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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM

THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

LEAH SMITH

Plaintiff/Respondent:

and

THE NATIONAL FARMERS UNION MUTUAL
INSURANCE SOCIETY LIMITED

First Defendant/Appellant:

and

ROBINSON SERVICES LIMITED

Second Defendant/Appellant.

Before: Stephens LJ and Colton J

STEPHENS LJ (delivering the judgment of the court)

Introduction

[1] This is a defendants' liability appeal from a judgment of McAlinden J in which he found in favour of the plaintiff, Leah Smith, and made an award of £35,000 in relation to personal injuries sustained by her on 22 March 2013 at approximately 4 p.m. on a public pavement in Alfred Street, Belfast. There is no appeal in relation to the amount of damages. The first defendant/appellant is the National Farmers' Union Mutual Insurance Society Limited ("the NFU") who occupy office premises known as Harvester House, situate at 4/8 Adelaide Street, Belfast ("the premises"). They employed the plaintiff at the premises as a claims handler and they also employed Mr McAleenan as their Service Manager in respect of the premises. The

second defendant/appellant is Robinson Services Limited ("Robinson") who were engaged by NFU to provide security and some limited maintenance services in respect of the premises. They employed a Mr McMillan as a security guard at the premises.

[2] The plaintiff alleged and the trial judge found that the shutters for the front entrance were closed so that she had to exit by the rear exit through the private car park attached to the premises and then onto Alfred Street. The judge also held that in close proximity but on the public road on Alfred Street just outside the premises the plaintiff slipped and fell on compacted snow. The plaintiff's case against Robinson was twofold. First that delegated to it by the NFU was the performance of NFU's duty to provide the plaintiff with a safe means of egress from the premises. Second that by its employee, Mr McMillan, it had actual knowledge that the pavements in Alfred Street were in a more dangerous condition than those in Adelaide Street so that Robinson was in breach of both the performance of the delegated duty of care and also of a common law duty of care when Mr McMillan did not raise the shutters to allow the plaintiff to leave the premises via Adelaide Street. The plaintiff's case against the NFU was twofold. First that the duty of care to provide the plaintiff with a safe means of egress from the premises was non-delegable so that the NFU was liable if Robinson failed to take reasonable care. Second that Mr McAleenan, NFU's Service Manager, participated in a decision made by Mr McMillan, to close the shutters onto Adelaide Street without Mr McAleenan considering the risk that this would compel its employees to go onto the pavement in Alfred Street which was in a more hazardous condition than the pavement in Adelaide Street.

[3] In the event the judge found both defendants liable but was not asked to, nor did he, apportion liability as between them.

[4] In this court Mr Liam McCollum QC and Mr David Cartmill appeared on behalf of the NFU, Mr David Ringland QC and Mr Stephen Elliott appeared on behalf of Robinson and Mr Dermot Fee QC and Mr Justin Byrne appeared on behalf of the plaintiff. The appearances before McAlinden J were the same except that Mr David Ringland and Mr Dermot Fee did not appear.

Factual Background

[5] The judge made detailed and careful findings of fact in his ex tempore judgment. The account that follows is based on those findings.

[6] The front entrance of Harvester House is onto Adelaide Street. There is a rear entrance down some 12 steps into a car park with an exit from the car park into Alfred Street.

[7] Both Adelaide Street and Alfred Street are public highways outside the control of the NFU and of Robinson.

[8] On 22 March 2013 the condition of the pavements in Alfred Street were more dangerous than those in Adelaide Street. The pavements in Alfred Street had compacted snow which made them slippy whereas the snow on the pavements in Adelaide Street was slushy.

[9] At lunchtime on 22 March 2013 the plaintiff from a window in the premises had seen "people or a person" slipping on Alfred Street. There is ambiguity in relation to that finding as to whether one or more persons were seen to have slipped. We note from the transcript that the plaintiff stated that "there were people slipping and sliding" but that she did go on to accept "it was just one person." We will proceed on the basis that the plaintiff only saw one person.

[10] The front door on to Adelaide Street from the premises had security shutters which were raised and lowered by an electric motor. There was no evidence and therefore no finding by the judge as to whether they could be raised or lowered manually. The manufacturer of the roller shutters was not identified during the course of the trial so there was no identification of that manufacturer by the judge.

[11] The security guard, Mr McMillan, who was employed by Robinson was a temporary replacement for the usual security guard who worked in the premises.

