REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.

....
SIGNATURE DATE

CASE NO: 4914/2017

In the matter between:

ROSA GRACINDA DOS PRAZARES **PLAINTIFF**

and

LIFE HEALTHCARE GROUP (PTY) LTD t/a **DEFENDANT**

LIFE HEALTHCARE THE GLYNNWOOD

JUDGMENT

WINDELL J:

INTRODUCTION

[1] On 5 February 2017, the plaintiff, 80 year old Rosa Gracinda Dos Prazares, visited her sick husband in the Intensive Care Unit ("ICU") at the defendant's hospital. Her daughter, Ms O' Reilly, accompanied her. It was the second time that day they attended at the ICU ward. They had earlier received news that her husband was gravely ill but he was showing signs of improvement and they were back to see him.

[2] Before one enters the ICU ward, there is a foyer area which is controlled by a security guard. The foyer is not a waiting area for the ICU, but is intended to control access to the ICU ward. Access is gained to the ICU ward by means of an automatic door ("the automatic door") which on the plaintiff's and Ms O' Reilly's prior attendances, was opened by the security guard. Whilst Ms O'Reilly was waiting in line behind a group of people, to sign the attendance register at the security desk, the plaintiff walked passed the security guard and entered the foyer. She lingered for a moment and then moved backwards to the right, leaning with her back against the wall. The automatic door was situated on the same wall the plaintiff was leaning against. Moments later, the security guard passed the plaintiff, who was looking in front of her, and moved towards the automatic door, accompanied by the group of people. The automatic sliding door in question slides parallel in front of the wall of the ICU and is activated from the outside by means of combination lock/fingerprint activation. The security guard activated the door, thereby opening it, in order to let the group of people into the ICU ward. The automatic door opened and collided with the plaintiff where she was still leaning / standing against the wall. The plaintiff, as a result, was knocked down and fell to her left hand side onto the floor.

[2] A video showing the whole incident, as well as two photographs, depicting the position of the automatic door and wall area at the time of the incident and after the event, were entered into evidence. The video and photographs were of great assistance to the court. The first photograph shows the automatic door which is situated in the foyer area on the right wall, a couple of metres from the security desk. A warning sign with bold red letters reading “Caution automatic sliding door” is present on the front of the door and in the middle thereof. A second photograph of the wall area and automatic door, taken some time after the event, shows that a metal structure had been installed against the wall within the trajectory of the automatic door. Mr Goosen, the witness on behalf of the defendant testified that it was installed approximately a month after the incident in an attempt to improve safety. The defendant had not installed similar brackets at any other automatic door on the premises, but had placed additional warning signs on the walls at other automatic doors, including the door in question. The additional warning sign reads as follows: “CAUTION! Automatic Sliding Door. DO NOT LEAN OR STAND BEHIND DOOR”.

[3] The plaintiff testified that she is originally from Portugal. She came to South Africa with her family at the age of 9. From the age of 10, she worked at a Fish and Chips shop for a Portuguese speaking family. She only attended school up to Grade 3 and has a very limited command of the English language. She testified with the help of a Portuguese interpreter. She stated that at the time of the incident she felt emotional and was thinking about her husband, who was sick and about to pass away-- they had been married for 56 years. She disputed that she had leaned against the wall and stated that she did not see the security guard moving to the automatic door to open it. On being asked about whether she thought she was wrong by standing against the wall, she stated that she did not know. She testified that she saw how the door

operated on the previous occasions she visited the hospital and that "*it runs and it closes*" and that she noticed it sliding along the wall. Later, during cross-examination she however stated that she was not aware of the operation of the door at all. She stated that she did not notice the warning sign on the door and that she did not know that the door was going to hit her.

[4] Mr Goosen, testified on behalf of the defendant. He was employed as the defendant's maintenance engineer at the defendant's premises at the time of the incident. He stated that there are 28 automatic doors on the defendant's premises and approximately 1500 people attend at the defendant's premises on a daily basis. There had been no prior incidents involving any of the automatic doors. He testified that the security guard, stationed at the ICU ward in question, was not employed by the defendant, but was employed by an independent security company, namely Itemba Skymark Security. The security company was appointed to provide security and access control services to the defendant in terms of a service level agreement. Mr Goosen stated that the approximate length of the area which the door, on opening, would traverse was 2.2 to 2.5 metres and although he could not pinpoint the plaintiff's exact location at the time of the incident, he estimated that she was standing approximately 1 meter from the leading edge of the door.

[5] The plaintiff claims damages due to the injuries she sustained during the incident. Her claim is based on delict, arising from the wrongful and negligent failure by the defendant to take reasonable steps to avoid the incident which led to her fall. At the start of the hearing, the court ordered a separation of the issues in terms of Rule 33 of the Uniform Rules of Court. The only issue to be decided by this court is liability.

