

**THE HIGH COURT****2008 182 P****BETWEEN****ALAN DANAGHER****PLAINTIFF****AND****GLANTINE INNS LIMITED****DEFENDANT****JUDGMENT of Ms. Justice Irvine delivered on the 26th day of March, 2010**

1. The plaintiff in these proceedings, Alan Danagher, was born on 15th September, 1987 and is currently a student at Cork Institute of Technology. He claims damages including aggravated damages in respect of an assault which he alleges was perpetrated against him by the defendant's security staff on 26th December, 2005, at its nightclub at the Templemore Arms Hotel, Templemore. The plaintiff maintains that alternatively he sustained personal injuries on the said date as a result of the negligence, breach of duty and breach of contract on the part of the defendant its servants or agents.

2. On the plaintiff's account of events, he and a number of members of his family decided to go to the defendant's nightclub on the evening of 26th December, 2005. He was accompanied by his brother, David, his sister Bernadette and her boyfriend, Seán McCarthy. They initially went to the Night Rise public house for a drink before proceeding to Mr. O's nightclub where they paid to enter the premises at approximately 12.30 on the morning of 27th December, 2005. Later, according to the plaintiff, after he had another few drinks, his sister Bernadette went to the ladies toilet leaving him her coat to mind. A fight started close by with two customers ending up on the floor. He states that he was knocked to the ground. He dropped his sister's coat and drink in the process. He subsequently retrieved the coat from underneath the two men. He states that he immediately moved away from the fight. He claims that neither he nor any member of his group was involved.

3. According to the plaintiff, a number of security staff arrived to deal with those involved in the fight and they were removed from the premises. The plaintiff then maintains that without warning, a security man came up behind him, grabbed him around his neck and dragged him backwards towards the double doors and out to the foyer area. He stated that his brother David and his sister's boyfriend Seán McCarthy were also being removed by the other members of the security staff. One of them allegedly inflicted a spear like tackle on Seán McCarthy and this caused everyone in the group, which he described as a scrum, to collapse in a heap. He told the court that in the process of being removed out to the foyer area and that he was strangled by the neck and felt he was being asphyxiated as a result of pressure applied around his throat. He later remembered lying on the ground in the foyer area for some time prior to finding himself outside in the open air at which stage he told the court he felt very cold. He complained that the defendant's staff did nothing to assist him following his injuries and that the only attention paid to him was by way of directions given to staff members to get him off the premises.

4. As a result of these events, the plaintiff was taken by ambulance to Nenagh Hospital where he was treated for his injuries. He had pain in his neck and back. He was discharged home sometime later.

5. At the time of this assault, the plaintiff was due to sit his college examinations in January 2006. He maintains that he was unable to sit these examinations and lost the rest of that academic year due to the severity of his injuries. He recommenced his studies in September 2006 but again experienced difficulties studying due to his injuries. He advised the court that he was forced to abandon his studies for that year also prior to enrolling in a building services engineering course in Cork Institute of Technology in September 2007.

6. As a result of his assault, the plaintiff claims that he has suffered soft tissue injuries to his neck and back which have required significant physiotherapy. He maintains that these injuries forced him to abandon what he described as his previous high profile involvement in rugby, boxing and GAA. He further maintains that he developed Post Traumatic Stress Disorder with symptoms of low mood, nightmares and flashbacks of the assault. He complains of becoming irritable and of developing an anxiety in certain social situations making him a reluctant and infrequent attendee at nightclub and discos where he always feels apprehensive.

7. In terms of psychological problems, the plaintiff relies upon the report of Dr. Niall Pender, Clinical Psychologist, dated 25th November, 2009 who stated that Mr. Danagher was still feeling depressed and worthless and that he had been unable to return to his previous sporting activities. In terms of his physical condition, his last medical review was by Mr. Jack Phillips, Consultant Neurosurgeon on 8th October, 2008. He reported the plaintiff's physical examination as being normal and ascribed his failure to return to sport to his professed fear that he might not, if he returned to his previous activities, perform at as high a level as he had done prior to the assault.

8. The defendant maintains that a serious fight involving perhaps as many as fifteen to twenty people broke out on the dance floor of Mr. O's nightclub on St. Stephen's Day 2005. Security staff had to remove those involved in the fight. According to two of the defendant's witnesses, Mr. Danagher was seen to have been involved in the fight and was noted to have stood on the head of one of those on the floor fighting before moving away from the scene. The security personnel decided that Mr. Danagher needed to be removed from the premises and a number of them approached him to this end.

