SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

IN THE ALL SCOTLAND SHERIFF PERSONAL INJURY COURT

[2020] SC EDIN 16

Case Ref: PN3033-18

JUDGMENT OF SHERIFF PETER J BRAID

in the cause

MRS VIKKI LOWE

Pursuer

against

CAIRNSTAR LIMITED

Defenders

Pursuer: Christine, Advocate, New Law Scotland, Solicitors
Defender: Brownlee, Solicitor Advocate; Clyde and Co, Solicitors

Edinburgh, 11 February 2020

The sheriff, having resumed consideration of the cause, makes the following findings in fact:

Findings in fact

1. The parties are as designed in the instance.

2. On 25 December 2015, the defenders were the owners and occupiers of Joanna's Nightclub, 189B High Street, Elgin.

3. In the early hours of 25 December 2015 the pursuer was at Joanna's Nightclub (hereinafter, "Joanna's"). She arrived there shortly before midnight on 24 December, in the company of her brother, Aaron Hume.

4. Earlier on 24 December, the pursuer had consumed alcohol. She had at least three glasses of wine in the afternoon followed by a further one or two drinks at her home. There

was alcohol in her bloodstream but she did not appear intoxicated to staff at Joanna's. Had she appeared intoxicated, she would have been asked to leave the premises (as others were that evening).

5. At around 12.45 am, after consuming at most one drink in Joanna's, the pursuer went to one of the ladies' toilets in said premises. She was wearing flat sandals on her feet.

6. The flooring in the toilet was tiled with porcelain tiles.

7. After she had finished in the toilet, and as she was walking towards the exit, the pursuer slipped and fell to the ground in the foyer area of the toilet.

8. The cause of the fall was water or other liquid on the floor, making the tiles slippery.

9. The water or other liquid was visible, but was not seen by the pursuer before she fell.

10. Members of the defenders' staff, namely, Michael Alderman, David Fraser and Natasha Spellman, attended to the pursuer after her fall.

11. The pursuer told Michael Alderman and David Fraser that she had slipped on a wet floor. Her skirt was wet.

12. Number 6/1 of process is a copy of the accident report completed by Mike Alderman on 24 and 25 December 2015. It makes no mention of the pursuer stating that the floor was wet.

13. No 6/3 of process is a copy redacted diary entry completed by Mike Alderman on 25 December 2015. Number 5/7 of process is the corresponding principal unredacted entry. The entry makes no mention of the pursuer stating that the floor was wet.

14. 6/4 of process is a copy of a diary entry written by David Fraser at some point after the pursuer's accident. It does not contain an accurate account of what the pursuer said or did.

15. Michael Alderman took photographs (numbers 5/6 and 6/9 of process) of sections of the floor showing the pursuer's feet, but not showing the area where she had slipped.

16. Paramedics subsequently arrived. The pursuer was in great pain. The paramedics used an inflatable device to manoeuvre her into a wheelchair before taking her to Dr Gray's Hospital.

17. As a result of her fall, the pursuer sustained an injury to her right ankle. Numbers 5/1 and 5/2 of process are medicolegal reports dated 15 May 2018 and 22 February 2019 relating to the pursuer, prepared by Mr R Kucheria, Consultant Orthopaedic Surgeon, the contents of which reports accurately describe the pursuer and her injuries.

18. Number 6/7 of process are the pursuer's hospital records from Dr Gray's Hospital, Elgin.

19. The tiled flooring on which the pursuer slipped did not meet the recommended minimum slip resistance value considered by the UK Health and Safety Executive as necessary to provide a safe floor environment when wet.

20. In particular, the pendulum test value (ptv) measured between 24 and 27, which represented a high risk of slipping. The ptv considered safe by the UKHSE is 36.

21. The tiled flooring did not constitute a safe floor environment when wet.

22. It was foreseeable that water or other liquid would be present on the tiled floor of the ladies' toilet, and would constitute a danger. The defenders had previously undertaken a risk assessment, number 6/5 of process, in April 2015 concerning the noted hazard of "slipping on tiled and other flooring" if it became wet. The likelihood of occurrence had been assessed as 9 out of 10 and the potential severity of injury as 3 out of 5.

23. The action proposed by the defenders to address that identified hazard, in terms of the risk assessment 6/5 of process, was to have a system of inspecting the toilets every 30 minutes "to ensure any spills are cleaned up when needed".

24. The defenders also operated a spillage policy, number 6/8 of process, in which staff members were trained.

25. In practice, the defenders' system was not to carry out inspections of the toilets every 30 minutes, but to vary the times, such that while inspections were carried out approximately every 30 minutes, there could be a longer or shorter period between inspections.

26. No 6/3 of process is a copy of the toilet inspection sheet for 24/25 December 2015. It does not contain an accurate record of the inspections of the ladies' toilets that evening.

27. The "comments" section on that sheet for the time 00.30 reads: "Gents ok ladies female found on floor" (sic).

28. That entry refers to the pursuer's fall, and accordingly was not written until after 12.45 am (and therefore not at 00.30 hours). The length of time since the previous inspection is not known.

29. Even had the defenders adhered to their system of inspecting the toilets, and clearing up any spillage identified during such inspections, that would not have reduced the risk of the floor becoming wet and therefore slippery to an acceptable level.

30. Number 5/5 of process is a report written by Paul Madden, of Floorslip Limited.

31. Had the defenders installed slip-resistant flooring up to the HSE standard of 36 ptv, the floor would not have been slippery and the pursuer would not have slipped.

32. It would have been reasonably practicable for the defenders to have installed such flooring.

Finds in Fact and Law

1. This court has jurisdiction.

2. The system of inspection devised and operated by the defenders did not, by itself, constitute the exercise of reasonable care for the pursuer's safety.

3. By failing to install slip-resistant flooring, the defenders failed to take reasonable care for the pursuer's safety, thereby breaching their duties at common law and under section 1 of the Occupiers Liability (Scotland) Act 1960, thereby causing the pursuer's accident.

4. By failing to notice the water or other liquid on the floor, and by walking on it, the pursuer failed to take reasonable care for her own safety, and in doing so, contributed to her accident.

5. The loss, injury and damage sustained by the pursuer is reasonably estimated at £16,250.

6. Contributory negligence falls to be assessed at 25%.

Therefore grants decree against the defenders for payment to the pursuer of the sum of TWELVE THOUSAND ONE HUNDRED AND EIGHTY SEVEN POUNDS AND FIFTY PENCE (£12,187.50) STERLING with interest thereon at the rate of 8 per cent from 6 December 2019 until payment; assigns a hearing on expenses for 10.00 am on 16 March 2020 within the Sheriff Court House, Chambers Street, Edinburgh.

