[2003–04 Gib LR 357]

RUTTER v. ATTORNEY-GENERAL

SUPREME COURT (Pizzarello, Ag. C.J.): February 9th, 2004

Civil Procedure—admissions—admission of liability—withdrawal of admission—court should allow defendant to withdraw pre-trial admission of liability if issue on which resiling has some prospect of success, application made in good faith and without prejudice to claimant—prejudice includes need to prove case with attendant increase in difficulty and cost

Civil Procedure—judgments and orders—judgment on admissions—no judgment on admission of liability in action for negligence if defendant has grounds for pleading contributory negligence

The claimant brought an action claiming damages for personal injury and consequential losses as a result of negligence and/or breach of statutory duty on the part of the defendant.

The claimant sustained an injury to her right hip and lower back and an aggravation of arthritis in her right thumb when a chair on which she was sitting at work (at St. Bernard's Hospital) collapsed beneath her. Correspondence regarding the claim was exchanged until the defendant's solicitors wrote: "We are in a position to accept liability on behalf of our client's insured," and following this the defendant made an interim payment of £1,000. By this stage, although it is unclear when exactly, the chair had been disposed of and the defendant had investigated the incident. In the particulars of claim, the claimant described the accident in greater detail, including a reference to a movement on her part which brought about the collapse of the chair. The case management conference in respect of the case was adjourned as the claimant applied for the court to enter judgment with damages to be assessed, and the defendant applied for leave to withdraw its admission of liability.

The claimant submitted that (a) the defendant's admission was an out-and-out admission of full liability; (b) the defendant should not be able to withdraw that admission as it sought permission solely on the basis that it would not prejudice the claimant, without giving any positive reasons for the withdrawal, and it did not even show that it would itself be prejudiced at all if the permission were refused; (c) no new factors arising after the admission had been advanced and the admission had not been based on a mistake of fact or of law; (d) the defendant had no real prospect of success on liability, and proportionality therefore required that no more

money should be wasted on costs of further litigation; (e) she would suffer prejudice if the withdrawal of the admission were allowed, in that she would suffer disappointment, delay in resolution, having to prove liability and sustain a disproportionate increase in costs in order to do so; and (f) the defendant would suffer no prejudice if the withdrawal were not allowed, as long as its claim for contributory negligence were allowed to proceed.

The defendant in reply submitted that (a) the admission had only been an acknowledgement that a duty of care had been owed and not an admission of liability; (b) in any case, the particulars of claim gave the case a different perspective, as previously it had not been known that there were factors on the basis of which contributory negligence could be pleaded; and (c) the claimant would not be prejudiced by a withdrawal of the admission because it was still admitted that the chair had broken, the fact that she would have to prove her claim without the chair, as it had been disposed of, did not alter the position as this had been the case when she had initially made her claim and the only prejudice suffered would be her disappointment which could be adequately compensated.

Held, ruling accordingly:

(1) The defendant would not be allowed to withdraw its admission, which was an admission of full liability. It was true that the onus was on the claimant to show that it would be unjust for the defendant to withdraw its admission by establishing that the issue to which the admission related had no realistic prospect of success, the application to withdraw the admission had been made in bad faith, or the withdrawal would prejudice her—and in this case the issue on which the defendant wished to resile had some prospect of success and the application had been made in good faith. The withdrawal of the admission, however, would prejudice the claimant, as it would mean that she would have to prove her case, with the obvious increase in costs, and the absence of the chair made this even more difficult. Although there would be prejudice suffered by the defendant in not allowing the withdrawal, the prejudice would be greater for the claimant (para. 19; paras. 22–23).

(2) Judgment would not be entered for the claimant at this stage, however, as the defendant continued to be at liberty to proceed with its claim for contributory negligence (para. 23).

Cases cited:

(1) *Bird* v. *Birds Eye Walls Ltd.* (1987), *The Times*, July 24th, 1987, considered.

(2) *Blackpool & Fylde College* v. *Burke*, [2001] EWCA Civ. 1679, considered.

(3) *Cropper* v. *Smith* (1884), 26 Ch. D. 700; 51 L.T. 729; 53 L.J. Ch. 891; 1 R.P.C. 81; 1 *Griffin's Patent Cases* 60; 33 W.R. 60; on appeal, *sub nom. Smith* v. *Cropper* (1885), 10 App. Cas. 249; 53 L.T. 330; 55 L.J. Ch. 12; 33 W.R. 753, followed.