9. The defendant's evidence was that Mr. Danagher was told that he was being removed from the premises but that he protested that he had done nothing wrong and resisted his removal. Mr. Tracey, one of the security staff, told the court that from his position behind the plaintiff he loosely put his two arms underneath the plaintiff's arms and reversed him out as far as the double doors leading to the foyer. He states that the plaintiff was on his feet walking backwards with him towards the double doors when the plaintiff's family and group of friends became involved in obstructing his removal by grabbing hold of him and trying to pull him back into the premises. A number of other security staff then became involved in trying to separate the plaintiff from his group who were all holding

onto him. Having made it through the double doors, the entire group fell just opposite the cloakroom. Mr. Tracey felt that he and the plaintiff were the last to fall. The fall to the ground was caused by the tussle between the two groups and in particular may have been precipitated by a female, whom Mr. Tracey thought might have been going out with one of the Danagher brothers, who pushed her way into the group as it made its way through the double doors to try to pull the plaintiff away from the security staff.

10. Mr. Tracey denied ever having had his arm around the plaintiff's neck, stating that he had his arms underneath the plaintiff's arms at all times. After the plaintiff fell to the ground Mr Tracey said that the Plaintiff was seen to be shaking or maybe having a fit. He was placed in the recovery position. Thereafter, he was seen to be talking to his sister. Some minutes later, the plaintiff was moved outside by a number of friends to await the arrival of the ambulance which had been called. Whilst the plaintiff was outside the premises he and members of his family had discussed what happened inside with Sergeant Lyons.

11. Mr. Tracey maintained that this was not a case of mistaken identity. He saw Mr. Danagher stand on somebody's head before he removed himself to another area of the nightclub.

### **The Law**

12. The law in relation to the events, the subject matter of this claim, are well established. They are considered in some detail by Peart J. in his decision in *Hackett v. Calla Associates Limited & Ors* [2004] IRLHC 336, a case in which the plaintiff lost his right eye in an incident in the car park attached to the defendant's nightclub premises as a result of being struck by what is commonly known as a "bouncer" who was employed by the nightclub owners.

13. Peart J. held that there was an onus upon the occupier of a nightclub premises to employ suitably trained staff in order to ensure that such premises would be managed and supervised in a proper fashion thus potentially protecting those who chose to patronise that establishment. He concluded that it was trite law that security staff members were not entitled to use more force than reasonably necessary to deal with patrons involved in culpable behaviour and that each case had to be considered on its own facts since the variety of situations potentially giving rise to intervention by security staff was infinite. He confirmed that the requirement to use only reasonable force never disappears.

14. Accordingly, it is for the court in this case to decide whether in all of the circumstances the plaintiff was ejected from the defendant's premises by the use of unreasonable force thus rendering the defendant liable to the plaintiff in damages for assault and/or negligence.

15. On the plaintiff's behalf it was argued that this was a case of mistaken identity and that the plaintiff was not involved in the fight which occurred on the night. Accordingly, on the plaintiff's account of events as to how he was removed from the premises the defendant had used unreasonable force. Even if the Plaintiff had earlier been involved in some type of adverse incident, counsel for the plaintiff submitted that as that incident was over when the security staff approached the plaintiff that there was an obligation on them to explain to him what they regarded as his unacceptable conduct following which they were obliged to either permit him to remain on the premises subject to a formal warning or request him to leave the premises before physically engaging with him. Having regard to all of the evidence it was submitted that the force used was unreasonable.

16. In reply, Counsel for the defendant submitted that it was agreed that a fight of some sort had taken place on the defendant's premises. On the balance of probabilities the evidence established that the plaintiff was involved and in particular had stood on somebody's head. Accordingly, the security staff had acted reasonably in intervening with immediate effect. If the defendant's evidence was accepted in this regard he submitted that there was no necessity for the security staff to verbally engage with the plaintiff as to why they were removing him from the premises. Once satisfied that the plaintiff had been involved in any aggression, the onus was on the defendant to remove the plaintiff with fairly immediate effect. To have merely warned the plaintiff and permitted him to stay on the premises would have been to expose other patrons to a foreseeable risk of injury. Counsel submitted that if an individual who was known to have been involved in a fight was permitted to stay on the premises subject to a warning and a second fight later broke out wherein that individual caused another patron serious injuries, the nightclub owners would have no defence to any case brought by that victim contending for negligence on the part of the management.

