Neutral Citation Number: [2012] IEHC 528

THE HIGH COURT

[2010 No. 4706 P]

BETWEEN

ELAINE NEWMAN

PLAINTIFF

AND

PATRICK COGAN AND MARIE COGAN

DEFENDANTS

JUDGMENT of O'Neill J. delivered the 5th day of December, 2012

1. The plaintiff was born on 13th November, 1985.

2. On 22nd June 2007, whilst the plaintiff was in the home of her partner's parents, the defendants in these proceedings, at Dunganstown, Delvin in County Meath, she suffered a horrific injury to her right eye which led to the destruction of and ultimately entire loss of this eye and its replacement by an artificial eye.

3. The accident occurred in most unusual circumstances. It was about 12.30pm and the plaintiff was in this house with her partner, Emmett Cogan. The house in question was described by the engineers who gave expert evidence in the case, Mr. Abbott for the plaintiff and Mr. Tennyson for the defendants, as consisting of an original or old traditional-style farmhouse built somewhere between 60 and 100 years ago, to which an extension was added in the 1960s.

4. At the time, the plaintiff's partner was recovering from an injury to his right foot and was either hobbling about or using crutches to get about. At about 12.30pm, they both went out into the yard at the back of the house. The plaintiff went out to have a smoke and Emmett Cogan went to a shed in which there was located a freezer to retrieve some meat, which he thought was a bag containing either 2lbs of either mince or lamb. Whilst he was doing this, the plaintiff stood near the shed and they continued to converse with each other. The plaintiff, having had her smoke, then moved to go back into the house. Emmett Cogan followed her but was some distance behind, which he described as approximately five paces. The plaintiff entered the house through the back door. This entrance, in effect, consisted of two doors, the outer one being solid wood, and double doors which created a porch leading to the inner door, also a wooden door, which had in it two glass panels. All of these features are fully illustrated in the photographs taken by both engineers. The inner door containing the two glass panels is obviously an old wooden door. Neither engineer was able to precisely date it, but its appearance is definitely suggestive of considerable antiquity.

5. The glass which was in the two panels, and in particular in the left panel, as one approaches the door from the outside, is the subject matter of this litigation. The glass was of a muffed or opaque kind so that one could not see through it and it contained a pattern throughout. It also appears to have been of a slightly darkened colour.

6. The plaintiff, upon returning into the house, opened this door and went inside and closed the door behind her, so that it was firmly or securely shut. Emmett Cogan was a few paces behind the plaintiff, and when he got to the step leading into the porch, that is to say, where the outer doors are located, he proceeded to hop up this step into the porch area. His evidence was that he tripped over clutter that was in the porch area and fell heavily forward. As he did so, his left hand was outstretched and he had in his left hand the bag of meat that he had retrieved from the deep freeze. His left hand containing the bag of meat crashed through the left-hand side glass panel, obviously with considerable force.

7. I am satisfied that at the point that this happened, the plaintiff had just closed the door from the inside and was still facing the door.

8. The force of Emmett Cogan's hand holding the meat coming through the glass panel caused the glass panel to shatter explosively, and tragically, a shard or shards of glass shot into the plaintiff's right eye, who, as I have just, said was still facing the door.

9. As a consequence of this glass entering the plaintiff's eye, as already mentioned, the plaintiff suffered a catastrophic injury to her right eye, as a result of which she has lost the eye and now has an artificial eye.

10. In this respect, the measure of the plaintiff's damages has been agreed between the parties in the sum of €200,000.

11. The plaintiff sues the defendants, who are the parents of her partner Emmett Cogan, as the occupiers of this house, and her case against them is that they failed, pursuant to s. 3 of the Occupiers Liability Act 1995, to take reasonable care in respect of the plaintiff, a visitor on the premises, to ensure that the plaintiff did not suffer injury or damage by reason of any danger existing on the premises.

12. The defendants do not contest the plaintiff's status as a visitor on the premises.

13. The case made by the plaintiff centres on what she alleges was the unsuitability of the glass in the door leading in from the yard which shattered when Emmett Cogan fell against it, thus causing her injury. It is commoncase that the glass used in this window was of a type that was prone to shatter in this way, and the evidence of both engineers was to the effect that it is unsuitable for use in doors where impacts against it can be anticipated. In this type of location, their evidence was that a toughened type of glass which would be much more resistant to impact and which, if broken, would fragment rather than shattering into shards, should have been used.

14. The evidence of Emmett Cogan, which was un-contradicted, established that the glass in this door had been broken on a number of occasions when he and his siblings were children as a result of playing hurling and football in its vicinity, and the last time it was

broken and replaced was around 2000 or 2001. On that occasion, the glass pane in the left panel had been replaced by Emmett Cogan's father, the first named defendant, himself. The first named defendant is a farmer. He did not give evidence.

15. The issue for determination in this case is whether or not the defendants failed in their duty of care as occupier to the plaintiff in having this type of glass in this door.

16. The evidence of Mr. Abbott, for the plaintiff, was to the effect that, had a professional glazier been asked to replace the glass in this doorway when it was replaced in or about 2000 or 2001, it was probable that he would have refused to install glass of the type that the first named defendant put in at that time. Mr. Tennyson, the defendants' engineer, agreed with this.

