12
King's Bench Walk

Janice Cockerill v (1) CXK Limited (2) Artwise Community Partnership [2018] EWHC 1155 (QB)

Nigel Lewers acted for the First Defendant, the Claimant's employer, successfully defeating a personal injury claim for an accident at work.

Background

This case arose from an incident whereby the Claimant, upon visiting unfamiliar premises in the course of her duties, fell down a doorstep, suffering injury to her ankle giving rise to chronic disability. Of some considerable legal significance was the date of the incident: 1st October 2013, the day of the coming into force of section 69 of the Enterprise and Regulatory Reform Act 2013 ("ERA").

The Claimant brought proceedings against both her employer at the time, CXK, and the occupier of the premises, Artwise. The case was to be tried first on liability only.

The Legal Framework

There was no dispute that both parties owed the Claimant a legal duty of care. Different legal regimes applied in each case.

Employer's Duty of Care

The parties were agreed that the effect of s.69 ERA was that there was no longer a self-standing cause of action available to the Claimant for any breaches of the statutory duties of employers under what have become known as the 'six pack' of health and safety regulations. The only route open to the Claimant against her employer was common law negligence, although the statutory duties continued to be relevant to the question of what an employer ought reasonably to do.

In that regard the Claimant invited the Court to consider the duty to assess risks under Regulation 3(1) of the Management of Health and Safety at Work Regulations 1999 and the duty to have suitable floors and surfaces found in Regulation 12 of the Workplace (Health, Safety and Welfare) Regulations 1992.

Occupier's Liability

The Claimant's case against Artwise was brought under section 2 of the Occupiers' Liability Act 1957, the common duty of care.

The Facts and Evidence

The relevant step was a 7inch drop between a lobby and a kitchen with a connecting door between, which was

propped open at the time.

The step had hazard warning tape applied to it. There was clear signage on the lobby side of the door warning of the step beyond. Since the accident, further hazard warning tape had been applied to the base of the door and to the step itself.

A risk assessment of the premises had been undertaken in February 2013, which identified the 'slip, trip, falls' hazard of the door. The risk assessment also identified the main function of the door as being one of security, safeguarding access to the building.

The question at the heart of the case was why did the Claimant fall down the step?

Liability

The Claimant's case on liability came down to two propositions:

1. The open door was a breach of the duties of care owed to the Claimant and caused her accident; and/or
2. More should have been done to warn of the step's existence and the failure to do so caused the Claimant to miss noticing the step and therefore to fall.

Rowena Collins Rice sitting as a Deputy High Court Judge dismissed both propositions.

As to the first, the Judge found that keeping the door shut was not part of the duty of care owed to the Claimant by either defendant to take reasonable steps to keep her safe from falling over the doorstep. Rather, the common-sense explanation of the risks associated with the door and step identified in the risk assessment were that the step presented a particular falling hazard *when invisible* by reason of the door's being shut, as it usually was, to visitors arriving in the lobby. The door standing open on the morning of the accident did not expose the Claimant to a risk which its closure was designed or intended to prevent (see [60-61] of the judgment).

As to the second proposition as regards the occupiers, the Judge held that the step was adequately lit and that reasonable steps had been taken to keep visitors reasonably safe: warning of the steps with signs when the door was closed and ensuring that it was clearly marked with hazard tape when open.

Considering the significance of the fact that further hazard tape had been applied to the door and step since the accident, the Judge was clear in holding that, "*[t]here is no necessary logic that post-accident improvements must be taken to be suggestive of pre-accident deficiencies, even where, as in the present case, it was accepted that the improvements had been made in the light of the accident*" (at [67]).

Artwise, as occupiers, were not found to be in breach.

For the employers, CXK, it was held that the assessment of the risk posed by a step is not one which is esoteric or specialised in the employment arena, nor was an employee in a position of special vulnerability in that regard. The Judge concluded that it was reasonable for an employer to accept that marking the outline of a clearly visible step with hazard tape was "*a reasonable response to its existence, and to the ultimately ineradicable risk of falling which steps always present*" (at [82]).

The Judge did not consider that the Claimant was assisted by Regulation 12 of the Workplace (Health, Safety and Welfare) Regulations 1992 as that provision is directed to the construction and surfacing of floors, which is not easy to apply to the existence of doorsteps.

An argument was put forward by the Claimant that employers can and should be expected to insure against accidents of the sort that befell the Claimant, while claimants cannot reasonably be expected to insure against them. Mrs Justice Collins Rice was clear that, even if this argument had any weight before 1st October 2013, it cannot survive the 2013 Act:

"*In relieving employers of no-fault liability to claimants in the field of health and safety, the Act no doubt intended to relieve them of some of the legal burden of insuring against no-fault liability. Parliament's intention that claimants must prove that their accidents were someone else's fault before they are entitled to compensation must presumably mean just that*." (at [85])

In summary, neither CXK nor Artwise were found to have conducted themselves negligently in relation to Mrs Cockerill. This was, unfortunately for Mrs Cockerill, just an accident.

HELEN WALLER

Pupil