[6] The plaintiff alleges that the defendant had a legal duty to sufficiently warn all people within a certain proximity to the door of the operation of the door; to avoid any danger that the door could cause to the public; to ensure that the door was not left unattended; and to exercise reasonable care to avoid the incident. The plaintiff alleges that the defendant was negligent by wrongfully failing and/or neglecting to warn of the operation of the door; avoid any danger that the door and the operation thereof could pose to the public; and by avoiding the incident.

[8] In *Swinburne v Newbee Investments Pty Ltd*,[1] Wallis J held that the owner of property is ordinarily liable to ensure that the property does not present undue hazards to persons who may enter upon and use the property. In other words, it is the owner's legal duty to ensure that the premises are safe for those who use them. Control over a dangerous (or potentially dangerous) object can be a factor in determining whether, in terms of the *boni mores*, a legal duty rests upon the person in control to prevent someone from being injured by the particular situation.[2] A factor pointing to such a duty is when the defendant had knowledge and foresight of possible harm because they were aware of the dangerous situation.[3]

[9] The defendant in its plea accepted that it has a reasonable duty of care in keeping its premises safe, but contends that it took *"all reasonable steps to ensure the safety of the operating of the door."* The defendant pleaded that the door was attended to by an independent security guard employed by an independent security company, duly contracted to the hospital; that the door had warning signs; and that it was not reasonable and foreseeable that a visitor to the hospital would lean against the wall

[1] *Swinburne v Newbee Investments Pty Ltd* 2010 (5) SA296 (KZD) ad paragraphs (10) and (12).
[2] Neethling & Potgieter *Delict* (2015) 62–5).
[3] *ZA v Smith & Another* 2015 (4) SA 574 (SCA) at 586.

within the path of travel of the door. The plaintiff pleaded that the sole cause of the incident was the negligence of the plaintiff who, *inter alia,* leaned against the wall within the path of travel of the door; failed to take heed of the warning signs prominently displayed on the automatic sliding door; failed to take notice that the independent security guard proceeded to engage the opening of the automatic sliding door; and failure to avoid the incident when by the exercising of reasonable care, she could and should have done so.

NEGLIGENCE

[10] It is trite that, for the purposes of liability, *culpa* arises if:

> *"(a) a diligens paterfamilias in the position of the defendant —*
>
> *(i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and*
>
> *(ii) would take reasonable steps to guard against such occurrence; and*
>
> *(b) the defendant failed to take such steps.* [4]

[11] The precise way in which harm occurred need not have been foreseeable. Only the general nature of the harm that occurred and the general manner in which it occurred, should be reasonably foreseeable.[5] In *The Premier of the Western Cape Province v Loots NO,*[6] the Supreme Court of Appeal ("SCA") affirmed this approach and stated that our courts have adopted the relative approach to negligence as a broad

---

[4] *Kruger v Coetzee* 1966 (2) SA 428 (A).
[5] *Sea Harvest Corporation (Pty) Ltd and Another v Duncan Dock Cold Storage (Pty) Ltd and Another* 2000 (1) SA 827 (A).
[6] (9214/2010) 2011 ZASCA 31 at [13].

guideline, without applying that approach in all its ramifications. Brand JA explained that the relative approach *"does not require that the precise nature and extent of the actual harm which occurred was reasonably foreseeable. Nor does it require reasonable foreseeability of the exact manner in which the harm actually occurred. What it requires is that the general nature of the harm that occurred and the general manner in which it occurred was reasonably foreseeable."*

[11] The defendant clearly foresaw that the automatic door poses a danger and that it could cause injury to persons. It is for that reason that the defendant placed signs on the door to warn the public of the existence of the door. The only reason why the defendant would warn someone of the existence of the automatic door is because it foresaw that if the door opens it might injure someone standing in the trajectory of the door. Once harm is foreseen it must be obvious to the reasonable man that he ought to take appropriate steps to avoid harm.[7] The only question that needs to be determined is whether the steps that were taken by the defendant under the circumstances were reasonable.

[12] The plaintiff in her particulars of claim does not rely upon any conduct of the security guard in the manner or timing in which the door was opened and there is no evidence presented by either parties that the placing of the security guard at the ICU ward was a further step taken by the defendant to prevent anyone from getting injured by the door. It is in any event clear from the evidence as well as the service level agreement between the security company and the defendant, that the security company was responsible for access control to the ICU ward and that the guard was not placed at the ICU ward to prevent people from getting injured by the door. So, the

[7] *Herschel v Mrupe* 1954 (3) SA 464 (A) at 477A.

only step that was taken by the defendant to prevent someone from getting hurt by the automatic door, was placing a warning sign “Caution: Automatic Door”” on the door.

[13] Was this step taken by the defendant reasonable under the circumstances? *In ZA v Smith & Another,*[8] the SCA found that reasonable steps should be taken to prevent harm even where the danger would not have been clear, and the proposed remedial steps would have been effective, affordable and sustainable. Whether steps would be reasonable, must always depend upon the particular circumstances of each case.