(4) *Flaviis* v. *Pauley*, Q.B.D., October 29th, 2002, unreported, followed.
(5) *Gale* v. *Superdrug Stores plc.*, [1996] 1 W.L.R. 1089; [1996] 3 All E.R. 468; [1996] P.I.Q.R. P330, considered.
(6) *Hamilton* v. *Hertfordshire C.C.*, [2004] P.I.Q.R. P23, followed.
(7) *Rozario* v. *Post Office*, [1997] P.I.Q.R. P15, considered.

Legislation construed:
Civil Procedure Rules (S.I. 1998/3132), r.1.1(2): The relevant terms of this paragraph are set out at para. 20.
r.1.3: The relevant terms of this rule are set out at para. 21.
r.3.1(2)(k):
"(2) Except where these Rules provide otherwise, the court may—
. . .
(k) exclude an issue from consideration."
r.14.1(5): The relevant terms of this paragraph are set out at para. 9.

Mrs. P. Garcia for the claimant;
Miss G. Guzman for the defendant.

1 **PIZZARELLO, Ag. C.J.:** On August 3rd, 2001, Messrs. Hassans, on behalf of the defendant, wrote to the claimant's solicitors as follows: "We are in a position to accept liability on behalf of our client's insured."

2 I am dealing with a case management conference which has been adjourned to take a preliminary point on the question of liability. The claimant wishes to enter judgment on the admission as she submits that this is an out-and-out admission of full liability on which the court may enter judgment, damages to be assessed. The defendant contests the application and says two things: it submits that (a) that admission only goes to concede an acknowledgement that a duty of care was owed by the defendant to the claimant and no more and so it is not an admission on which judgment may be entered against it; and (b) if that submission is not upheld, then it seeks leave to withdraw the admission. The claimant opposes both submissions.

3 In my view, the expression used seems clear enough. Nevertheless, I shall consider it in the context in which it was made and the relevant circumstances in my view are these:

(a) The claimant was injured and suffered damage when a chair collapsed under her on February 9th, 2000.

(b) On August 3rd, 2000, the claimant's solicitors, Russell Jones & Walker, wrote to the Gibraltar health authorities claiming damages in connection with the accident:

"The circumstances of the accident are our client is employed as an Administrative Officer in the Private Patients office and she sat on a

chair and the right leg of the chair collapsed and she was thrown on to the floor causing injuries.

We are instructed to put forward a claim for personal injury and consequential losses as a result of your negligence and/or breach of statutory duty.

The reason why we are alleging fault is the chair was clearly defective and we are sure that you will openly admit liability in this case.

Our client sustained an orthopaedic injury to the right hip and lower back and also an aggravation of arthritis in the right thumb and we will be obtaining orthopaedic evidence in respect of this."

(c) On September 12th, 2000, Messrs. Hassans informed the claimant's solicitors that they were instructed and wrote: "At this stage, whilst we conduct preliminary enquiries . . . We further look forward to hearing from you with regard to a joint instruction of a medical expert."

(d) On October 10th, 2000, Hassans wrote: "We confirm our client agrees to a joint instruction of Group Capt. Chakraverty." Miss Guzman does not accept Mr. Chakraverty's report as an agreed joint report because in the event Hassans did not join in the instructions given to Mr. Chakraverty so that any fact postulated by Mr. Chakraverty in his report are not necessarily agreed.

(e) On October 25th, 2000, Russell Jones & Walker asked Hassans whether they had completed their investigations on liability.

(f) On February 13th, 2001, Hassans disclosed an accident form (which is referred to as an accident report in the defence). I cannot make out the important parts of the script and I am following Mr. Chakraverty's reading of it as related in his First Medical Report on Caroline Rutter:

"**Accident Form**

Name: Caroline Rutter
Age: 51
Ward: . . .
Date and time of accident: 08.02.2000, at 4.10 p.m.
Place: Accounts Office, St. Bernard's Hospital
Any equipment involved: A chair
Was patient attended at time of accident: Yes
Any witnesses: Christine Sanchez and Allan Kilpatrick
Short summary how accident occurred: The metal leg of a chair went completely double (from the point of attachment of the seat) and seat collapsed
Date and time of doctors examination: . . .

Doctors report and signature: The chair collapsed and fell down. Complaining of neck, back and right wrist—suffers from arthritis (Signature)—illegible
Signed by person in charge of ward at the time of the accident: . . .
Matron's signature: . . ."