NOTE

Introduction

[1] I heard a proof in this action on 4 to 6 December 2019. It is common ground between the parties that when the pursuer was visiting the defenders' nightclub, Joanna's, in Elgin on 24/25 December 2015, she fell in the ladies' toilet there, fracturing her ankle. The pursuer's case is that the cause of the fall was water or other liquid on the tiled floor of the toilet, rendering it slippery. The claim is based both on the defenders' fault at common law and breach of their duties under the Occupiers' Liability (Scotland) Act 1960 ("the 1960 Act"). Although in terms of the pleadings the pursuer avers both that the defenders failed to take reasonable care to ensure that the floor was dry and that they failed to install flooring which met the recommended slip resistance value considered by the UK Health and Safety Executive as necessary to provide a safe floor environment when wet, in fact, at the proof, counsel for the pursuer conceded that, for the pursuer to succeed, she had to establish the latter ground of fault. For their part, the defenders dispute that the floor was wet. They also maintain that in any event they undertook a reasonable system of inspection of the toilets.

[2] Accordingly there are two main issues to resolve: (1) was there water or liquid on the floor which caused the pursuer to slip and (2) if so, were the defenders in breach of their duty of care as occupiers by failing to install flooring which met the recommended slip resistance? There is a subsidiary issue in the event that liability is established, namely, whether or not there was contributory evidence on the part of the pursuer to any degree.

[3] At the outset of the proof, a joint minute was lodged agreeing *quantum* in the sum of £16,250 inclusive of interest to the date of the proof.

The evidence

[4] Both parties led evidence. The pursuer gave evidence on her own behalf and also called her brother, Aaron Hume, and a skilled witness, Paul Madden, who is a Health and Safety Consultant. The defenders called Michael Alderman, David Fraser, Natasha Spellman and Ronald Farquharson who were respectively employees, and the managing director, of the defenders.

[5] ***The pursuer's*** evidence was that she went to Joanna's nightclub, with her brother, arriving between 11 pm and midnight on 24 December 2015. Earlier that day, they had gone out for a meal with friends in a local pub in Elgin, during which she had consumed up to three glasses of wine. She then returned home with her husband and brother and wrapped some Christmas presents. She and her brother then decided to go out to Joanna's. She had another drink there. At about 12.45 am she went to the toilet. She used the disabled toilet, which was on the left as one enters the toilet. On leaving the toilet she was walking over the floor when she slipped and fell. It was a wet floor which caused her to slip. She slipped and fell backwards. She landed on her bottom. Her skirt was wet. She hadn't noticed any water before slipping. She lay there in pain and shouted for help which resulted in bouncers coming in. She was in so much pain that she told them not to touch her or to move her but to call an ambulance. While waiting for the ambulance one of the bouncers took photographs of the floor. This made her think that they were trying to show that she hadn't slipped on anything. She

thought it was odd that they didn't photograph the actual spot where she fell. When the ambulance crew arrived they gave her gas and air. They had to put a mat under her and inflate it to get her into a wheelchair before wheeling her into the ambulance. She was taken to Dr Gray's Hospital. The swelling in her ankle was so bad they couldn't operate straight away. She had an operation either on Christmas day evening or 26 December.

[6] In cross-examination, it was put to the pursuer that she had been drinking so much alcohol that she was intoxicated. However she continued to maintain that she had no more than two or three glasses of wine at lunchtime followed by a drink later in the nightclub. She was referred to the hospital records which referred to her as having been out drinking and having fallen over, which she accepted was an accurate account. She accepted that the hospital records described her as being intoxicated at 2.50 am but pointed out that she didn't know what the person writing that entry would class as "intoxicated". She maintained that she was not drunk at any point, stating that she had been given a lot of gas and air, which in her view might have made it appear that she was intoxicated when she was not. She also pointed out that one entry in the records stated that she had fallen over while dancing, which was clearly wrong. She had told the paramedics that she had slipped on water but accepted that she did not mention that at the hospital. She drank 30 units of alcohol per week. She had not consumed enough alcohol to cause vomiting. As regards her recollection of the accident, she did not know how much liquid was on the floor because she hadn't seen it before she fell. The whole of the back of her skirt was wet. She did not recall telling Mr Alderman that she did not know how she ended up on the floor. She did not accept that the accident report form 6/1 of process was accurate. The entry regarding the floor, 6/3 of process was incorrect. She agreed that her

brother entered the toilet after the bouncers were already there. She denied that he had said "you are not up to this again" or that she pulled herself up quickly upon hearing him say that. She had not picked herself up off the floor at all, but had to be lifted by the paramedics. She did not think that her brother's first instinct would have been to say that to her. She confirmed that her feet could be seen in the photographs 5/6 and 6/9 of process, none of which showed her full body or where she fell. She acknowledged that there was no water seen on the floor around her feet. However her bottom was wet when the paramedics had to cut her skirt off.

[7] In re-examination, the pursuer confirmed that the form completed at the hospital on arrival to the effect: "has had a few drinks, slipped" was a fair assessment of what had happened (6/7 of process page 19).

[8] ***Aaron Hume*** confirmed that he and the pursuer, his sister, had gone to Joanna's nightclub on Christmas Eve 2015. Earlier they had met friends at a pub for a few drinks before going home. He and the pursuer decided to go to Joanna's. They had met their friends in the pub at lunchtime. They were there for a couple of hours but he couldn't remember the exact time. At home, he was sure the pursuer had had a glass of wine. He couldn't remember what time they had gone to the club, possibly 11.30 pm. They queued to get in. The bouncers at the door were checking whether people going in were sober. They would not admit people who were too intoxicated. Once in, he went to the bar and his sister went to the bathroom. She was a long time in returning and he went to see what was delaying her. When he wandered over to the toilets, he heard someone in agony, which turned out to be the pursuer. When he went in she was on the floor with two bouncers also present, one on the doorway and him all in the toilet. The pursuer was very distressed. The bouncers kept trying to move her but she didn't

move. He told them to leave her because she obviously couldn't stand up. The floor was tiled. He described it as quite muddy and quite wet. He didn't think that he had called an ambulance, a bouncer had, but an ambulance arrived after 10 to 15 minutes perhaps. One of the paramedics slipped on coming in and made a comment about how wet the floor was. The paramedics gave the pursuer gas. They had to put an inflatable mattress under her to lift her off the ground. The bouncers were taking photographs of the floor but not the entirety of it, which he thought was strange. He accompanied his sister to hospital. He would not have described his sister as drunk. He knew her well enough to know that she wasn't drunk.

