

THE HIGH COURT

[Record No. 2001/14040P]

BETWEEN

DAVID MEAGHER

PLAINTIFF

AND

SHAMROCK PUBLIC HOUSES LIMITED TRADING AS THE AMBASSADOR HOTEL

DEFENDANT

Judgment of Mr. Justice Herbert delivered the 16th day of February, 2005.

1. On 28th November, 1999 Mr. David Meagher, the plaintiff in this action, his wife Cara, (then his fiancée), and his sister Brenda attended a discotheque at the Ambassador Hotel, Kill, Co. Kildare, which hotel is owned and occupied by the Defendant. They had travelled to the hotel from Celbridge in his sister's motor car. They paid an entrance charge to be admitted to the discotheque and while there they had some drinks. I am satisfied on the evidence of Mr and Mrs Meagher that at about 2.30 a.m. to 3 a.m. on the morning of 29th November, 1999 they left the discotheque. I accept their evidence that the music had stopped sometime previously and that they had to wait in a queue to retrieve their coats. Prudently, as they had consumed alcohol they decided to leave the car in the car park of the hotel and travel home by taxi.

2. I accept the evidence of Mr. Meagher and of his wife that about half an hour passed during which they failed to find a taxi. I accept their evidence that Mr. David Meagher was standing at the side of the car park exit immediately opposite the large glass entrance doors of the hotel and around the corner of the building from and entirely out of sight of the entrance doors to the discotheque. It is clear from the photographs admitted into evidence that there was a light standard, - one of a row of similar lights lining the parking area in front of the hotel, - immediately behind where he was standing. I am satisfied on the evidence of Mr and Mrs Meagher that while he was standing at this location, his sister Brenda Meagher was re-parking her car in front of the hotel and Cara Meagher had walked back to the side of the Naas bound carriageway of the public road to endeavour to obtain a taxi. I accept their evidence that at this time, approximately 3.30 a.m. in the morning there were still a lot of persons moving around in the car park in front of the hotel. Sergeant Michael Murphy of Kill Garda Station and Mr. Edward Boland a Security Consultant both told the court that they believed that the discotheque at the Ambassador Hotel had a permitted maximum capacity of 850 persons. Mr. Niall Duff, then the Manager of the hotel, considered that the attendance on the particular night was approximately 600 persons as he said that business tended to be somewhat slack before the start of the Christmas Season.

3. I accept the evidence of Mr. David Meagher that while standing at the indicated location, he was approached by two men who were strangers to him. I accept his evidence that one of these men said to him, "do you want to start a fight, - or possibly, do you want to have a fight with a Garda." I accept his evidence that he realised that he was being threatened and replied, "if you touch me you will lose your job". I accept his evidence that the other man then responded, "he won't, I'm his Solicitor". I accept the evidence of Mr. Meagher that he was afraid to turn his back and walk away from these men and that he hoped that he could talk his way out of the situation or that someone might come to his rescue. I accept his evidence that without any further discussion or warning he was struck by one or other of these men and knocked unconscious to the ground.

4. I accept the evidence of David Meagher that prior to his being struck he did not recall seeing any security staff wearing, as was put to him in cross examination, yellow or orange jackets or over-jackets in any part of the car park in front of the hotel. Mr. Meagher very frankly accepted that until approached by these men he was not particularly looking to see who might be in the particular car park. He accepted that the entire incident took no more than about one minute and that prior to the assault the men had been doing nothing which would attract attention to themselves. Mr. Meagher impressed me as a scrupulously careful and truthful witness. I accept his evidence that once it became clear to him that these men wear intent on provoking a fight with him he was hoping that someone might come to his assistance and thereafter was looking anxiously round for help and that if he had seen anyone in the vicinity who looked like a member of security staff he would have shouted for help and so avoided being struck.