[12] On 22 March 2013 there was a difficulty with the electrical supply to the premises. Prior to 4 pm a conversation took place between Mr McAleenan and Mr McMillan during which a decision was taken by Mr McMillan "with some significant input from Mr McAleenan" to lower the shutters to render the premises more secure in the event of a power failure. The judge repeated that this decision had significant input from Mr McAleenan. The reason for closing the security shutters was solely based on the potential insecurity of the premises if an electrical failure meant that the shutters could not be lowered. It was on that basis that the security shutters were lowered whilst there was an electrical supply.

[13] The plaintiff came down the stairs at about 4pm on 22 March 2013 and the security guard, Mr McMillan, was at the front entrance to the premises. The shutters were down. The judge accepted the plaintiff's evidence that she spoke to the security guard asking him to raise the shutters so that she could leave via the Adelaide Street exit. The judge also accepted the plaintiff's evidence that she explained to the security guard that she had seen a person on Alfred Street slipping, that she considered that Alfred Street was in a hazardous condition and that she wanted to leave via the Adelaide Street exit. Furthermore, the judge accepted that the security guard refused to raise the shutters but rather simply informed her that she had to leave through the rear exit of the premises.

The judgment of McAlinden J

[14] The judge accepted that an employer is ordinarily not responsible for the condition of the public highway outside where the employee is directly employed. However, he stated that the case being made by the plaintiff was that Robinson's employee, for whom it was vicariously liable, had express knowledge of the hazardous condition of the pavements in Alfred Street and that he required the plaintiff to exit the premises by a route which exposed her to an increased risk of injury. The judge continued that Mr McMillan and therefore Robinson was put on notice of the hazardous condition which existed immediately outside the premises at which the plaintiff was employed and that the failure to have any regard for the complaints made by the plaintiff and the failure to raise the shutters, (which was a "very straightforward step") to enable the plaintiff to exit by Adelaide Street was in breach of the duty of care owed by Robinson to the plaintiff. The judge on that basis found the second defendant, Robinson, liable.

[15] In relation to the first defendant, NFU, the judge also found liability. He stated that the NFU "owes a non-delegable duty of care to its employees to ensure that they are reasonably safe during their employment with the first Defendant." The judge continued that: "In the circumstances of this particular case, having regard to the input which the service manager of the first named Defendant had (Mr McAleenan had) in relation to the decision to close the shutters on the day in question, the Court is of the view and finds that the National Farmers Union Mutual Insurance Society Limited is jointly and severally liable to the Plaintiff on the basis of breach of a non-delegable duty of care to the Plaintiff."

The grounds of appeal

[16] For the reason set out in paragraph [32] first we will set out the ground of appeal of the second defendant, Robinson in its Notice of Appeal dated 1 March 2019. There was only one ground namely "the learned trial judge was wrong in law in finding that Robinson owed a duty of care to the plaintiff in circumstances where she sustained injury on a public thoroughfare and that Robinson was in breach of that duty. The learned trial judge ought to have held that no duty was owed to the plaintiff." It can be seen that the only ground of appeal relied on by Robinson was that a duty of care could not extend to a situation where the fall and injuries occurred on a public highway.

[17] Some further points were made in the undated skeleton argument on behalf of the second defendant which was settled by senior counsel. In summary the further points were that

(a) the judge's finding that there was a conversation between the plaintiff and Mr McMillan, in which the latter refused the plaintiff's request to raise the shutter doors was against *the weight of the evidence* (as opposed to being wrong). (This purported to be a new ground of appeal);

(b) the judge's finding that a duty was owed by Robinson to the plaintiff was wrong as Robinson was not responsible for the condition of the public highway on Alfred Street where the plaintiff fell and sustained her injuries. (This is another articulation of the ground contained in the Notice of Appeal);

(c) the judge's finding that it was the security guard employed by Robinson who made the decision to close the shutters at the Adelaide Street entrance therefore requiring employees to use the rear exit was wrong as that decision was made by Mr McAleenan. (This purported to be a new ground of appeal); and

(d) if there was any liability to the plaintiff it fell on the NFU as her employer in failing to take reasonable care for her safety. (Again this purported to be a new ground of appeal).

In so far as these points were not included in the Notice of Appeal there ought to have been but was no application to amend that Notice.