[9] Mr Hume was also cross-examined about the hospital records and how much the pursuer had had to drink. He said he wasn't noticing what she was drinking but didn't disagree that she had consumed three glasses of wine in the pub. He thought that his opinion that she wasn't drunk was more accurate than an assessment at the hospital that she was "intoxicated". He wouldn't expect his sister to be drunk after three glasses of wine. He would not describe his sister as an avid drinker. She drank no more or no less than any other person. He hadn't seen his sister fall. He did see water on the floor. It was soaking wet. The water was obvious to him. It was where she was lying. He could not point to water on the floor in photographs 6/9 of process but he did see mud marks on the photo 6/9/1. He did not say "*You are not up to this again*". When he went in the paramedics were not there. The entry in 6/4 of process could not be correct.

[10] ***Paul Madden*** spoke to his report 5/5 of process. He is the northern regional consultant of Floorslip Limited. His qualifications to give opinion evidence are set out in section 9 of the report on page 17. He was instructed to carry out floor slip tests at Joanna's nightclub, which he

duly did on 27 April 2017. The tests were conducted using British Standard methods and equipment approved by the UK HSE methods, equipment which had proved, over many years of scientific research and evaluation, to provide consistent, repeatable results. Pendulum testing was carried out. The equipment used for the testing is shown in the photograph (for example) on page 13 of the report. Essentially, the equipment comprises a tripod with three legs. A slider is attached to a pendulum which is released and hits the floor. The machine then gives a reading which measures the degree of resistance. At each location which is tested the pendulum is swung in three different directions. Before the testing is carried out, the machine is verified against three surfaces, the resistance of which is known. That was done on this occasion. The floor was tested when dry and when wet. He wetted the floor by using a fine spray. The reading which is given is known as the pendulum test value (ptv). Mr Madden referred to the chart of probability of slip at page 10 of his report. A reading of 36 equates to a probability of a slip of 1 in 1 million which is categorised as low probability of a slip. A reading of 34 to 36 equates to a probability of between 1 in 100,000 and 1 in 1 million, which is categorised as a low to moderate risk. A reading of between 26 and 34 equates to a probability of between 1 in 200 and 1 in 100,000, categorised as a moderate risk. A reading of 24 to 26 equates to a probability of between 1 in 20 and 1 in 200, which is categorised as moderate to high. A reading of below 24 is categorised as high risk. The Health and Safety Executive recommended a pendulum test value of a minimum of 36 ptv to be achieved to ensure that a floor was safe for members of the public, visitors or staff.

[11] When Mr Madden tested the foyer area, where the pursuer fell, he noted that the floor type was square porcelain tiles. The readings when dry were 73, 72 and 71 but when wet were

27, 26 and 24. That represented a high slip risk. Having regard to the location of the floor, it was likely to get wet or contaminated through a variety of factors including spilled drinks, water splashed from taps, soap splashed from dispensers, over-spray of ladies' perfumes, vomit, regular cleaning and floor polished using additives. It was Mr Madden's opinion that the levels of slip resistance would not have been likely to provide a safe floor environment at the date of the incident.

[12] In cross-examination, it was put to Mr Madden that his report could not be relied upon because he had not recorded the results of the verification of the procedure which he had carried out. However he stood by his evidence that he had verified that the machine was providing correct readings. He had not seen the need to record that in his report. The inspection system could be relevant, but more so if the floor had a reading of 33 or 34 which wasn't quite a pass but the view might be taken that it was safe if a team of three people was employed to do nothing else but tend to the floor. When it was put to Mr Madden that he used a jug of water to wet the floor, he appeared surprised and disagreed, repeating, as he had said in his evidence-in-chief, that he had used a spray bottle.

[13] The first of the defenders' witnesses was ***Mike Alderman***, who is a doorman at Joanna's nightclub with 25 years' experience. He recalled the incident when the pursuer fell. After the fall was brought to his attention, he rounded up David Fraser and Natasha Spellman and all three went to the ladies' toilet. He went through the door first. He saw the pursuer on the floor. He asked her what had happened and she said she couldn't remember. They decided to call the paramedics. The pursuer then wanted her brother to be present. He was standing outside the door so he came in. Mr Alderman then took photos of the floor before the

paramedics arrived. They did what they needed to do and took the pursuer away. The pursuer had fallen in the foyer leading to the ladies' toilet. At first she said she didn't know what had happened but then she said that she had slipped. 6/1 of process was the accident report which he had filled in on the night. It accorded with his recollection. 5/7 of process was a diary entry which he had also completed. Any spillages in the nightclub were dealt with very quickly. They were cleaned up and a sign put out. If there had been a spillage in the ladies' toilets it would have been closed, cleaned and inspected and re-opened. As it was, when he went in the floor was dry and there was no need to do anything. The disabled toilet was always locked when not in use and the pursuer could not have used it. The floor was bone dry. After the pursuer was taken away he had a quick check of the toilet and everything looked okay. The photos 6/9 and 5/6 of process were taken by him in the foyer. He took them to prove that nothing was there and that the floor was bone dry. The reason he gave in evidence for taking the photographs was that "we were surprised as to how she said she had slipped". Neither of the paramedics slipped on the floor. When the pursuer's brother came in he looked at the pursuer and said "you are not at this again get up". Mr Fraser wrote that down. It wasn't the sort of thing that you expected to hear. Mr Alderman, Natasha and David Fraser all heard this being said.

[14] Turning to the system of inspection, Mr Alderman said that the toilets were checked every half hour. The precise time varied slightly so that the public didn't know exactly when a check would be carried out. If there was a spillage recorded the toilet would be closed, cleaned, re-assessed and re-opened. The checks were carried out within the half hour period or as close to the half hour period as possible. Checks were logged. 6/2 was the record for inspections on

24/25 December 2015. That had been a Thursday night into a Friday morning. He didn't know why it said Saturday. He put Saturday because the club was so busy that "every night felt like a Saturday night". He didn't know which toilet was "ladies 1" and which was "ladies 2". The entry beside 12.30 appeared to say "ladies female found on floor".