One has to note that the form is not dated, a short summary of how the accident occurred is given, two witnesses are named and there appears to be an illegible signature at the end of the paragraph headed "Doctor's report and signature." It is not signed by the matron. This seems to me to be an accident form which is completed by a doctor when attending to any injury received in an accident and so would be merely recording what he has been told by the patient, in this instance: Miss Rutter. Miss Guzman however assures me that this is a report compiled by those in charge of the workplace where the accident occurred and I treat it as such. This explanation conforms with the defence at para. 3, which states: "Save that the defendant has been informed of the events related in para. 7, and has seen a copy of the accident report outlining the details of the accident, para. 7 is not admitted." The difference is crucial; if it is the former then it is merely self-serving, if it is the latter then a legitimate inference can be drawn, and I do so, that the facts of the accident have indeed been investigated by the defendant. It may not matter too much in the context of the action as a whole because Miss Guzman admits the chair did break and is not now to be found as it has been disposed of, but it does matter in the context of the consideration of what was meant in the admission made on August 3rd, 2001.

(g) On March 21st, 2001, the claimant's solicitors acknowledged receipt of Hassans' letter of February 13th, 2001, informed them that Miss Rutter was due to see Mr. Chakraverty soon, believed that the case could be dealt with under the pre-action protocol and finally asked: "Please will you let us have your decision on liability."

(h) On July 25th, 2001, the claimant's solicitors wrote again: "With regard to liability, this is a straightforward case in respect of defective equipment. Please now confirm that liability is admitted."

(i) On September 4th, 2001, the claimant's solicitors thanked Hassans for their letter of August 3rd, 2001, and noted that liability was admitted.

4 On the facts as they existed on August 3rd, 2001, the claimant's submissions, in my judgment, are correct and I do not agree with the defendant's submissions of the interpretation given by Miss Guzman of that admission. There are no mistakes of fact, as the defendant had made its own investigation of the accident and had not sought to correct the claimant's version in any way and the admission is not qualified or conditional.

5 The action might have proceeded apace were it not for the pleadings whereby in the particulars of claim the claimant pleaded:

> "In or about February 9th, 2000, at approximately 4 p.m., the claimant was sitting at her desk in the Accounts Office at St. Bernard's Hospital. She was sitting on a chair with metal legs counting money. The claimant bent sideways to her right to pick up a counting machine from the floor when one of the legs of the chair collapsed, causing the claimant to fall to the ground and land on her right side, hitting her right wrist and right hip against the floor."

6 Proceedings had been issued to save limitations. The claim form was issued on February 4th, 2003, and was served on May 20th, 2003, together with the particulars of claim. The parties were still discussing quantum, the defendant having on November 11th, 2001, made an interim payment of £1,000.

7 The defendant submits that the particulars of claim put a different complexion on things. The claimant is not pleading the same case she started with and it gives rise to a situation where contributory negligence can be properly pleaded. Therefore, Miss Guzman submits, the defendant should be given an opportunity to resile from its admission in order to have a fair trial. The claimant will not be disadvantaged because it is admitted that the chair broke. Mrs. Garcia opposes and submits that judgment should be entered for the claimant on the admission. She opposes the suggestion that there should be a trial of contributory negligence, although she concedes that the court in its discretion may allow the defendant to proceed with its claim for contributory negligence, notwithstanding entry of judgment.

8 At this stage of the proceedings, I find it hard to see any difference between the claim originally set out in the letter of August 3rd, 2000, and the pleading. The pleading, it seems to me, merely fleshes out the original statement but does not change the facts which, as I have already mentioned, the defendant had investigated before it made its admission. The difference between the two versions is one of degree, unlike the situation in *Hamilton* v. *Hertfordshire C.C.* (6), where the mistake was one of substance. I understood Miss Guzman to suggest that para. 8 of the particulars of claim indicates that the claimant acknowledges possible negligence on her part. I do not so read it. She also submits that the claim based on the Factories Ordinance is misconceived and so the claimant has pleaded incorrectly the statutory duty applicable to the defendant. To this, Mrs. Garcia's retort is that whether or not the Factories Ordinance applies, the common law action of negligence amply supports the claimant.

9 As CPR, r.14.1(5) states, "the court may allow a party to amend or withdraw an admission." Both counsel rely on the cases cited for support.