[18] Senior counsel's oral submissions were further removed from the Notice of Appeal in that he submitted that the case against Robinson had not been adequately pleaded in the Statement of Claim. This point was not raised before the judge and did not feature in the Notice of Appeal. In any event we consider that the case was adequately pleaded in that the particulars of negligence included failing to ensure that the plaintiff could use Adelaide Street as a means of leaving her employment, failing to ensure that the plaintiff could exit onto Adelaide Street and failing to heed the warnings of the plaintiff that the Alfred Street exit was dangerous and unsafe.

[19] The grounds of appeal in the NFU's, the first defendant's Notice of Appeal dated 28 February 2019 were

(a) The learned judge was wrong in law in holding that the NFU was in breach of a non-delegable duty of care to the plaintiff. The learned judge ought to have held that the NFU was not in breach of a duty of care to the plaintiff. The duty the learned trial judge held existed was a special duty peculiar to the conversation between the plaintiff and the servant and agent of Robinson.

(b) There was no or no sufficient evidence upon which the learned judge could find that the NFU was in breach of a duty of care to the plaintiff. The NFU had satisfied its duty of providing a safe place of work and safe system of work. The breach of duty found by the learned trial judge was not a breach of the employer's duty of care.

(c) The learned judge's conclusion that the law does not create an onus or duty of care for persons outside the premises and that an employer can not owe a higher duty to an employee than a member of the public using the public

highway but that the law can be distinguished to impose a duty on Robinson who was put on notice by the plaintiff of the hazardous condition of Alfred Street and requested to take the straightforward step to raise the shutter for access to Adelaide Street is inconsistent with his finding that the NFU owed a non-delegable duty of care to the plaintiff in the absence of evidence that the NFU was put on notice of the hazardous condition of Alfred Street or the request to raise the said shutter (sic).

(d) The verdict is against the weight of the evidence.

(e) The employer is not liable for falls outside the workplace and outside the scope of employment. The plaintiff was neither at her place of work nor carrying out her duties when the accident occurred.

[20] In so far as ground (d) is concerned we consider that the word "verdict" whilst correct is more appropriately used in relation to the verdict of a jury. In any event we assume that by "verdict" is meant the entire judgment without condescending to any details as to the parts of the judgment and as to why those parts are against the weight of the evidence. That lack of particularisation is not appropriate in a ground of appeal. We do not consider that this ground of appeal is one meriting any further consideration.

[21] We would observe that in essence the grounds of appeal on behalf of the NFU raise the following points

(a) The finding of the judge was that the duty of care owed to the plaintiff was a special duty peculiar to the conversation between the plaintiff and the servant and agent of Robinson and that this duty excluded and was not a part of the NFU's non-delegable duty to provide a safe means of access to and egress from the plaintiff's place of work.

(b) The NFU had satisfied its duty of providing a safe place of work and safe system of work for the plaintiff.

(c) There was no evidence that the NFU was put on notice of the hazardous condition of Alfred Street or of the request by the plaintiff to Mr McMillan to raise the shutter at the Adelaide Street entrance so that there was no breach of any duty of care owed by NFU to the plaintiff.

(d) Any duty of care on the part of the NFU could not extend to a situation where the fall and injuries occurred on a public highway.

Common law duties

[22] The plaintiff's case before the judge was confined to a claim at common law for negligence against both the NFU and Robinson.

[23] The specific primary, non-delegable duties "to take reasonable care, and to use reasonable skill" owed by an employer to its employees were identified by Lord Maugham in *Wilsons and Clyde Coal v English* [1938] AC 57 at 86 as being "*first*, to provide and maintain proper machinery, plant, appliances and works; *secondly*, to select properly skilled persons to manage and superintend the business, and, *thirdly*, to provide a proper system of working" (emphasis added). Similarly, Scott LJ in *Vaughan v Ropner & Co* (1947) 80 Ll L Rep 119 at 121 identified the three main duties of the employer as being "(1) to provide proper premises in which, and proper plant and appliances by means of which, the workman's duty is to be performed; (2) to maintain premises, plant and apparatus in a proper condition; (3) to establish and enforce a proper system of working." The duty to take reasonable care for the safety of the place of work extends not only to the actual place of work but to the means of access to and from it, see *Brydon v Stewart* (1855) 2 Macq 30. It is clear that the NFU owed a duty to take reasonable care in relation to the plaintiff's access to and from the premises.

[24] The general rule at common law is that a defendant is liable for the negligent act of a servant committed in the course of his employment but not that of an independent contractor. However a defendant can be fixed with a personal duty to exercise reasonable care which he cannot delegate so that if he does delegate performance of that duty to an independent contractor he has to ensure that the independent contractor performs the duty carefully. In such circumstances the defendant will be liable for the negligent act of a servant of the delegate even if an independent contractor and even if the independent contractor has been carefully selected. The question then is whether the NFU's duty to take reasonable care in relation to the plaintiff's access to and from the premises is non-delegable?

