

Duty of Care and Slippery Floors



Professor Mark Pawlowski considers a recent High Court decision on an occupier's liability for slippery floors

In a previous issue of this journal (August 2007, pp. 26-28), the writer examined recent case law on the distinction between "activity" dangers and "premises" dangers under the Occupiers' Liability Act 1957. In this article, he considers the duty of care owed by a shop owner under the Act to keep floors clean and clear of spillages.

It is well established that an occupier owes a common law duty to take reasonable care to see that the floors in his premises are kept clean and free from spillages so that customers are reasonably safe. He does not, of course, have to guarantee their safety – the obligation is to take "reasonable care" in all the circumstances of the particular case: see, s.2(2) of the Occupier's Liability Act 1957. In *Turner v. Arding & Hobbs Ltd* [1949] 2 All E.R. 911, at 912, Lord Goddard C.J. stated the common law principle as follows:

"The duty of a shopkeeper in this class of case . . . [is] to use reasonable care to see that the shop floor, on which people are invited, is kept reasonably safe, and if an unusual danger is present of which the injured person is unaware, and the danger is one which would not be expected and ought not to be present . . . there is a burden thrown on the defendants either of explaining how this thing got on the floor or giving me far more evidence than they have as to the state of the floor and

the watch that was kept on it immediately before the accident."

This approach was fully endorsed by the majority of the Court of Appeal in the well-known case of *Ward v. Tesco Stores Ltd* [1976] 1 All E.R. 219 and now, more recently, in the High Court ruling in *Piccolo v. Larkstock Ltd (Trading as Chiltern Flowers) and Others*, 17 July 2007, (available on Lawtel).

Ward v. Tesco Stores

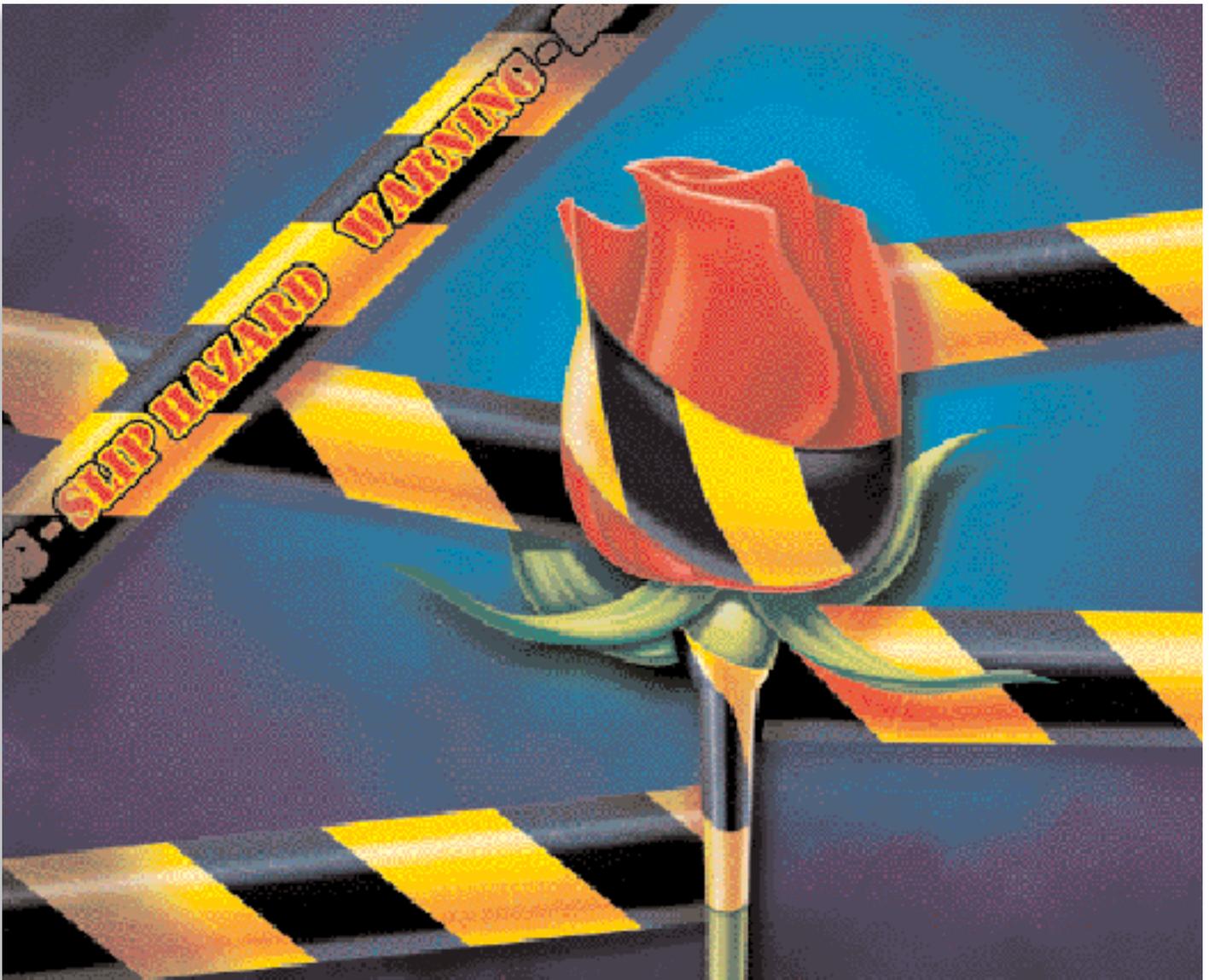
In *Ward*, the defendants owned and managed a supermarket store. While shopping, the claimant slipped on some yoghurt which had been spilt on the floor and was injured. Her claim for negligence against the store succeeded on the basis that the onus was on the defendants to give some explanation to show that the accident had not arisen from any want of care on their part. In this connection, the probabilities were that, by the time of the accident, the spillage had been on the floor long enough for it to have been cleared up by the defendant's staff – in the absence, therefore, of any explanation by the defendants, the court was entitled to conclude that the accident had occurred because the defendants had failed to take reasonable care. Significantly, the defendants did not adduce any evidence as to when the floor had last been cleaned before the