[15] In cross-examination, Mr Alderman was asked how he knew that sheet 6/2 of process related to the same night as 6/1 and 6/3. He repeated that he clearly made a mistake in describing it as a Saturday night but was adamant that the date 24/12 was correct and that it was the day of the week which was wrong. When the pursuer was taken away he didn't take any further photographs. The floor was not wet. He was asked why he hadn't recorded in the accident report 6/1 of process the fact that the pursuer said that she had slipped. He was not able to give an entirely satisfactory answer to that question, simply repeating that the first thing she said was that she didn't know what had happened and he didn't know when she changed her mind to say that she had slipped. However, he conceded that before she was taken away, she did say that she had slipped. He then said that she said she slipped, while they were waiting for the paramedics. He confirmed that when the statement by the pursuer's brother, recorded in 6/4 of process, was made, the paramedics were not there. When it was put to him that she couldn't get up quickly and that there was an apparent inconsistency in the statement (which gave the impression that the paramedics were there at that time), he said that he couldn't answer for Mr Fraser. The pursuer got up when the paramedics arrived. He never saw an inflatable mat. The pursuer "pretty much" got herself up off the floor. He couldn't remember if the pursuer had said there was water on the floor. He knew that she claimed that she slipped on a wet floor, by the time he gave his statement in 2017. He acknowledged that

patrons of the night club who appeared to be under the influence of alcohol were asked to leave the premises. He couldn't explain why he had checked the pursuer's dress to see if it was wet.

[16] In re-examination Mr Alderman repeated that he was 100% certain the floor was dry. When asked if at any point the pursuer had mentioned water, he said that she just claimed that she slipped on a wet floor. He then, more or less in the same breath, changed his evidence to say that she simply said she had slipped (without mentioning a wet floor). He could not then explain why he had just stated that she said she had slipped on a wet floor.

[17] ***David Fraser*** was also one of the security staff employed at Joanna's nightclub. He, too, remembered the incident involving the pursuer. He said that Mike (Alderman) came to him and said that a woman had fallen in the toilet. They went there together. As they came through the door they saw a lady on the floor whom they later found out was the pursuer. The first thing Mike said was "what happened?" She said that she didn't know what had happened. The paramedics were called for. The floor was dry and clean. He said that "the first thing you do is look and see if they have tripped on something or slipped". He saw no sign of water on the floor. The pursuer was wearing sandals. He thought they had shiny bits on them. Natasha Spellman also attended at the toilet. He did not remember the pursuer mentioning the floor being wet. Later on the pursuer said that she had slipped. Originally she said that she didn't know. The paramedics were quite quick in arriving, maybe 15 minutes. They didn't slip when they came in. The pursuer's brother came in. He didn't know the pursuer's brother's name. He said "you are not up to this again are you, get up". It sounded so unusual, not what Mr Fraser was expecting to hear, that he took a note of it in his notebook. 6/4 of process was a copy of the relevant entry. The paramedics were not there at that point. Mr Fraser had no

concerns about the floor being hazardous or dangerous when he was in the toilet. He was there for over half an hour, maybe three quarters of an hour. The pursuer could not have used the disabled toilet because it was locked. He could not remember a blow-up mattress being used to manoeuvre the pursuer into a wheelchair.

[18] As regards the system of inspection, Mr Fraser said that the toilets were checked every half hour. He carried out checks of the gents' toilets. Although the checks were supposed to be every half hour they didn't stick to the half hour, so that the public didn't know exactly when the checks would be carried out, in case they were up to something in the toilets. If there was a spillage then a member of staff would be asked to stand there and ask customers to use other toilets and someone else would clean up and then re-open the toilet. Mr Fraser had received training in the procedure. He spoke to the production 6/8 of process which was the defenders' spillage policy. There had been an incident in the bar earlier that night. A drink was spilled and it was cleaned up. Mr Fraser confirmed that 5/7 of process contained an accurate account of that incident. He also confirmed that 6/2 was the sign off sheet for the inspection. It had been written by Mr Alderman. 24 December was not a Saturday. The club was so busy at that time of year it felt like a Saturday. It was he who had completed the checks of the gents' toilets. The entry at 12.30 appeared to read "ladies female found on floor". He would expect the pursuer to be the person referred to. The "Emma" named in the sheet was Emma Saunders. He wasn't sure which toilet was "ladies 1" and which was "ladies 2".

[19] In cross-examination Mr Fraser repeated his earlier evidence that the first thing the pursuer said was that she didn't know how she had fallen but later said that she had slipped. He couldn't remember if she said what she had slipped on. She might have said that she

slipped on water, but there was no water on the floor. He had a look at the toilet before he left just after the pursuer left and did not notice any water. He didn't check her clothes so he didn't know whether her clothes were wet or not. When asked how he knew that 6/2 of process was the sheet referred to in the night in question he said that he just knew because of the date. The date was right but Mr Alderman had put the day in wrong. At this point in his evidence, he appeared to be floundering. If the pursuer had been found in the toilet having fallen that would have been noted. The only reference to anything in the ladies' toilet the whole night was an entry by Emma which would have had to have been completed between 12.30 and 1 am. He was not aware of who had informed Mr Alderman of the accident. He would assume that the pursuer had been drinking, because it was a club, but there was nothing about her to suggest that she had been indulging. The entry in 6/4 of process, although it might seem to read as one action, in fact described two. The brother made the remark as he came in and the paramedics were there a wee while before she got into her chair. The entry was describing two separate actions.

[20] ***Natasha Spellman*** was the bar manager at the time. She was working on the night of 24/25 December 2015. She remembered that she was in one of the offices when Mike [Alderman] came through and said there had been an incident in the female toilet. He asked her to accompany him there. She went through to see what was going on but returned to the office to get her phone which she gave to Mike to take photos because she did not know what was going on. When she entered the toilet the pursuer was lying just in at the entrance. There was a disabled toilet on the left. Mike Alderman and David Fraser were also there. There was nothing unusual on the floor. It was not wet at all. There was no water around the pursuer.

She was wearing a long dress and a pair of sandals. The sandals weren't wet. There were no wet marks. There was no water in or around where she was lying. Miss Spellman called an ambulance. She remembered Mike taking the photographs. She looked at the floor because he was taking photos. The ambulance took about 15 minutes to arrive. The paramedics took the pursuer away in a wheelchair. Miss Spellman did not see an inflatable device. At no time did the pursuer mention that the floor was wet. Her brother entered the foyer. He didn't slip on the floor. No one else slipped on the floor. She could not remember any other incident such as this in the nightclub. The capacity was 761. Most nights when it was open there were five or six hundred people there. She has worked in Joanna's for over 11½ years. The disabled toilet was not generally open. It was always locked in case of vandalism.