Mrs. Garcia submits that the defence puts forward denials, but no positive case is pleaded on which the court may allow it to resile from its admission. The defendant, she says, relies basically on its submission that the court should allow it to resile as it is not shown by the claimant that she has suffered prejudice and that is its only ground. But that, she says, is not the right approach. The general rule is that the court does not permit the withdrawal of an admission consciously made and there are three factors which the court must bear in mind in the exercise of its discretion, which were identified by Nelson, J. in *Flaviis* v. *Pauley* (4):

(a) whether the issue to which the admission relates is one which the party who made the admission has a real prospect of success;

(b) whether the application to withdraw the admission is made in good faith; and

(c) whether the withdrawal of the admission would prejudice the party in whose favour the admission was made.

10 *Flaviis* sets out the guidelines and is a post-Woolf case, unlike *Bird* v. *Birds Eye Walls Ltd.* (1) and *Gale* v. *Superdrug Stores plc.* (5). There are no new factors which are brought forward by the defendant and there has been no mistake of fact when liability was accepted. When Miss Young, on December 12th, 2003 (*i.e.* after the claim and the defence), made her witness statement and dealt with the claimant's original letter, she made no allegation that the defendant was acting under any mistake of fact. The defendants were perfectly aware that the claimant's allegation was that the chair was defective and they accept a duty of care was owed to the claimant. From August 3rd, 2001 until 2003, the only issue was quantum and Mrs. Garcia prayed in aid a conversation she had on May 14th, 2003, with Miss Fiona Young, solicitor with Hassans, who advised her that liability for the accident was accepted. While Miss Young has no recollection of that, Mrs. Garcia produces a file note she made at the time to this effect. Thus, it is that the claimants have not taken any steps to get evidence regarding the chair. But as that fact is no longer an issue, the situation is the same as it was when the admission was made and the defendant has no real prospect of success on liability, and proportionality requires no more money should be wasted on costs. Furthermore, the defence is not coherent. To allege contributory negligence on the part of the claimant is to concede that the defendant has been negligent in the first place. Another aspect of the same point is that the defendant's real position, as argued by Miss Guzman, is that the defendant wants to withdraw its admission and that in effect is an admission of liability and goes to the heart of the question: has the defendant a real chance of success?

11 Miss Guzman agrees that the defendant has a duty of care but denies there is a breach of duty. In so far as the defendant should be allowed to

resile from its admission, it is to be noted that the claimant is relying on an admission made $1\frac{1}{2}$ years after the accident. The claimant has not therefore been prejudiced in any search for evidence: she has had ample opportunity to do so and the defendant has in fact disclosed all materials that have been requested of it, saving of course the chair, which was disposed of in the normal way; the claim, it is to be noted, was made six months after the accident, during which time the defendant was unaware of the claimant's intention. The defendant accepts the chair collapsed and that admission takes away the need to produce the chair as evidence. The only general prejudice is the claimant's disappointment but that can be adequately compensated. She refers to Millett, L.J.'s observations in *Gale* v. *Superdrug Stores plc.* (5) ([1996] 1 W.L.R. at 1100):

> "In my judgment leave should normally be granted if the application is made in good faith, raises a triable issue with a reasonable prospect of success, and will not prejudice the plaintiff in a manner which cannot be adequately compensated."

12 As to the reasonable prospect of success, Miss Guzman submits that the difference between the claim and the pleaded case is that the claimant at first said she sat on a chair. That was a simple matter with no foreseeable risk of injury. The pleaded case shows her in movement. She refers to *Rozario* v. *Post Office* (7) to show it is arguable that a counsel of perfection made with the benefit of hindsight imposes too high a burden on the defendant and therefore the defendant should be allowed to contest it. The same point is made in *Blackpool & Fylde College* v. *Burke* (2). The claim in the present case imposes on the defendant, her employer, an impossible burden and it should be tested in court. The implication this would have, not only in the present case but in other workplaces, cannot go by default.