claimant's accident. In the course of his judgment, Lawton L.J. set out the basic duty of care in the following terms (at 221):

" . . . those in charge of the store knew that during the course of a working day there was a likelihood of spillages occurring from time to time . . . The management should have appreciated that if there are patches of slippery substances on the floor people are liable to step into them and that, if they do, they may slip. It follows that if those are the conditions to be expected in the store there must be some reasonably effective system for getting rid of the dangers which may from time to time exist."

His Lordship then considered the evidential burden to establish the discharge of the duty (at 222) in this way:

"The accident was such as in the ordinary course of things does not happen if floors are kept clean and spillages are dealt with as soon as they occur. If an accident does happen because the floor are covered with spillage, then in my judgment some explanation should be forthcoming from the defendants to show that the accident did not arise from any want of care on their part; and in the absence of any explanation the judge may give judgment for the [claimant]."



A similar approach was adopted by Megaw L.J who put the matter in this way (at 224):

“It is for the [claimant] to show that there has occurred an event which is unusual and which, in the absence of explanation, is more consistent with fault on the part of the defendants than the absence of fault . . . When the [claimant] has established that, the defendants can still escape from liability . . . if they could show that the accident must have happened, or even on balance of probability would have been likely to have happened, irrespective of the existence of a proper and adequate system, in relation to the circumstances, to provide for the safety of customers.”

It is apparent from the foregoing that, once the likelihood of a spillage is known to the defendant, the onus is on him to show that the accident would have occurred notwithstanding a reasonably effective system for avoiding the dangers. This, as we shall see, is the approach taken by the court in *Piccolo* involving a florist's duty to protect pedestrians from the risk of slipping on fallen petals by

providing a reasonable and effective system for dealing with the danger of spillage on floors. Before turning to this case, however, it is instructive to consider some of the earlier case law.