[21] There was a system of inspection of toilets in place in the nightclub. She did a couple herself on the night of the pursuer's accident. The sort of things being checked for included whether there were enough toilet rolls, or whether anyone was doing anything they shouldn't be doing. The inspection would be every time a staff member went into the toilets. They could be every five minutes. Spillages would be noted and cleaned up. The wet floor sign would be put out. If she noticed a spillage she would mop it up or it could be someone else if she was busy. Number 6/8 of process was the defenders' spillage policy.

[22] In cross-examination Ms Spellman confirmed that she had checked the toilets that night but her signature was not on the sheet. Checks were done in between the formal checks. Staff used the toilet as well and they just did a random check when they did so. She maintained her position that in 11 years she had no knowledge of anyone slipping or falling in the nightclub. She confirmed that she had not checked the pursuer's sandals to see if they were wet but there

was no water around her feet. She just looked about, she didn't touch the floor. She looked at the pursuer's skirt but didn't examine or touch it. It didn't look wet. At no point did she hear the pursuer say what had happened. When asked why she had re-checked the floor when the pursuer had left, she said it was to check if the toilet could be opened again. She was just having a look, it popped into her head. She didn't hear the pursuer say she didn't know what had happened. She didn't hear the pursuer say anything. She could tell the pursuer had had a drink but she wasn't drunk.

[23] In response to a question from me Ms Spellman said that no one else had come into the toilet whilst she was there. Ron Farquharson and she had inspected the foyer and deemed it safe to re-open. It was not Wilma who had inspected the toilet.

[24] ***Ron Farquharson*** is the managing director of the defenders. His job includes the day to day running of the premises and health and safety. He remembered the pursuer's accident. Mike came through and said that someone had fallen in the ladies toilet. He went there. Mike said to him everything was under control. He has a lot of experience and so Mr Farquharson stepped back to let him deal with it. He did not enter the toilet. All he could see was the pursuer's legs and sandals. He looked to see if the floor was dry which it was. If the floor had been wet the defenders would have "put our hands up immediately". The photos at 6/9 of process were consistent with what he saw. The pursuer could not have used the disabled toilet because it was not open to the public. He had been managing director of the defenders for 30 years. Joanna's had been there for 25 years. The capacity was 761. There were no other incidents of anyone ever having slipped in the toilets. You would get a wet floor but staff were trained to follow the procedure in dealing with it. There was a system for checking the toilets.

If liquid had been found the toilets would have been closed immediately and a sign put up. The toilets were checked every half an hour. 6/2 was a toilet check sheet. It referred to the night in question. It had the wrong day because "every night is a Saturday". Number 6/8 was the spillage policy. Number 5/7 was a diary entry for the night in question. It recorded an earlier incident. A customer had thrown his drink in the air but the defenders' employees were on the ball and had dealt with it immediately.

[25] 6/5 of process was a risk assessment completed by Mr Farquharson in 2015. In doing so, he took into account the procedure for mopping up, which accorded with the defenders' spillage policy.

[26] Mr Farquharson was present when Paul Madden had attended to do his tests. He had no experience himself in testing slip resistance of a floor but he thought that Mr Madden was very unprofessional. He asked Mr Madden if the machine had been calibrated. He could not see how someone could calibrate such a machine. He did not see him verify the machine. Mr Madden seemed to put a lot of water on the floor. He had a jug. The floor was very wet. When asked again whether a jug had been used he paused and said a vessel of some sort.

Pursuer's submissions

[27] Counsel for the pursuer invited me to accept the pursuer and her witnesses as credible and reliable, in preference to the defenders' witnesses. The former gave clear and consistent accounts, whereas there were signs of rehearsal and collusion on the part of the latter. As regards liability, the pursuer's case was based primarily on a breach of the defenders' duty in terms of section 2(1) of the Occupiers' Liability (Scotland) Act 1960. A tiled toilet floor which

was slippery when wet constituted a danger, of which the defenders were aware, as confirmed by their own risk assessment. It was reasonably foreseeable that a toilet floor in a nightclub would become wet and even a reasonably regular inspection would not prevent that from occurring. The defenders' failure to install a floor surface with good slip resistance qualities was a breach of their duty under the 1960 Act. As regards contributory negligence, the defenders had failed to prove either that the amount of alcohol consumed by the pursuer had caused, or contributed to, her fall, or that she should have seen any water on the floor. The following cases were referred to: *Wallace* v *City of Glasgow District Council* 1985 SLT 23 and *McMillan* v *Lord Advocate* 1991 SLT 150.

Defenders' submissions

[28] The solicitor advocate for the defenders submitted that I should prefer their witnesses both in relation to credibility and reliability. The pursuer had been evasive over how much she had to drink, and her evidence was further undermined by the medical records. Her evidence was inconsistent with that of Aaron Hume. The evidence of Mr Madden should not be accepted, because he had not included in his report a statement that he had verified the machine, and, at least if I accepted Mr Farquharson's evidence, his inspection had been rushed. The defenders' witnesses were all consistent in saying that the floor was dry when they found the pursuer. They were all credible and reliable. The pursuer had failed to prove that the floor was wet. As regards the law, it was accepted that the defenders owed a duty of reasonable care to the pursuer, and a duty in terms of section 2(1) of the 1960 Act. However, if the court accepted that the floor was dry, the defenders could not be said to have breached the duties

incumbent on them. Further and in any event, the defenders had a reasonable system of inspection. If the defenders were found to be liable, the pursuer should be found to be contributorily negligent due to her level of intoxication at the time. Contributory negligence should be assessed at 50%. The following cases were referred to: *Beaton* v *Ocean Terminal* 2018 Rep LR 110; *Kiapasha* v *Laverton* EWCA Civ 1656.

Decision

Was the floor wet?

[29] The parties agreed that the case largely turns on the factual issue of whether the floor was wet or dry at the time of the pursuer's accident. That turns on my assessment of the witnesses. The pursuer and her brother gave direct eye-witness evidence that the floor was wet; whereas the defenders' witnesses all gave evidence that it was not just dry, but "bone-dry". One set of witnesses must be wrong.