[25] As we have indicated a feature of the employer's duty of care to his employee is its non-delegable nature. That is an aspect of the special responsibility of an employer to its employee which provides a policy reason for the employer to retain responsibility. As a result the employer can delegate the performance of the duty to others, such as an independent contractor, but not responsibility for its negligent performance. The duty of care is not fulfilled simply by entrusting its performance to another even if reasonable care is taken in selecting that other (though see *A (A Child) v Ministry of Defence* [2003] P.I.Q.R. P33 and on appeal at [2004] EWCA Civ 641 together with *Woodland v Essex County Council* [2013] UKSC 66 at paragraph [24]). In this case the NFU purported to delegate to Robinson, an independent contractor, the duty to take reasonable care for the safety of the means of access to and from the plaintiff's place of work. As a result of that delegation Robinson assumed a responsibility towards and owed a duty of care to the plaintiff. However, because the duty to take reasonable care is non-delegable it then had to be fulfilled by

Robinson and the NFU between them. If it was not, then although the performance of the duty may be delegated the duty to take reasonable care also remains the duty of the employer. In such circumstances if Robinson does not take reasonable care then the NFU is not absolved of responsibility. The liability is negligence-based rather than strict. In other words if the delegate takes reasonable care then there can be no liability on the delegate or on the employer but if the delegate fails to take such care then both the delegate and the employer are liable. In this way if an employer delegates to another his duty to take reasonable care he is liable for injury caused through the negligence of that other because it is legally his own negligence. This is a departure from the basic principles of liability in negligence by substituting for the duty to take care a more stringent duty, a duty to ensure that reasonable care is taken by the delegate. The departure is on the basis of policy given the relationship between an employer and employee that makes it appropriate to impose on the employer a duty to ensure that reasonable care and skill is taken by the delegate for the safety of the employee being the person to whom the duty is owed.

[26] In relation to the duty to take reasonable care in relation to the plaintiff's access to and from her place of work it is contended on behalf of the appellants that the duty cannot extend to any place outside the perimeters of the premises and in particular cannot extend to a situation where the fall occurred and the injury was sustained on a public highway. We consider that the duty must involve consideration of the hazards immediately outside the premises even if those hazards are on the public highway though recognising that ordinarily a public highway will be safe. It is obvious that if an access led to the most obvious of dangers just outside the employers premises even if on a public highway that could not be a proper discharge of the employer's duty of care. The duty involves consideration of what is immediately outside the door which the employee is required to use to gain access to her place of work.

[27] Consideration was given by Lord Atkin in *Weaver v. Tredegar Iron and Coal Co.*, [1940] A. C. 955 , at p. 966 to the limits on the course of employment both in time and space. He stated that "There can be no doubt that the course of employment cannot be limited to the time or place of the specific work which the workman is employed to do. It does not necessarily end when the down tools signal is given, or when the actual workshop where he is working is left. In other words the employment may run on its course by its own momentum beyond the actual stopping place. There may be some reasonable extension both in time and space …."

[28] In *Ashdown v Samuel Williams & Sons Ltd.* [1956] 3 W.L.R. 1104 consideration was given to the safety of the plaintiff's access to her place of work which included consideration of that part of the access outside her employer's premises. It was contended that an employer could never be under any duty until the employee arrived at the employer's premises. Parker LJ doubted whether the proposition in that wide form could be supported.

[29] In *Methven v Babygro Ltd* 2002 S.L.T. 1282 Lord Drummond Young held that an employer's duty of care to provide a safe means of access to a workplace was not restricted to access over the employer's own property or property under his control. We agree. He also held that the appropriate test for determining whether the necessary relationship of proximity existed was generally whether the ground in question could reasonably be regarded as part of an access route *from the public road* to the employer's premises that was used on a regular basis. We also agree but subject to the qualification that we do not exclude consideration of the public road though recognising that ordinarily it will be safe.

[30] We dismiss those grounds of appeal which involve the proposition that the duty of care to provide a safe means of access and egress from the plaintiff's place of work did not extend to a consideration of the condition of the public road immediately outside the main and rear entrances to the premises.