Other Cases

In *Dobson v. Asda Stores Ltd*, unreported, March 19, 2002, Middlesbrough County Court, [2002] CLY 358, the claimant slipped on a cherry in Asda's produce department. He argued that the store had been negligent in failing to place slip mats in the produce section and, more generally, in failing to have an adequate system for maintaining a safe floor in that department. In response, the defendant contended that the cherry had been dropped by a customer and that cleaning had taken place every half hour by employees trained to deal with spillages on the floor. The court held that that the defendants were not liable. Although there was clearly a risk that cherries might fall to the floor, it was not necessary to place slip mats in areas any further than the relevant

display. Moreover, the defendant's cleaning system was excellent and there had been only four accidents recorded that year despite the 1.3 million customers that had used the store. Crucially, the cherry had been on the floor for only a short time – the accident having occurred only 10 minutes after the last clean in the department.

Similarly, in *Laverton v. Kiapasha (Trading as Takeaway Supreme)* [2002] EWCA Civ 1656, the floor of a takeaway shop was wet from rain that had been walked into the premises by various customers. The claimant had gone into the shop wearing cowboy-style boots after consuming a considerable amount of alcohol. As she walked in, she slipped and fractured her ankle. The floor was laid with slip-resistant tiles, but the unfixed doormat had become displaced at the time of the accident. The owner had a system for mopping up the floor but this could not be done when (as at the time of the accident) the shop was full. In holding that the owner had not breached his duty of care under

continued overleaf

Personal Injury

s.2(2) of the 1957 Act, the Court of Appeal distinguished the *Ward* case on the ground that it was not reasonable to expect a shop owner to deal straightaway with the “naturally occurring phenomenon of walked-in water” which applied to all premises everywhere. Unlike a particular hazard such as a greasy spillage, this was not an unusual or concealed danger which could be completely avoided. In the words of Hale J (at para. 17): “Everyone coming in from the wet outside to the drier inside brings water with them on their feet.” At busy times, therefore, it was simply not practicable for a small shopkeeper to mop up rainwater as it arrived. At such times, customers could be expected to take reasonable care for their own safety, particularly as this was something obvious of which they ought to be aware.

By contrast, in *Bell v. Department of Health and Social Security*, unreported, 12 June 1989, (available on Lawtel), the claimant sought damages for personal injury occasioned by a fall on a marble passage floor in an office block which had been made slippery from constant spillages of tea and other beverages. Drake J. had no difficulty in holding that the defendants were in breach of their statutory duty under s.2 of the Occupier’s Liability Act 1957 and s.16 of the Office Shops and Railway Premises Act 1963.

Different considerations will also apply if the injury is sustained on domestic premises. In *Fryer v. Pearson*, unreported, 15 March 2000, (available on Lawtel), the Court of Appeal held that the position of a householder was not the same as the case where a customer slips on the floor of a shop. In the domestic context, each case depended on its own circumstances. In *Fryer*, the claimant was a gas fitter who had knelt on a needle when he called at the defendants’ home to fit a new gas fire. He claimed damages for personal injury alleging a breach of the duty of care under the Occupiers’ Liability Act 1957. His claim failed as negligence could only be established if the defendants knew that the needle was in the carpet and had permitted it to remain there. The mere presence of the needle could not give rise to a breach of duty of care under s.2(2) of the Act – there was no foreseeable risk of injury to an adult visitor other than a pin prick.

Decision in *Piccolo*

The first defendant was the owner of a flower shop on a station concourse at Marylebone Station owned and operated by the second defendant railway company. The claimant had slipped on a petal and some water outside the flower shop and sustained personal injuries. He claimed damages for negligence under the 1957 Act alleging that the shop owner had failed to operate a safe cleaning system and that the railway company ought to have taken steps as were necessary to ensure that the former kept the shop and concourse in a clean and safe manner. By way of defence, the shop owner

argued that it had operated a reasonable system of “clean as you go” and that, as a small florist, it was not possible (or reasonable) for it to have kept the floor dry and petal-free at all times.