[30] As regards the pursuer, the first issue to deal with is whether or not she was "intoxicated". It was not always clear to me as the proof progressed whether the defenders' assertion that the pursuer was intoxicated (which is, as the pursuer and Mr Hume pointed out in cross-examination, a somewhat subjective term in any event) was the foundation for an argument that she therefore was not a reliable historian as to what happened on the night in question, or for an argument that her level of intoxication caused or contributed to her falling, or both. In any event, the evidence did not support either argument. Perhaps the best independent indicator of that is the evidence of the defenders' witnesses that, when they were speaking to her as she lay on the floor, she did not appear to them to be significantly

intoxicated. That is supported by a negative inference which can be drawn from the fact that, prior to her fall, the pursuer was admitted to the nightclub, and subsequently had not been asked to leave as she is likely to have been had she been perceived to have been significantly intoxicated. While the medical records do contain references to her having consumed alcohol, and to her being intoxicated, these are not entirely consistent and, as I have pointed out above, "intoxication" is a subjective term. I certainly cannot conclude from its use in the medical records that she was so under the influence of alcohol that she would be unable to give reliable evidence about what happened. Further, the pursuer gave her evidence in a compelling manner. Although she generally stood her ground in cross-examination, she was also prepared to make concessions where appropriate which were potentially against her interest, such as that she had been drinking and that she could not remember how large the glasses of wine which she had consumed were. She gave evidence which showed that she clearly *could* remember details from that night, such as that one of the defenders' staff came in and started taking photographs of her, but not of where she had fallen; which turned out to be entirely correct. (Of course, the pursuer *could* have given that evidence simply because she was now aware of what the photographs showed, but I did not gain that impression). She also gave evidence about having to be lifted by the paramedics using an inflatable device, which her brother also spoke to. Although the defenders' witnesses could not remember that happening, that would be an unusual detail for both her and her brother to have mis-remembered; and it is still more unlikely that they would have discussed and fabricated that evidence before the proof (particularly when, on other issues of potentially more significance, such as how much alcohol she had consumed and where she had consumed it, their evidence differed). The pursuer was

also able clearly to describe that she slipped on some liquid which was on the floor and that her dress was wet, at her bottom. Notably, there was no other obvious factor which might have caused her to fall (such as something other than liquid on the floor, or unsuitable footwear).

[31] Before leaving the pursuer's evidence, it has to be acknowledged that her evidence that she had come out of the disabled toilet seems unlikely to have been correct, partly because of the unanimous evidence of the defenders' witnesses that it is likely to have been locked and partly because that seemed to come as a surprise even to her own advisers (and to Mr Madden, whose report had been prepared on the basis that the pursuer had been exiting the ladies' toilet not the disabled toilet, when she slipped and fell). That said, she was not cross-examined on the point and her lapse of memory on this point could be due to the passage of time. There was no dubiety about the actual location of the fall, and it was immaterial precisely where the pursuer had been.

[32] The pursuer's brother, Aaron Hume, also gave unambiguous evidence that the floor was wet. He was able to point to marks on the photographs which might have been indicative of wetness, or mud, on the floor. He confirmed that the pursuer had been drinking, and his assessment of how much she had consumed more or less chimed with hers, without being identical. I also found Mr Hume to be a credible and reliable witness. Such inconsistencies as there were with the pursuer's evidence – and there were some – were the sort of inconsistencies one would expect to find in the accounts of two basically honest witnesses doing their best to recall events which had occurred the best part of four years ago.

[33] I found Mr Madden to be an impressive witness, who clearly has a high degree of expertise and experience in the area of measuring the slip resistance of flooring. While at times

he did tend to over-elaborate in his answers to questions, and to stray onto matters which had no real relevance to this case (such as his evidence about slopes) that ultimately served only to confirm my impression of him as a man who takes a pride in his job, about which he has gained an immense amount of knowledge. The two main challenges to the reliability of his report were that he had not included in it a statement that he had verified the machine before carrying out the testing; and that he had not sprayed a small amount of water on the floor but had poured it from a jug. He dealt adequately with both those criticisms in his evidence. I found him to be entirely credible and reliable and therefore accepted his evidence that he had verified the machine before using it. He gave sufficient detail of how he had done this as to persuade me that he had. I do not consider that the report was in any way undermined by the fact that he did not state in it that he had carried out the verification procedure, whether or not his more recent reports do contain that level of detail. Further, Mr Madden appeared genuinely surprised by the suggestion that he might have used a jug of water as opposed to a spray which he brought with him and, moreover, that suggestion, which came from Mr Farquharson, appeared to be watered down somewhat by him when he came to give his evidence. I therefore do accept Mr Madden's evidence, and what I take from that for present purposes is that the floor where the pursuer slipped is slip-resistant when dry, but is slippery when wet.

[34] By contrast, the evidence of the defenders' witnesses was unsatisfactory in a number of material respects. First, it did give the appearance of having been discussed, as evidenced by the repetition, by different witnesses, of stock phrases or themes, such as that the floor was "bone" dry; and that "every night was a Saturday". On that latter point, all witnesses (with the possible exception of Ms Spellman) seemed to have identified before the proof that the sheet

number 6/2 of process wrongly described 24 December 2015 as a Saturday, and that issue did appear to me to have been discussed. Second, Mr Alderman's evidence when questioned as to whether the pursuer had claimed on the night that the floor was wet was most unsatisfactory. He seemed reluctant to state in terms that she had, and indeed, when he did spontaneously blurt that out in re-examination immediately sought to retract it. However, the explanation he volunteered for having taken photographs was that "we were surprised as to how she said she slipped", which would tend to confirm that she *had* said that the floor was wet, otherwise the reference to "how she said she slipped" would make less sense. Given that he accepted in his evidence, on several occasions, that whether or not she said that the floor was wet, the pursuer did on the night claim to have slipped, the manner in which the accident report form (number 6/1 of process) and the diary entry (number 6/3 of process) were completed on the night of the accident is, at best, mysterious and, at worst, suspicious. Both state that the pursuer said that she did not know how she had ended up on the floor, but even if that was what the pursuer initially said, that was on any view only a partial account of what she said, and Mr Alderman could not adequately explain in his evidence why such a partial account was given in the written records which he made that night. Mr Alderman's account of the statement allegedly made by the pursuer's brother when he first saw the pursuer on the floor was also somewhat undermined by his inability to explain why the statement written by David Fraser gave the impression that the paramedics were there at the time the statement was made, somewhat lamely saying that David Fraser would have to explain that, and he appeared somewhat discomfited by questioning about the apparent anomaly. It was also unclear to me why Mr Alderman had been so keen to take photographs; and, if it was to support the

proposition that the floor was dry (despite, on his own evidence, the pursuer not having asserted that it was wet), why he did not take photographs of the area where the pursuer had actually slipped, rather than of where her feet ended up? Even if that had been to preserve her dignity while she lay there, that did not preclude him from taking photographs of the entire area after she had been removed by the paramedics. I also found Mr Alderman's evidence about the mistake in the Toilet Check sheet, number 6/2 of process, difficult to follow, as to how the mistake in the day came about. For all these reasons, I did not find him to be a reliable witness.

