in other evidence as to the state of the floor. The decision was upheld by the Court of Appeal.

Conclusion

51. It is the view of this Court that, in all the circumstances, s. 7 of the Occupiers Liability Act covers the liability of occupiers for negligence of independent contractors.

> "An occupier of premises shall not be liable to an entrant for injury or damage caused to the entrant or property of the entrant by reason of a danger existing on the premises due to the negligence of an independent contractor employed by the occupier if the occupier has taken all reasonable care in the circumstances (including such steps as the occupier ought reasonably to have taken to satisfy himself or herself that the independent contractor was competent to do the work concerned) unless the occupier has or ought to have had knowledge of the fact that the work was not properly

done."

Clearly on the evidence heard, there is no breach of s. 7 of the Occupiers Liability Act.

52. This Court notes that the Occupiers Liability Act 1995 sets out the duty owed to visitors at s. 3:-

> "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.
>
> (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."

53. The cleaning lady herself makes it very clear that she has no authority over a patient, that it is a nurse who deals with the patients' needs and that a patient must seek out a nurse where necessary. This Court noted how the cleaning lady stressed that she is not authorised to touch anything in the pantry itself. This Court holds the view that the plaintiff's contention that there was no yellow man sign is incorrect and the court does believe the evidence of the cleaning lady that the plaintiff moved the sign. This Court holds the view that although advised not to enter the pantry area owning to a wet surface, the plaintiff insisted on going ahead, ignoring the warning both in terms of the yellow man sign which she moved and the verbal of the warning of the cleaning lady.

54. This Court takes the view that there was a good cleaning system in place and a good safety system which enabled work to continue in the hospital and enabled those who needed access to the pantry to have such. It is the conclusion of this Court that there can be no sustainable case against the hospital in terms of its cleaning system, nor is there a case against the management of the hospital in relation to this accident.

Causation

55. The accident which this plaintiff suffered was caused by her own disregard of the system in the hospital both in terms of the manner in which the hospital was managed the hospital and in the manner in which the cleaning system was carried out. The plaintiff ignored all the warning signs even though she admitted that most of the time she had regard to such systems and signs. She is the author of her own misfortune. Both engineers agreed that the floor surface used in the pantry was one widely used in hospitals in this country and that it was a very good surface when dry although a very slippy surface when wet.

56. In consideration of the various submissions, it was quite clear to this Court that neither the first nor the second named defendant could be held liable for this accident. The system of cleaning as described by Ms. Ivanova shows reasonable care was taken for the safety of the plaintiff and this Court believes that the second defendant carried out her duties on the occasion in question in accordance with her training and the system of cleaning in the hospital. In terms of the hospital's management of the situation this Court is quite clear that Ms. Ivanova's evidence of what occurred on the occasion of the accident is clear and cogent and consistent both in her direct evidence and while under cross-examination. The plaintiff on the other-hand has admitted on a number of occasions through her evidence to other parties that she could not remember the accident, that she could remember up until the accident, but not after the accident.

57. This Court has found that neither defendant is liable for this accident and therefore dismisses the case brought by the plaintiff as against both defendants.