5. It had been put to Mr. Meagher that security men wearing bright yellow or orange jackets or over-jackets were on duty in all the hotel car parks at 3.30 a.m. on the morning of the 29th of November, 1999. It was also put to him that before he was struck nothing whatever had occurred which would have alerted even the most vigilant security man to the fact of something being amiss. It was also put to him that even if many security personnel were about he would still probably have been assaulted by these men who seemed determined upon that course and given the totally sudden nature of the attack on him there was nothing which any security man could have done to prevent it.

6. Mr. Edward Boland, Managing Director of Temple Bar Security Limited, gave evidence. He said that he had been a member of An Garda Síochána for 30 years before establishing his security consultancy business in September 2004. He told the court that his company specialised in advising on security and providing training for staff involved in security in connection with the Licensed Trade. He told the court that he had completed a conflict management course while a member of An Garda Síochána, had qualified as an addiction counsellor and, had extensive experience in dealing with juvenile crime. After leaving An Garda Síochána he had undergone specialist training courses in security in London and in Birmingham. He accepted that he had been instructed in relation to this assault on David Meagher in October 2004, almost five years after the event. His status as an expert witness was not challenged by the defendant.

7. Mr. Boland accepted that even with 50 members of An Garda Síochána present an assault could still have occurred. However, he was satisfied from his own experience and from the state of knowledge in the Security Industry that the presence of easily identified trained security personnel, - not merely car park attendants, - does stop assaults, passively by their mere presence and actively by their being trained to notice potential confrontations and to take immediate preventive measures. Mr. Boland told the court, and I accept his evidence as according with reason and common sense, that an obvious and prime location for a security man to have been stationed was in front of the main doors of the hotel, in almost the exact area where Mr. Meagher was standing when he was assaulted. Mr. Boland told the court that because of the layout of the various car parks around the hotel and because security personnel at the door of the discotheque could not see the front of the hotel, other clearly identifiable security staff should have been constantly patrolled the front car park of the hotel until the last of the discotheque patrons had left the hotel grounds. Neither Mr. Patrick Gormley, who had been head of security at the hotel complex on the relevant occasion, nor Sergeant Michael Murphy, Sergeant in charge of Kill Garda Station since 1990, gave evidence which would in anyway cast doubt on this evidence of Mr. Boland.

8. Sergeant Murphy told the court that the Ambassador Hotel and its "Matrix" discotheque were in his Precinct Area. He said that a huge amount of young people travelled to this discotheque at weekends, on foot from the village of Kill, and in private cars and in large numbers of taxis and coaches from Naas and other towns and villages in the area and from the Dublin suburbs of Tallaght and

Clondalkin. He gave evidence that assaults and public order offences occurred every two or three weeks in connection with this discotheque but these generally occurred inside the premises. In his opinion the defendant had provided sufficient security personnel inside and at the entrance door to the discotheque. He said that he would however liked to have seen more security people in the car parks and in particular in the parking area at the front of the hotel where people tended to congregate after emerging from the discotheque. He also considered that these members of the security staff should remain in the area until all the patrons had left the hotel grounds. He said he had discussed this matter with the hotel management but had not suggested actual numbers of security staff. He said that he had stressed that the security staff in the car parks should be very visible and that this was most important from a preventive point of view. Under cross examination he said that he visited the hotel complex on a regular basis and that the hotel management had improved security over the years and had generally complied with all his suggestions. He said that he seen security personnel wearing yellow jackets patrolling the car parks after a function but could not say how many persons were involved. It was put to him that there were four security men, - which was the number which Mr. Edward Boland would later tell the court should have been present in addition to the security staff on the door of the hotel and the entrance to the discotheque, - but Sergeant Murphy could not recall how many men he had seen.