[35] Turning to David Fraser, the first and main criticism of his evidence is that the purported contemporaneous statement written in the diary, a copy of which is number 6/4 of process, simply cannot be correct. Leaving aside whether or not Mr Hume would be so callous as to say to a sister very obviously in pain "you are not up to this again, are you, get up", the statement goes on to say "She picked herself up very quickly and on to the paramedics chair." There are two fundamental problems with that last statement. The pursuer on no view was able to pick herself up, quickly or otherwise, and the paramedics were not there. Although Mr Fraser eventually sought to say that he was describing two separate actions which occurred at different times, I do not consider that escape route is open to him. Even making due allowance for any lack of literary prowess (which is not a criticism) and for the fact that the entry may have been written in a hurry, there is no fair way of reading the entry other than that it is purporting to describe a continuous sequence of events: the author is intending to convey that the pursuer's brother told her that she was "up to this" [presumably falling], "again", which prompted her to get up quickly. That simply did not happen. Even Mr Alderman

qualified his evidence about the manner in which the pursuer got off the floor by saying that she "pretty much" got herself off the floor, the qualification "pretty much" clearly conveying that she did in fact require some assistance and that evidence is not redolent of an injured person, who did in fact have a broken ankle, getting up quickly, unassisted. I therefore conclude that Mr Fraser's diary entry does not contain an accurate account and can only have been written, and maintained subsequently to be true, in an attempt to paint the pursuer in a bad light, and the defenders in a favourable one. (It is of course entirely possible that the pursuer's brother did make some less than sympathetic comment to her, and that Mr Fraser was merely gilding the lily. However, for the avoidance of doubt, even if the pursuer had fallen before, whether after consuming alcohol or otherwise, that would have had no probative value in helping me to determine the cause of her falling on this occasion. However, on a balance of probabilities, I have found that Mr Hume made no such comment). This is such a fundamental pointer to the unreliability of Mr Fraser's evidence that I need say little more. I did not accept his evidence insofar as it was inconsistent with the pursuer's.

[36] Natasha Spellman I did not find to be a particularly compelling witness. She did not give her evidence confidently and at times it was difficult to follow, particularly when she was describing the system for inspecting the toilets. She gave evidence that the pursuer's skirt was not wet, when she was not really in a position to say whether it was wet or not. She was not present throughout the time the pursuer lay on the floor (as she went back to get her mobile phone, although it was then unclear why Mr Alderman subsequently took the photographs, and why she did not, which lends some credence to the notion that there might have been an agenda in taking the photographs). That may or may not explain why she said she did not hear

the pursuer say anything about the cause of her fall, or hear what Mr Hume said. She did give evidence that while she was in the toilet no-one else came in; and, further, that the toilet was re-opened after an inspection by herself and Ron Farquharson.

[37] I digress at this point to say something about the Toilet Check sheet number 6/2 of process, which even apart from the discrepancy over the day and date, already noted, is unsatisfactory in a number of respects (or, at least, raises as many questions as it answers). First, although it refers to four toilets, variously as Gents 1, Gents 2, Ladies 1 and Ladies 2, none of the witnesses could say which were 1 and 2 respectively. This is surprising. The next observation is that many of the comments in the right hand column simply say "gents ok" or similar, with no corresponding comment for the ladies' toilets, which does beg the question as to whether the ladies' toilets were inspected that night at all. Third, the form gives the clear impression that the inspections are carried out on the hour and half hour, but there was evidence from all of the defenders' witnesses that in fact the inspection times vary, so as to keep the public on its collective toes. If one then assumes (and, on the evidence, I find) that the entry for 00.30 hours reads "Ladies female found on floor" and that this refers to the pursuer being found in the ladies' toilet (although the handwriting is not entirely clear, that is how it reads, and no better explanation was put forward for the meaning of that entry), then, given that we know that the pursuer's accident did not occur until 00.45 hours, that entry must have been written not at 00.30 but at some time after 00.45, which suggests that the supposed 00.30 hours inspection was likewise not carried out until some time after 00.45. When one then throws into the mix that we also know that after the pursuer was found and help summoned, which would have taken several minutes; that it took, on the evidence, at least 15 minutes, possibly longer for

the paramedics to arrive; and that it would then have taken several minutes, at least, to remove the pursuer, it is likely that the toilet was out of commission for at least 30 minutes, which is consistent with the evidence. (Mr Fraser had the whole incident lasting as long as 45 minutes.) It is thus unlikely that an inspection took place at 01.00 hours, and possibly not even at 01.30 hours, as the sheet would suggest. Indeed, Natasha Spellman confirmed that no-one else came into the toilets while the pursuer was lying there, so we also know that "Wilma" – who bears to have signed off the 01.00 hours inspection, did not inspect that particular toilet at that time. We further know from Natasha Spellman that the inspection which led to the toilet being re-opened was carried out by her and Ron Farquharson, but that does not appear on the Check sheet. When all of this is put together, there can be no confidence that the ladies' toilet was regularly inspected that night, and no reliance can be placed on the Toilet Check sheet number 6/2 of process. There is therefore no reliable evidence before me that the toilet had been inspected at any particular time before the pursuer fell, and so there is no evidence that any spillage of water or other liquid would have been discovered and dealt with (which is consistent with my having found that there was, in fact, water on the floor at the time of the pursuer's fall).