17. On the basis of this evidence Mr. Devlin, S.C. for the plaintiff, in his closing submissions placed reliance upon the case of Wells v. Cooper [1958] 2 Q.B. 265, a decision of the United Kingdom Court of Appeal in which it was held as follows as revealed in the head note:-

> *"Held dismissing the appeal,*
>
> *(1) That on either ground of action the duty owed by the defendant to the plaintiff was a duty to take reasonable care for safety.*
>
> *(2) That, in the case of such a trifling domestic replacement, a man of the defendant's experience was justified in undertaking it himself.*
>
> *(3) That the degree of care and skill required of a householder undertaking his own repairs was to be measured not by reference to his own degree of personal competence, but by reference to the degree of care and skill which a reasonably skilled carpenter might be expected to apply to the work in question.*
>
> *(4) That, since the defendant, a reasonably competent carpenter, was doing his best to make the handles secure, he must be taken to have discharged his duty of care unless his belief that three quarter inch screws would be adequate was one which no reasonably competent carpenter would reasonably entertain, and the evidence failed to establish that.*
>
> *Per curiam. The decision did not mean that the degree of skill and care required of an inviter such as the defendant was to be measured by the contractual obligations as to the quality of his work assumed by a professional carpenter working for reward, which was of a higher standard."*

18. In that case, the plaintiff suffered injury when leaving the defendant's house and pulling the back door after him, the handle on the door came away causing the plaintiff to fall and suffer significant injury. The handle in question had been fixed on to the door by the defendant, the householder, who had some experience as an amateur carpenter.

19. In relying upon this case, Mr. Devlin argues that the first named defendant, having taken upon himself the task of replacing the window in question, was to be judged, not by the standard of his own competence, or lack of it, but by reference to the degree of care and skill which a reasonably skilled tradesman, in this case, a glazier, might be expected to bring to the work in question. He submitted that the evidence of the two engineers established that a reasonably skilled glazier would have declined to have put in this glass and would have insisted on installing glass which was suitable for use in a door, *i.e*. toughened and/or shatterproof glass.

20. As the head note in this case makes plain, the standard of work to be expected of a householder in these circumstances, who has taken on a repair of this kind, is not quite the same as that to be expected from a tradesman who is performing the task for reward and subject to contractual obligations, where the standard would be much higher. In effect, the householder will be considered to have discharged his duty of care unless it established that what he did was something which no reasonably competent tradesman, in this case, a glazier, would do.

21. The first named defendant did not give any evidence and, therefore, there is no evidence as to what he was thinking when he carried out this repair.

22. I am satisfied from the evidence of the experts that the installation of the glass was carried out competently and, therefore, the only complaint that could arise would be in relation to the selection of the type of glass used.

23. Whilst I am quite satisfied that the evidence of the two engineers establishes that a professional glazier performing the task for reward would not have installed the type of glass which the first named defendant used, it does not follow at all that the first named defendant's choice in this regard is to be condemned simply because a professional glazier performing the task for reward would not have chosen the same glass. The evidence of the engineers does not go so far as to suggest that a reasonably competent amateur glazier, such as the first named defendant, when replacing a pane of glass in his own private dwelling, could not reasonably have believed that the glass used was adequate or suitable for the location in question.

24. Insofar as the selection of the glass is concerned, the only inference that can be drawn from the evidence is that the first named defendant probably purchased it from a retail supplier of glass.

25. The premises where it was to be used was his own private dwelling.

26. Much of the expert evidence in the case was concerned with the recommended standards or technical guidelines for the appropriate type of glass for use in doors. Mr. Abbott described British Standard No. 6262, which governed these matters, and he traced the introduction of this standard into Ireland initially via guidelines issued by An Foras Forbortha in 1984, which in turn became attached to the Draft Building Regulations which did not come into force until the 1990s.

27. It is quite clear from the evidence of the experts that these Regulations, and the technical standards referable to them, are directed at the erection of new buildings for which planning permission is required, or presumably for renovation of buildings which also require planning permission.

28. It, of course, necessarily follows that all of the professionals engaged in the building industry, be they architects, engineers or builders, would be expected to be familiar with all technical aspects of the standards required.

29. I am quite satisfied that it could not reasonably be suggested that a householder who elects to carry out a relatively simple

repair, such as the replacement of a pane of glass, as was done by the first named defendant in this case, and no doubt as is done by householders day in day out up and down the country, could be expected to be familiar with the technical standards set down in the technical guidelines associated with the Building Regulations. Thus, it could not be said that a householder, who was a reasonably competent glazier, such as the first named defendant, could not have reasonably believed that the glass chosen was suitable for this location.

30. To hold the defendant liable, in negligence, for choosing the glass that the first named defendant installed in this door in 2000 or 2001, would be to impute artificially to him knowledge of the technical aspects of glazing which could not be expected of somebody who was not involved in the building industry or glazing trade or to hold that he should have had this knowledge. To do this would be to impose upon the defendants a duty of care which would be artificial and which, in all probability, they had no real chance of discharging. Thus, in choosing this particular type of glass, which is in common usage in dwellings, it could not reasonably be said that the defendant failed in his duty as occupier of this premises, to the plaintiff, to take reasonable care to protect her from dangers on the premises.

31. What is required by the law is that the occupier take reasonable care in all of the circumstances and, in my opinion, the plaintiff has failed to demonstrate that the defendants failed in that regard.

32. Accordingly, the plaintiff's action must be dismissed.