9. Mr. Edward Boland told the court that in his opinion, given the relatively inaccessible location of this discotheque catering for such large numbers of young persons, the high profile presence of well trained security staff patrolling the car parks after the discotheque had ended was an essential requirement to secure the safety of patrons, especially given the known history of rowdiness and assaults. In his opinion what occurred to Mr. David Meagher was entirely foreseeable. He told the Court that research by the University of Leeds conducted over a two year period using numbers of Night Clubs in that city and, similar research in New York had demonstrated that the visible presence of well trained security staff could reduce public order offences to zero. In his opinion, in November 1999, this problem was well known to those involved in the licensing trade and was frequently coming to the attention of the Licensing Courts, especially in the Dublin area. He considered that in November 1999 it would have been sufficient for the defendant to have had four security staff in the front car park of the hotel where patrons tended to congregate while seeking transport home, these four to be in addition to those at the door of the hotel and at the entrance to the discotheque. He said that all such personnel should be wearing brightly coloured jackets or other highly visible and distinguishable dress. He told the court that in his opinion it would not be acceptable at all for this duty to be left in the hands of car park attendants.

10. Patrick Gormley told the court that he only heard about the incident to David Meagher a few weeks after the event from either Mr. Clinton, the Discotheque Manager or Mr. Niall Duff, the General Manager of the hotel. He had asked the men on duty that night had they seen anything because he was obliged to make a report to Mr. Duff as part of his duties as head of security. He gave the Court the names of six men, - none of whom was called in evidence, - some or all of whom he felt would have been on security duty at the Hotel on the night of 28th and the morning of 29th November, 1999. Mr. Gormley told the court that he had not been in the employment of the defendant group for the past five years and without seeing the books he could not be certain who was on security duty that night. Mr. Niall Duff told the court that the relevant records would have been, a security incident book, a management pass-over book, a file with any letters making a complaint or a claim, staff statements, (if taken), and closed circuit television tapes. Mr. Duff said that he had ceased to work at the hotel in March 2000 and was no longer employed by the Quinn Group. He said that he was astonished that none of these records were available but accepted that the hotel had been sold since the 29th November, 1999.

11. Mr. Gormley recalled that patrons usually started to leave the discotheque from 2 a.m. onwards and that the barrier across the entrance to the hotel was usually lowered and locked and all patrons of the discotheque departed home by 3.30 a.m. Any late arriving guest staying at the hotel would be observed on the closed circuit television system by the night porter on duty in the hotel foyer who would then go out, unlock and raise the barrier. Mr. Duff told the court that the Hotel Receptionist went off duty between 11.30 p.m. and midnight. The hotel doors were locked he said, about 1.30 a.m. or 1.45 a.m. Thereafter the doors were under the control of the hall porter who had authority to admit into the foyer patrons of the discotheque who wished to telephone for a taxi.

12. Mr. Duff told the court that the security staff normally on duty consisted of eight to ten staff inside the discotheque and four staff on external duty. He said that the four outside security staff wore fluorescent type jackets. These would remain at the front of the hotel when the crowd started to exit the discotheque and four of the inside security staff would usually join the security staff at the exit to the discotheque. In November 1999 the four outside security staff were provided, equipped, (other than with radios which the Hotel provided), controlled and, paid by an independent company called City Guard Limited which then had the outside security contract for all the hotels in the Quinn Group. No witness was called from or documents produced by City Guard Limited. Mr. Gormley told the court that at least four security men would usually be on duty at the front of the Hotel normally up to 3 a.m.

13. Mr. Gormley, who impressed me as a very fair, open and accurate witness, said that it was his view as head of security at the hotel that it was very desirable to have a high profile security presence at the front of the Hotel when the crowds were leaving the discotheque. It was his recollection that the youngest person patrolling the car parks was Mr. Paul Walsh who he believed was about 30 years of age. He said that he himself never took part in car park duties. He remained in the discotheque but was in radio contact with all security personnel on the outside who shared a two way radio between every two men. He agreed that there were lots of disturbances at the functions but he described most of it as, "handbag stuff". He agreed that whenever one got large numbers of young persons with drink taken and lots of opportunities for sociosexual jealousies one was going to get rowdiness and assault. They accepted that the security staff were not allocated specific stations but were told to follow the crowds and to go where the crowds were and to be on the lookout for incidents. He accepted that the car park area in front of the hotel was reasonably well lighted and free from obstructions and that the security men should have been clearly visible to all. He was not responsible for locking or opening the hotel doors and this was the duty of the hall porter. He accepted that if Mr. David Meagher and his wife Cara did not see any security men at the front of the hotel and no one came to assist a bleeding man and a screaming woman there must be have been some breakdown in the security system.