Review by an appellate court of findings at first instance

[31] The role of this court in relation to factual determinations made by the judge is limited. The relevant principles have been set out by Lord Kerr at paragraphs [78] – [80] when giving the judgment of the Supreme Court in *DB v Chief Constable of Police Service of Northern Ireland* [2017] UKSC 7. Amongst other considerations is that the trial judge is in a privileged position to assess the credibility of witnesses' evidence. It is the trial judge who has the benefit of assessing the witnesses and actually hearing and considering their evidence as it emerges. The first instance trial should be seen as the "main event" rather than a "tryout on the road." The standard to be applied in this court in relation to a challenge to factual findings is the clearly erroneous standard with deference to the trier of fact. Lord Wilson stated in *In re B (A Child)* [2013] 1 WLR 1911, paragraph [53] that:

> "… where a trial judge has reached a conclusion on the primary facts, it is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it."

This court does not conduct a re-hearing and it is only in very limited circumstances that the factual findings made by the judge will not be accepted by this court, see *Mihail v Lloyds Banking Group* [2014] NICA 24 at [27]; *McConnell v Police Authority for Northern Ireland* [1997] NI 253; *Carlson v Connor* [2007] NICA 55; *Chief Constable of the Royal Ulster Constabulary and Assistant Chief Constable A H v Sergeant A* [2000] NI 261 at 273.

Discussion

[32] The judge first addressed the question as to whether Mr McMillan, Robinson's employee for whom Robinson was vicariously liable, was negligent. We consider that the judge was correct to do so given that the duty of taking reasonable care as to the means of access to and from the place of work is non-delegable so that if Robinson was negligent so also would be the NFU.

[33] The NFU delegated to Robinson the performance of NFU's duty to take reasonable care in relation to access and egress to the premises. The delegation was both general by virtue of the appointment of Robinson as NFU's independent contractor with responsibility for the security of the premises. The appointment of Robinson invested it and its employee Mr McMillan with the power and authority to direct NFU's employees in relation to which exit to use. Mr McAleenan stated in evidence that "the security contractor is responsible for all aspects of opening and closing the building during the normal working week and for things like general arranged overtime." That was a clear recognition of the delegation of the performance of that duty to Robinson. In addition there was specific delegation of the performance of that duty on 22 March 2013 as NFU's Service Manager, Mr McAleenan had significant input into the decision to lower the shutters but was content that thereafter any decision as to whether to raise the shutters was made by Mr McMillan. The evidence of Mr McMillan was that he had been told by Mr McAleenan to keep the shutters down or "keep the shutters closed and open them when needs be." In this way the performance of the obligation to provide a safe means of egress from the place of work was specifically delegated to Mr McMillan by Mr McAleenan.

[34] The delegation of the performance of the duty to Robinson meant that it owed the plaintiff a duty to take reasonable care in relation to her access to and egress from the premises.

[35] The question then becomes whether Robinson was in breach of that duty.

[36] The judge found that the plaintiff had warned Mr McMillan, a servant and agent of Robinson, of the condition of the rear exit and that in those circumstances the shutters should have been opened to allow safe egress from the building onto Adelaide Street. On behalf of Robinson Mr Ringland submitted that this factual finding by the judge was wrong. We consider that this court should not disturb the finding of fact of a trial judge when his findings depended upon his assessment of the credibility of the witnesses which he has had the advantage of seeing and hearing. The judge did not expressly state that this finding was based on his assessment of the credibility of the two witnesses but this is implicit in his ex tempore judgment and in the trial process which necessarily involved an assessment of both the plaintiff and of Mr McMillan. The judge did give a number of reasons for preferring the evidence of the plaintiff to that of Mr McMillan. They included that Mr McMillan had only been asked some 3 weeks prior to the trial to

recollect the conversation of 22 March 2013. The judge was entitled to take that into account in considering and resolving the factual dispute. The judge also relied on the contents of the letters of claim dated 17 June 2013 and 4 September 2014. The judge stated that in those letters "the plaintiff's case is clearly stated and set out that a servant or agent of the *defendants was informed as to the hazardous condition of Alfred Street* and of the plaintiff's wish to exit the building through the Adelaide Street entrance" (emphasis added). We agree with Mr Ringland that neither letter contains the allegation to which we have added emphasis. However, the letter of 17 June 2013 states that the person on duty "refused without good reason" to allow NFU staff to exit the premises onto Adelaide Street but directed them "onto Alfred Street, where the conditions were significantly more dangerous for pedestrians." We do not consider that any overstatement of the contents of the letters of claim by the judge undermines his factual finding that the conversation occurred in the manner alleged by the plaintiff. As we have observed this ground was not a ground of appeal in Robinson's Notice of Appeal but if it had been we would have dismissed that part of the appeal.