[14] Mr Goosen testified that the steps taken by the defendant was, in his opinion, reasonable. I disagree. Firstly, although the door might be visible from the entrance of the foyer, it will only be when one is standing in front of the door and consciously observes how the door moves that one would understand the operation of the door and the danger of standing against the wall. The specific technical operation of the door, would probably not be scrutinized or even considered by the reasonable person. Secondly, when the plaintiff entered the foyer and moved towards the wall, there were no signs to warn her that she is standing in the trajectory of the door. The evidence of Mr Goosen is that the automatic door opens 2 to 2,5 metres to its right in front of the wall. There is nothing to indicate to a person entering the area, that the door moves such a distance. That is probably the reason why the defendant placed a metal bracket in front of the wall after the incident occurred. Although the after-the-fact installation does not in itself provide evidence of negligence, Mr Goosen’s answer in this regard was telling: it was done to prevent harm. He also conceded that the placing of barriers was a simple and cost-effective solution to the issue, but attempted to explain away

[8] Ibid fn 3 at

this remedial action not as reasonably necessary but as a valiant attempt to render the environment even safer.

[15] Thirdly, the automatic door was unshielded and only contained a warning printed in red letters: "Caution automatic sliding door". The plaintiff was within the trajectory of the automatic door when it opened and there was no sign on the wall indicating in which direction the door opened or cautioning a person not to lean or stand close to the wall. Placing a sign only on the door therefore served no purpose in preventing a person from getting harmed if that person is leaning against the wall in the trajectory of the door. The defendant should have, as it has done after the incident, placed a sign on the wall warning people not to lean or stand behind the door. The sign placed on the door was not a reasonable measure given the particular circumstances of this case and did not prevent the foreseeable harm. Fourthly, to make matters even worse, the automatic door can be opened from the inside by a motion detection sensor, without any warning to someone standing on the outside of the ICU ward. By only placing a blue and red sticker on the door itself, the defendant did not take reasonable steps. Visitors would probably not give more regard to the door than to realize that it is a sliding door.

WRONGFULLNESS

[16] An enquiry into wrongfulness is determined by weighing competing norms and competing interests. Whether conduct is wrongful is tested against the legal convictions of the community.[9] LAWSA, [10]explains it as follows:

---

[9] *Loureiro and Others v Imvula Quality Protection (Pty) Ltd* 2014 (3) SA 394 (CC) at [34].

[10] LAWSA, Delict, Volume 15 – Third Edition Wrongfulness, 75.

"Public policy is closely associated with, and cannot be separated from, the community's perception of justice, equity, good faith and reasonableness. However, courts are "not concerned with what the community regards as socially, morally, ethically or religiously right or wrong, but whether or not the community regards a particular act or form of conduct as delictually wrongful".

[17] The enquiry is the following: As the defendant could have prevented the harm that the plaintiff suffered and it had negligently failed to do so, should the defendant, as a matter of public and legal policy, be held liable for the loss resulting from such harm? As stated before, the defendant admitted that it has a legal duty to prevent harm. Its only defence was that it took all reasonable steps to prevent harm.

[18] The question of wrongfulness in the present matter is, in my view, self-evident. The defendant is expected to act positively to prevent the harm and it is reasonable to expect of the defendant to have taken positive measures to prevent the harm. The hospital did not take reasonable steps to ensure that the premises is safe. The legal convictions of the community, in consideration of constitutional principles, require the hospital to act reasonably. The failure of the hospital to take reasonable steps to ensure the safety of people attending its premises was wrongful.

CONTRIBUTORY NEGLIGENCE

[19] The plaintiff clearly gave evidence on a retrospective basis. The objective evidence from the video footage clearly depicts that the plaintiff simply walked into the foyer but never looked in the direction of the door or gave any regard to the security officer or the other visitors approaching the door. This, in itself, confirms that the plaintiff was oblivious to the operation of the door and the risks associated therewith. Her only knowledge of the risk could have been founded on pre-acquired knowledge,

but her evidence in this regard did not confirm any definite knowledge or insight to the risk.

[20] The mere fact that one visitor might give regard to the operation of the door and another does not, is indicative of the risks associated with the operation of the door. The test remains that of the reasonable person. Under the circumstances, there is no evidence to support the allegation that the plaintiff was contributory negligent in the causing of the incident. I am satisfied, on a balance of probabilities, that the failure of the defendant to take reasonable steps in preventing the risk, was the sole cause of the incident.

[21] In the result the following order is made:

1. The defendant is held liable to pay 100% of the damages suffered as a result of injuries sustained by the plaintiff during the incident on 4 February 2017.

2. Costs to be paid by the defendant which includes the costs of counsel.

L. WINDELL
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG
Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 25 March 2021.

APPEARANCES

Attorneys for the plaintiff:	A. Wolmarans Inc
Counsel for the plaintiff:	Advocate P. Uys
Attorneys for the defendant:	Whalley & van der Lith Inc
Counsel for the defendant:	Advocate W. de Beer
Date of hearing:	24 November 2020 & 26 November 2020
Date of judgment:	25 March 2021.