14. Mr. Niall Duff recalled that no security incident had been logged for the night of 28th or the morning of 29th November, 1999 even though the records which he identified as existing were no longer available. He accepted however, that a day or so later Garda Cahill had contacted Mr. Clinton the Discotheque Manager about this incident which had been notified to the Garda on the morning of 29th November, 1999. Mr. Duff said that Mrs. Cara Meagher could not be correct in her recollection that a receptionist had telephoned a taxi for her at about 3.30 a.m. and said that she also must be mistaken in her recollection that the hotel door was open at that hour. I accept the evidence of Mr. Duff on these matters. However, I find on the balance of probabilities that the door porter, probably seen Mr. Meagher collapsed bleeding on the steps leading up to the hotel doors and probably also hearing his sister screaming and seeing Mrs. Cara Meagher running up the steps had opened the door to admit her. In her evidence she recalled that a man was standing behind the door which, as is demonstrated by the photographs admitted into evidence, is almost entirely clear glass. While she is, I believe, mistaken that the lady behind the reception area was a receptionist, I am quite satisfied that some female member of the hotel staff who was sitting in the reception area had telephoned for a taxi for her. I find that these errors in recollection on the part of Mrs. Meagher are entirely explicable and do not in anyway impugn her credibility as a witness.

15. Mr. Duff said that City Guard Limited had a proven record for reliability and he and Mr. Gormley would not in any event just leave

security matters up to them. He said that he could not be certain that he was on duty on the relevant occasion but was 99% confident that he was. It was his recollection that patrons of the discotheque would start leaving the premises after 1.30 a.m. when the bar closed and would not wait until the dancing ended at 2.30 a.m. because of known difficulties in obtaining transport home from the hotel. He accepted that the closed circuit television would have covered the location where Mr. Meagher stated he was assaulted. He accepted that the car park area at the front of the hotel was a matter of concern to him and the security staff when the crowds were milling about after the discotheque and trying to organise or find transport home.

16. Mrs. Cara Meagher, (then McCabe), said that she left her then boyfriend standing waiting for his sister to finish parking the car at the front of the hotel and had herself walked back down to the side of the Naas Road to try to get a taxi. She said that shortly after she had arrived a man approached her, - not a security man, - and told her that, "the fellow she was with was lying on the ground back up there". She immediately ran back up to where she had left her boyfriend. When she arrived she said David Meagher was staggering about with blood all over his face and did not even seem to recognise her. His sister Brenda then arrived and started screaming and shouting at people had they seen what happened. Mrs. Meagher who is a hospital theatre nurse ran up the steps to the hotel door while David Meagher sat down at the bottom of those steps. She said she had no difficulty entering the hotel lobby. She had asked a lady behind the reception area whom she had assumed was a receptionist to call a taxi for her. The lady suggested that she should call an ambulance but Mrs. Meagher insisted on a taxi. The taxi came quite quickly. She and Brenda Meagher assisted David Meagher into the taxi. In the taxi he told her what had occurred. She had wished to take him to the Casualty Department of Blanchardstown Hospital but he insisted on going home and lying down. She decided on her own initiative to telephone An Garda Síochána and Garda Cahill had come very quickly. Later in the morning she insisted that David should go with her to Blanchardstown Hospital where they arrived at about 7 a.m.