[37] Robinson also submit that the trial judge was wrong to find that the decision to close the shutters was made by Mr McMillan. We have considered the transcript of evidence and it was open to the judge to arrive at the conclusion that the decision was taken by Mr McMillan with some significant input from Mr McAleenan. As we have observed this ground was not a ground of appeal in Robinson's Notice of Appeal but if it had been we would have dismissed that part of the appeal.

[38] On the basis of the finding that the conversation had occurred in the manner alleged by the plaintiff the judge found, we consider correctly that this exposed the plaintiff to an unnecessary danger and was a breach of duty. One exit route from the work place was hazardous to Mr McMillan's knowledge and the alternative route was considerably safer. It was a straightforward step to raise the shutters. Mr McMillan refused to do so. Requiring the plaintiff to use a dangerous route is a breach of duty.

[39] We dismiss the appeal brought by Robinson.

[40] The finding that Robinson was negligent also disposes of the appeal by the NFU. The duty of care was not a special duty of care peculiar to the conversation between the plaintiff and Mr McMillan. It was the ordinary duty to take reasonable care in relation to the plaintiff's access to and from the premises. It was non-delegable and this means that the NFU is also liable regardless as to whether they were put on notice of the hazardous conditions in Alfred Street or the request to Mr McMillan to raise the shutters.

[41] We dismiss the appeal brought by the NFU.

[42] In dismissing both appeals we note that no suggestion was made at trial or on appeal that the damages should be reduced on the basis that there was still a risk of falling even if the plaintiff had left the premises via Adelaide Street.

Statutory duties

[43] Although it is not necessary to the outcome of this appeal we consider it appropriate to set out our observations on an obiter basis as to a number of statutory duties. The duty under the Occupiers Liability Act (Northern Ireland) 1957 cannot assist the plaintiff as neither the NFU nor Robinson were occupiers of the pavement in Alfred Street.

[44] Regulation 17 of the Workplace (Health, Safety and Welfare) Regulations (Northern Ireland) 1993 provides statutory duties in relation to the organisation and suitability of traffic routes in relation to workplaces. It applies to both the NFU and to Robinson both of whom had employees at the premises. However, Regulation 2(1) specifically excludes from the definition of a workplace a public road. The plaintiff cannot rely on any breach of statutory duty under Regulation 17 in so far as it relates to the public road. However, an issue could have arisen under Regulation 17 as to whether the NFU complied with its statutory duty to provide a sufficient number of traffic routes in suitable positions when the decision was taken to close the front exit onto Adelaide Street. An issue could also have arisen as to whether the front door traffic route was suitable if there was no manual method of opening and closing the roller shutter doors in the case of an electrical failure. This would have been particularly so if the front door was a fire escape route in which circumstances a fire exit could have been blocked if there was no manual system of opening the roller shutter doors in the case of an electrical failure.

[45] Regulation 4 of the Provision and Use of Work Equipment Regulations (Northern Ireland) 1999 provides that **"(**1) Every employer shall ensure that work equipment is so constructed or adapted as to be suitable for the purpose for which it is used or provided." The roller shutter doors at the front entrance are work equipment and a question could have arisen as to whether they were suitable if there was no manual system to close them in the case of an electrical failure. Again, this would have been particularly so if the front door was a fire escape route in which circumstances a fire exit could have been blocked if there was no manual system of opening the roller shutter doors in the case of an electrical failure. It appears to us to be obvious that absent a manual system of opening and closing the roller shutter doors the work equipment could not have been suitable. If there was a manual system for opening and closing the roller shutter doors then there would have been no reason to close them on 22 March 2013 and the plaintiff would have left by the front door. Some further assistance in relation to the obligation under Regulation 4 might have been obtained from Regulation 5 which provides that "(1) Every employer shall ensure that work equipment is maintained in an efficient state, in efficient working order and in good repair." The obligation in Regulation 4 is to have suitable work equipment and thereafter under Regulation 5 to maintain it in an

efficient state, efficient working order and in good repair. In this way suitability is to be seen in the context that what is provided is to be efficient. If there was no manual system to close the roller shutter doors in the case of an electrical failure then that inefficiency could inform as to whether they were suitable.

Conclusion

[46] We dismiss both appeals. We will hear counsel in relation to costs.