13 Mrs. Garcia in reply submits that Miss Young's statement does not show why it would be onerous to refuse the retraction of the admission. The defendant has to show this and it is wrong for the defendant to rely on general submissions made by Miss Guzman. She does not say how the defendant would be prejudiced if the admission is not resiled from. In the defence, the stance is "our admission is to the duty of care," but the defence does not consider how onerous the admission is. The defendant has not put forward a positive case by which the court might be persuaded to allow the withdrawal. In *Gale* (5) and *Flaviis* (4), the party who sought to withdraw its admission put forward a positive case and so the submission that the defendant made its admission while labouring under a mistake of fact should be rejected. As to no prejudice to the claimant, prejudice is not the most important matter. *Flaviis* and *Hamilton* (6) are important cases which show this. In *Flaviis*, prejudice was one factor only. In *Hamilton*, there was a difference on the facts, where in the

present case there is none. Mrs. Garcia submits that the strength of the evidence is important in the court's balancing exercise. The prejudice to be suffered in the present case by the claimant can be assessed by the court on the basis that the facts set out in the claim and those set out in the particulars of claim are the same. There is obvious prejudice: (a) the obvious disappointment, more so when an interim payment has been made; (b) the delay in the resolution of the matter; (c) the accident occurred and there is an admission that the chair collapsed while she was sitting on it and if the admission is withdrawn she will have to prove her case on liability; and (d) disproportionate increase in costs to prove facts. From the point of the defendant, it should suffer none if its claim for contributory negligence is allowed to proceed.

14 Every case rests on its own facts and the present case, in my judgment, is to be guided by general principles laid down in *Cropper* v. *Smith* (3) (26 Ch. D. at 710–711):

> "[I]t is a well established principle that the object of Courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights . . . I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such an amendment as a matter of favour or of grace . . . It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice, as anything else in the case is a matter of right."

15 Millett, L.J. in *Gale* (5) said ([1996] 1 W.L.R. at 1099):

> "I do not believe that these principles [*i.e. Cropper* v. *Smith* (3)] can be brushed aside on the ground that they were laid down a century ago or that they fail to recognise the exigencies of the modern civil justice system. On the contrary, I believe that they represent a fundamental assessment of the functions of a court of justice which has a universal and timeless validity."

The test laid down in *Bird* v. *Birds Eye Walls Ltd.* (1) by Gibson, L.J., supported in *Gale* (5) is this ([1996] 1 W.L.R. at 1101):

> "[W]hen a defendant has made an admission the court should relieve him of it and permit him to withdraw it or amend it if in all the circumstances it is just to do so having regard to the interests of both sides and to the extent to which either side may be injured by the change in front."

16 Both *Birds Eye* and *Gale* were decided before the Civil Procedure Rules came into force. In both cases, the court approached the application to resile on the basis that the defendant has a *prima facie* right to resile from his admission and in that context Waite, L.J. in *Gale*, with reference to the court's discretion, said (*ibid.*, at 1097): "In that appraisal [of the weighing exercise] it is not enough for the court to presume prejudice: it must be established specifically and affirmatively." And later on he says (*ibid.*, at 1098):

> "That does not mean that the late retraction of an admission is something the courts should encourage. But what it does mean is that a party resisting the retraction of an admission must produce clear and cogent evidence of prejudice before the court can be persuaded to restrain the privilege which every litigant enjoys of freedom to change his mind."

17 Millett, L.J. in *Gale* said (*ibid.*, at 1099–1100):

> "I consider that the court should ordinarily allow an admission to be withdrawn if it can be done without injustice to the other party and if no question of bad faith or overreaching is involved.
>
> . . . In my judgment leave should normally be granted if the application is made in good faith, raises a triable issue with a reasonable prospect of success, and will not prejudice the plaintiff in a manner which cannot be adequately compensated."

Again, as Waite, L.J. indicated, Millett, L.J. said (*ibid.*, at 1100): "It is not normally necessary for a party to justify his decision to amend his pleadings or withdraw an admission. It is enough that he wishes to do so."

18 Both these cases predate the CPR as I have said, and the effect of the CPR was foreshadowed by Thorpe, L.J. in *Gale* (*ibid.*, at 1101–1102):

> "Further the judgment of Ralph Gibson L.J. made it plain that he was entitled to have regard to the effect of the resurrection of liability on the plaintiff's feelings.
>
> Although his judgment was given some weeks before the issue of the Lord Chief Justice's practice direction calling for much firmer judicial control of civil litigation . . . it certainly reflects the message of the direction. The civil justice system is under stress and far-reaching reforms are in prospect. There is a public interest in excluding from the system unnecessary litigation and a consequent need to curb strategic manoeuvring."

And he finishes (*ibid.*, at 1102) that—

> "the judge was entitled to come in the exercise of discretion and in

furtherance of a more disciplinary approach to adversarial manoeuvring which the public interest now requires."