17. In cross examination Mrs. Meagher accepted that she had no idea that her husband, (then her boyfriend), had been attacked. She had heard no commotion or raised voices or any disturbance. She said that all she heard was the traffic noise on the Naas road. She said that while David Meagher was staggering about with blood all over his face, while Brenda Meagher was screaming and trying to find out what had occurred, while David Meagher was slumped on the steps leading to the door of the hotel and, while they were getting him into the taxi she saw no security man of any sort and no security man came to offer assistance or to discover what was going on. Mrs. Meagher accepted that she was quite distraught but that in the circumstances would have certainly seen any security staff if any had been about.

18. Section 3(2) of the Occupiers Liability Act, 1995, merely restated without altering the position at common law of an occupier with regard to a contractual invitee. In the case of *Hall v. Kennedy* (Unreported, High Court, 20th December, 1993), Morris, J., (as he then was), in setting out the position at common law held that the owner of a licensed premises owed a duty to a customer, "to take all reasonable care for the safety of the [customer] while on the premises [and] this would include in this case ensuring that a customer in the premises did not assault him."

19. It was not pleaded by the defendant in its defence that the plaintiff was guilty of negligence or of contributory negligence. It was however pleaded that if the plaintiff did suffer the alleged severe personal injuries, loss, damage, inconvenience and expense (all of which were denied), the same were caused or occasioned by reason of the acts and/or omissions of other persons for whose acts and/or omissions the defendant was not responsible.

20. It was put in cross examination to the plaintiff and to witnesses called on his behalf that his assailants might not have been customers of the defendant but persons who had travelled to the spot from a neighbouring town or even from the city suburbs for the sole purpose of assaulting some patron of the discotheque. Given the relative inaccessible location of this hotel, the time and the location of the assault the immediate presence of large numbers of persons who had recently emerged from the discotheque and, the known incidents of previous assaults at this location and on these occasions, in the absence of any evidence whatsoever suggesting the contrary, I am satisfied on the balance of probabilities that the person or persons who assaulted the plaintiff were fellow customers of the discotheque.

21. I find, on the evidence, that the defendant was aware of the danger or rowdiness and of assaults by visitors on each other on its premises during and after the functions in the discotheque. I find that it was therefore clearly foreseeable by the defendant that unless reasonable care was taken by it to prevent such behaviour, visitors such as the plaintiff, while on its premises might be assaulted and as a direct result suffer personal injuries. I find that it therefore had a duty to take reasonable care to keep the plaintiff safe from such known danger, I accept that the defendant was not in the position of an insurer and its duty only extended to taking reasonable care to protect patrons such as the plaintiff from such known danger. I find on the evidence that the defendant did have a security system organised which was generally sufficient for this purpose. However, I also find on the evidence that the system was not in operation at 3.30 a.m. on 29th November, 1999 when this plaintiff was assaulted and injured. In find on the evidence that on the balance of probabilities there were no security men, - or even car park attendants, - on duty at the front of the Ambassador Hotel at 3.30 a.m. on the morning of 29th November, 1999.

22. I find that the defendant was well aware and had been advised that for a security system to provide sufficient protection to patrons at least four security men must remain on duty at the front of the hotel until all patrons of the discotheque had left the hotel grounds. I find on the evidence that considerable numbers of patrons were still in the car park area in front of the hotel when the plaintiff was assaulted and that the barrier closing off access to the hotel grounds had not been lowered when the assault took place. I find on the balance of probabilities that if four security men dressed so as to be clearly identifiable as such were maintaining a high profile presence in the car park area in front of the hotel, especially if one of them was located covering the entrance to the hotel grounds and the main door to the hotel, this assault on the plaintiff would probably not have occurred. In the circumstances I find that the defendant was in breach of its duty to take reasonable care for the safety of the plaintiff while on its premises.