This argument, however, was emphatically rejected by the court. According to His Honour Judge J. Altman (sitting as a Judge of the High Court), the presence of the petals on the station concourse in the area in front of the shop had created a foreseeable hazard of slipping for pedestrians. Indeed, members of the railway company’s staff had highlighted to the shop owner on several occasions before the accident concerns about safety risks posed by fallen petals from flower displays and water spillages. Moreover, unlike any other florist’s shop, the shop owner’s duty of care had to be measured in the context of the large number of people passing all day across the front of the shop along a busy station concourse. In this context, therefore, a purely reactive system in which steps were taken only when something was brought to the shop owner’s notice was not enough to guard against the risk of falling on a slippery floor. A pro-active system was necessary for getting rid of the dangers that might arise from time to time. Accordingly, in the absence of a proper and safe system for dealing with the dangers, the shop owner was clearly in breach of its duty of care.

In reaching this conclusion, the learned judge was mindful to follow the approach taken in *Ward* in identifying the requisite duty of care and establishing the constituent evidential elements of a breach. On this point, he concluded (at para. 47):

“I find the type of accident that was sustained by the claimant is not one that in the ordinary course of events does occur and that the first defendant has failed to establish that they had in place and effective and reasonable system for dealing with spillages.”

Moreover, unlike the facts in *Laverton*, above, the danger here could not be characterised as necessarily obvious to passers-by engaged in their own pre-occupations. As mentioned earlier, a “spillage” case falls to be distinguished from a situation where the wetness is general because of rain brought in by the feet of customers. In the former case, it is incumbent on the shopkeeper to deal with the problem in a pro-active way rather than simply deal with the problem as and when it arises.

The railway company, on the other hand, was held not to be at fault as it had discharged its common duty of care as an occupier of the concourse by the imposition of contractual obligations upon the shop owner and the extent of supervision that it had exercised through appropriate warnings. In this connection, the shop owner’s lease provided that it should keep the premises in a “clean and tidy condition and employ only competent and respectable persons as cleaners”.

Contributory Negligence

In both the *Ward* and *Piccolo* cases, the claimant was held not to be contributory negligent in slipping on the floor. In the former case, Lawton L.J. accepted that “shoppers, intent on looking to see what is on offer, cannot be expected to look where they are putting their feet”: *ibid*, at 221. Similarly, in *Piccolo*, the learned judge concluded that the claimant had not been walking other than with reasonable care at the time of the accident and had not been careless in failing to notice the petal. Adopting the language of Lawton L.J. in *Ward*, he felt that the same applied “to a pedestrian walking, with many others, across the busy concourse of a railway station, looking ahead to see where he or she is going”: *ibid*, at para. 64.

By contrast, in *Laverton*, the Court of Appeal indicated that, had the shop owner been liable, liability would have been apportioned at 50 per cent between the parties so as to reflect the claimant’s contributory negligence in failing to take care when stepping on the wet tiled floor.

Conclusion

The decision in *Piccolo* confirms that, once the claimant is able to point to an accident which is unusual and which, in the absence of explanation, is more consistent with fault on the part of the shop owner, the burden shifts to the owner to show that the accident happened notwithstanding the existence of a proper and adequate system to safeguard customers from injury.

It is apparent also that the shop owner’s duty of care will be assessed by reference to the particular shop in question. Thus, where there is a foreseeable risk of falling debris that may cause injury if walked on by a potentially large number of customers, a pro-active system of safeguards may be called for to discharge the owner’s duty of care. As indicated by the learned judge, this would necessarily involve a sufficient presence of staff with “on-going responsibility . . . to ensure the finding and removal of spillage very soon after it had fallen”: *ibid*, at para. 40. Interestingly, the precautions in *Ward* were taken by the supermarket in *Ward* were (1) the system of having the floor brushed five or six times during the working day and (2) giving instructions to staff that, if they saw any spillage on the floor, they were to stay where the spill had taken place and call somebody to clean it up. On the facts, however, these were held to be deficient since the probabilities were that the relevant spillage had been on the floor long enough for it to have been cleaned up by a member of staff. ■

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