19 The present case is governed from its inception by the provisions of the Civil Procedure Rules. In *Hamilton* (6), which is post-CPR, Keith, J. had this to say ([2004] P.I.Q.R. P23, at para. 13):

"It is agreed that three factors should inform the exercise of the discretion conferred by CPR r.14.1(5):

(i) whether the issue to which the admission relates is one on which the party who made the admission has a realistic prospect of success,

(ii) whether the application to withdraw the admission is made in good faith, and

(iii) whether the withdrawal of the admission would prejudice the party in whose favour the admission was made.

These were the three factors identified by Nelson J. in *Flaviis* v. *Pauley* unreported October 29, 2000 (QBD), drawing on the judgments in *Gale* v. *Superdrug Stores Plc.* [1996] 1 W.L.R. 1089. The three factors have to be considered, of course, in the context of the overriding objective of the Civil Procedure Rules, which is to enable the court to deal with cases justly."

20 The overriding objective is to deal with a case justly and that is explained in CPR, r.1.1(2):

"Dealing with a case justly includes, so far as is practicable—

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate—

(i) to the amount of money involved;

(ii) to the importance of the case;

(iii) to the complexity of the issues; and

(iv) to the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly; and

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases."

21 All these matters do not, it seems to me, require to be established specifically and affirmatively. The court may draw its conclusions generally from a consideration of the facts and the context of the case

before it and when in *Birds Eye* (1) and *Gale* (5), in relation to prejudice, the court wanted specific circumstances from which prejudice is to be inferred, that must now, with respect to their Lordships, be tempered in my opinion by considerations under the CPR and in particular the court's general powers of management. I say tempered because procedural codes may not override general principles. Not to be forgotten in this connection is the requirement of the CPR, r.1.3, which states that "the parties are required to help the court to further the overriding objective," a requirement which in my opinion prevents a party indulging in procedural tactics. Of course, I am satisfied that the defendant in this case has not indulged in such behaviour, but the point is that the investigation carried out by the defendant should, in my opinion, have brought to its attention the version of events as recounted by the claimant in the particulars of claim at the time the admission was made. There were after all two witnesses. In addition, an examination of the chair would have revealed its state and whether there was a latent or other defect.

22 In my view, the issue upon which the defendant wishes to resile has some prospect of success. The application is made in good faith. The withdrawal of the admission prejudices the party in whose favour the admission was made. The admission, in my view, was not founded on a mistake either of fact or of law. If the error or mistake lies in the fact that the admission was wrongly made because it should not have been made then I do consider this and reject it under the court's general powers of management and in particular of CPR, r.3.1(2)(k). I find the factors submitted by Mrs. Garcia, as set out in the penultimate sentence of para. 11, cogent and persuasive. In addition, I consider that an examination of the chair is imperative and Miss Guzman is not right to say that its absence does not matter in the light of the admission that the chair did break. The withdrawal of the admission will mean that the claimant will have to prove her case with the attendant increase in costs for her and generally. What the state of the chair was—was there a latent defect and such-like questions—may be important hurdles the claimant must overcome (a) to establish her case, and (b) to contest contributory negligence. Miss Guzman says that that was the case when the claimant made her claim, she is no worse off now and she was after all prepared to stay in that position until the admission was made. What if the admission had not been made? Well, all that is true and while Miss Guzman made an attempt to explain it away, there is no explanation as to what happened to the chair and when it was disposed of. The prejudice to the defendant, if not allowed to withdraw its admission, is obvious (except that I do not in the least accept Miss Guzman's suggestion that this decision would in any other workplace run by the defendant) but the prejudice to the claimant is worse.

23 It is my judgment that I should not allow the defendant to resile from its admission. I do not propose to enter judgment for the claimant at this

stage, as the defendant continues to be at liberty to proceed with its claim for contributory negligence. It may well be, as Miss Guzman says, that that part of the action will in any case require hearing of evidence to establish as best as can be what happened on February 9th, 2000, but I do not consider that is good reason to allow the defendant to withdraw the admission made on August 3rd, 2003.

24 When the court is resumed, I propose to deal with costs as follows: Costs of this preliminary issue to be costs in the cause, save that the costs of that part of the hearing dealing with the question whether the admission was a full admission will be costs for the claimant in any event.

Ruling accordingly.