23. I accept the evidence of the plaintiff and his wife that he was rendered unconscious and suffered a deeply traumatising experience. Fortunately the plaintiff suffered no serious head injury. In my judgment Mr. Meagher tried to make as little of this shocking event as possible. Fortunately none of his teeth were broken in the attack. His jaw was observed at Blanchardstown Hospital to be bruised but for some reason an x-ray taken at that time did not reveal a fracture of the jaw. The plaintiff went to work as usual on the Monday following these events. He could not speak but he told me that this was not to great an embarrassment nor was it an impediment to his work as an engineering surveyor. He states and I accept his evidence that he had a headache all day at work. He could not close his teeth properly and found eating very difficult. As his condition was not improving he returned to Blanchardstown Hospital and was referred to the National Maxillofacial Unit at St. James's Hospital where he came under the care of Mr. Cliff Beirne, Consultant Maxillofacial Surgeon, on 22nd December, 1999.

24. A bilateral fracture of the mandible was diagnosed. This was reduced under general anaesthesia using plates, screws, wires and elastic traction. The plaintiff told me and I accept his evidence, that he had severe pain after surgery for which he was prescribed Solpadol. He continued to have difficulty with his bite. He was readmitted to St. James's Hospital where the plates were removed and

he was placed in intra maxillary fixation using wires. This treatment lasted for some six weeks during which he was unable to eat and he told me he lost five stones in weight. He and Cara had to postpone their engagement which they intended to announce on 14th February 2000 and to celebrate with a holiday in Paris. This announcement had to be postponed until April 2000. The plaintiff continued to work. He had severe hunger pains at all times and his jaw was uncomfortable. He also suffered numbness of the lower lip and of the chin area. On 6th March, 2000 Mr. Beirne felt that the prognosis was guarded for a full recovery.

25. When seen on 29th November, 2004 the fracture of the lower jaw had healed. The plaintiff had a full range of functional jaw movements but with clicking of both temporal mandibular joints. Mr. Beirne found that there was no damage to facial nerves. In his opinion the clicking would not predispose the plaintiff to the development of future arthritic changes in the jaw joint. The numbness of his lower lip and chin area had resolved. Mr. Beirne considered that in periods of stress the plaintiff's temporal mandibular joint symptoms would become worse. Mr. Meagher told me that he felt that his bite was fine. He considered that some of his teeth were displaced by the wire fixation. He had consulted an orthodontist about this but did not consider it worth spending one and a half years in a brace which he was advised would be necessary to correct this displacement. As of the date of trial the plaintiff said that his jaw continued to feel delicate and the clicking was still present and unpleasant. He said and I accept his evidence that he has suffered a loss of confidence in public as a result of this incident and has been turned off visiting public houses and nightclubs.

26. I have had regard to the Personal Injuries Assessment Board Book of Quantum as required by s. 22 of the Civil Liability and Courts Act, 2004. Under the heading, "Jaw Fracture", the book provides as follows:-

"After the nose the jaw (mandible) is the most commonly fractured facial bone. Some jaw fractures may be very simple and require only observation and soft diet or with just bandaged immobilisation but the majority of fractures require internal fixation with the use of wires".

27. In my judgment Mr. David Meagher has a significant ongoing injury and therefore the range of damages is given as lying between €25,000 and €58,000.

28. To compensate the plaintiff, so far as money can, for the pain suffering and inconvenience which he has had to endure in the past five years and three months, while at the same time being fair to the defendant, the Court will award the plaintiff the sum of €32,000. Mr. Cliff Beirne did not opine that the clicking in the plaintiff's temporal mandibular joints would resolve in the foreseeable future but instead indicated as I have already observed that in times of stress or strain the plaintiff's temporal mandibular joint symptoms would get worse. In these circumstances and applying the same principles of compensation, the court will award the plaintiff the sum of €16,000 for future pain suffering and inconvenience. Special damage has been agreed between the parties in the sum of €379.51. The court therefore directs that judgment be entered for the plaintiff in the sum of €48,379.81.