[38] Reverting to the evidence about the state of the toilet floor, the final witness who spoke to that issue was Ron Farquharson. On his own admission, he did not enter the toilet while the pursuer was lying there. He was therefore not in a position to tell whether the floor where she had fallen was wet or dry and I discount his evidence that he could tell from the door that the floor was dry. I was also unimpressed by his criticisms of Mr Madden. Although he said that he could not see how the machine could be calibrated, one would not expect a lay person to

know how that was done, and so his lack of understanding of that is immaterial. As mentioned elsewhere, he also retracted somewhat his initial bald assertion that Mr Madden had wetted the floor with water from a jug, and I do not accept that that happened.

[39] Of course, simply because I do not accept the defenders' evidence that the floor was dry, does not mean that it was wet, nor does that corroborate the evidence of the pursuer and her brother that it was wet. However, the pursuer's description of an accident in which she was walking normally before suddenly slipping, coupled with Mr Madden's evidence that the floor was not slippery when dry, but very slippery when wet, is indicative of a floor which was slippery and therefore wet. It must also be borne in mind that, as Mr Madden said, the floor is in an environment, namely the foyer of toilets on a busy night of the year, which is likely to give rise to wetness. I have also accepted the evidence of the pursuer, and Mr Hume, about the floor being wet.

[40] In the event, for all these reasons, I have concluded that the floor was slippery due to the presence of water or other liquid on it.

[41] I have also concluded, on the balance of probabilities, that there was sufficient water or other liquid on the floor to be seen by persons using the toilet. On the pursuer's evidence, there was sufficient liquid to make her skirt wet. Mr Hume also said that he saw the water when he came into the toilet. This is relevant when considering contributory negligence, which I deal with below.

Breach of duty

[42] That leads on to the second main issue for resolution, which is whether or not the defenders were in breach of their duties of care at common law, and under section 2 of the 1960 Act, by failing to install flooring which met the recommended slip resistance. The authorities referred to by the defenders I found to be of limited assistance, given that each case must of necessity turn on its own facts, and in none of the slipping cases referred to did the negligence comprise a failure to install adequate flooring. On the evidence of Mr Madden again (which apart from the two quibbles about it, which I have rejected, was not seriously challenged), in the present case the levels of slip resistance did not provide a safe floor environment when the floor was wet, which it was likely to be through the sort of contaminants listed by him, including water from taps, soap and even spilled drinks. Although the defenders made the point that there are no taps or soap in the foyer area, water or other liquid can easily be transferred simply by toilet users transferring the spilled liquid on their footwear, but in any event the defenders cannot dispute the foreseeability of the risk of slipping within the toilet area as a whole when their own risk assessment, number 6/5 of process, identified slipping on tiled flooring if it becomes wet as a hazard and assessed the likelihood of that occurring as 9 out of 10. I therefore accept the pursuer's submission that the floor, when wet, constituted a danger of which the defenders were aware (*cf Wallace* v *City of Glasgow District Council*, *supra*). On Mr Madden's evidence, which again I accept, the tiles did not comply with the Health and Safety Executive recommended ptv – by some considerable margin – and did represent a high risk of slipping when wet – which the risk assessment recognised in any event. The question then becomes whether the defenders had complied with their duty of reasonable care by having a reasonable

system of inspection or whether they ought to have gone further by installing flooring which had a slip resistance which met the Health and Safety recommended ptv.

[43] The problem with the system of inspection as I see it is, first, that it was not in fact a system of inspection every half hour – on the defenders' own evidence there would self-evidently be intervals of more than half an hour between some inspections, given the variation in timings which was built into the system (in other words, whenever an inspection was carried out before or after the scheduled time). If an illustration of this is needed, it can be seen by looking no further than the evening of this incident, when taking the sheet at face value, an inspection was carried out at midnight, and, as noted above, the next inspection cannot have been before 12.45. Given the environment – toilets – that will inevitably lead to periods of longer than 30 minutes when those using the toilets are exposed to the risk of liquid of some sort on tiles which are known to be slippery when wet. But even a shorter, or more strictly regimented, system of inspection would not have been a sufficient precaution against the risk of the tiles becoming wet, given the slippery state of the tiles when wet, having regard to the fact that the tiles resulted in a floor which was likely to become wet. For these reasons, I do not consider that any system of inspections could have discharged the duty of reasonable care, but certainly not one which, as this one did, could result in periods of 45 minutes or more of wet flooring.

[44] On the evidence, a reasonable and more effective precaution which the defenders could, and should, have taken was to install flooring which did have the recommended ptv, combined with a system of inspection. The defenders did not argue that such a step would not have been practicable, nor did they advance any other reason why it would not have been reasonable,

particularly having regard to the number of patrons. Had such flooring been installed, the pursuer probably would not have slipped, and it was the failure to install it which was the cause of her accident.

[45] I therefore find that the defenders are in breach of the duties owed by them to the pursuer at common law, and by virtue of section 2 of the 1960 Act.

[46] For completeness, I should record that there was some evidence led about an earlier spillage in the bar on 24 December 2015, which was cleared up promptly in accordance with the spillage policy number 6/8 of process. I accepted that evidence, but it is nothing to the point. The defenders' negligence lay not in any delay in clearing up spills which had been identified, but in having flooring, in the toilet, which was slippery when wet; and no spillage or inspection policy was able adequately to guard against the risk posed thereby while it was wet.

Contributory negligence

[47] As regards contributory negligence, I have found not only that the floor was wet, but that there was sufficient water or other liquid on it to be seen by persons using the toilet. Aaron Hume saw it as soon as he entered. I do not find that the pursuer failed to take reasonable care for her own safety by having consumed an excess of alcohol, but the fact is that had she been taking reasonable care for her own safety she ought to have seen the water, but she did not, and whether that failure arose from mere inattention or intoxication is immaterial. I therefore consider that she was contributorily negligent. However, since the defenders' negligence lay not so much in the presence of water in the floor, but rather in the provision of a floor surface which was dangerously slippery when wet (which the pursuer could not have

foreseen), I consider that the greater share of blame must attach to the defenders, as their failure had a greater causative potency. In that regard, I consider the facts can be distinguished from *Kiapasha* v *Laverton*, *supra* in which the Court of Appeal expressed the *obiter* view that contributory negligence should be assessed at 50%, but as I have said, each case must in any event be assessed on its own facts. I have assessed contributory negligence at 25%.

Decree

[48] I have therefore awarded decree in the pursuer's favour in the sum of £12,187.50 plus interest from the date of the proof, 6 December 2019.

Expenses

[49] I have reserved all questions of expenses and assigned a hearing for 16 March 2020. If parties can agree expenses, the appropriate joint minute and motion can be lodged before then.