17. Counsel for the defendant further relied upon s. 26 of the Civil Liability and Courts Act 2004. He submitted that the plaintiff had knowingly given false and misleading evidence in relation to a material aspect of his claim, namely as to the extent of his injuries. Accordingly, the claim ought to be dismissed.

### **Findings of Fact**

18. It is necessary for the purposes of deciding the legal issue to which I have earlier referred to make a number of findings of fact as to what happened in the early hours of the morning on 27th December, 2005.

19. The court has heard two entirely different accounts of the events which occurred at the defendant's premises in the early hours of the morning on 27th December, 2005. Perhaps this is not surprising in that the events with which the court is concerned happened over four years ago. In these circumstances, the court has paid particular attention to that evidence available which may be described as contemporaneous, objectively corroborative or independent. This evidence includes the statements made by the plaintiff and other members of his family to An Garda Síochána and also those made by a number of the defendant's staff following this incident. The court has also had regard to the independent evidence of Sergeant Lyons, to the medical records from Nenagh Hospital, to the pleadings delivered on the plaintiff's behalf and perhaps most importantly to the video tape evidence. Unfortunately, there were no video cameras in the nightclub itself. Consequently, the video evidence does not capture the plaintiff's actions in the nightclub at the time of the fight, nor the approach made to the plaintiff by the defendant's staff. The video commences with the parties coming through the double doors into the foyer area. It captures part of the period leading up to the fall of the group or scrum and all of the period thereafter until such time as the plaintiff was assisted out of the foyer to the area outside the defendant's premises.

20. Having considered all of the oral evidence and evidence to which I have just referred, I now propose to make a number of findings of fact which are critical to the conclusions I have reached regarding this claim:-

(1) There was a significant fight on the defendant's premises in the early hours of the morning on 27th December, 2005. In oral evidence there was a dispute as to the extent of the fight and the numbers involved. Mr. Tracey in his statement to An Garda Síochána made on 29th December, 2005 stated that there were fifteen to twenty people involved. Mr. David Danagher in his statement made to An Garda Síochána on 28th December, 2005 stated that there were about three or four involved. It was accepted by both parties that at least two people who had been fighting on the floor of the nightclub were removed before the defendant's security staff sought to take the plaintiff out of the premises. The video tape evidence captures several other patrons being moved in an orderly fashion out of the nightclub at the defendant's

instigation at the relevant time. Accordingly, I have concluded as a matter of fact that there were significantly more than four people on the premises involved in the fight and who were thus potentially a liability to the safety of the other patrons at the time the plaintiff was removed.

(2) I am satisfied that the plaintiff was involved in the fight which took place on the defendant's premises to the extent that the defendant was justified in seeking to remove him from the premises as a potential threat to other patrons. I did not find the Plaintiff's evidence as to how he allegedly found himself on the floor in the middle of the fight to be credible. For reasons stated later in this judgment, I found the Plaintiff to be an unreliable witness and I have taken this into account in coming to the conclusion that he was involved in whatever fight was taking place on the premises whether it be in a peripheral or significant way. I accept Mr. Tracey's evidence that he saw the plaintiff physically involved in this incident and that he told the court the truth when he stated that he believed that he saw the plaintiff stand on a patron's head on more than one occasion. It is not necessary for me to find as a fact that the plaintiff deliberately stood on somebody's head on the night in question, once I am satisfied that he was either involved in a fight or that the security staff had had good reason to believe that he was involved in the fight such that they were entitled to reach a conclusion that he potentially posed a risk to other patrons.

(3) I am satisfied that the plaintiff had every opportunity to leave the premises voluntarily and that had he not resisted there would have been no need for the security staff to move him backwards out the premises as they did. In this regard, the video shows a number of patrons in the process of being evicted from the nightclub and are seen to be leaving in an orderly fashion at the request of security staff. They can be seen being what I would describe as being "frog marched" out of the nightclub ahead of security staff without any physical contact being made with them. It was only because the plaintiff resisted efforts to move him that physical intervention was necessary. In reaching this finding, I have taken into account the plaintiff's statement to An Garda Síochána where he stated:-

"One of the bouncers grabbed me by the upper arm. I can't really remember. I was reluctant to leave...my brother David and Seán tried to hold me from being removed."

(4) As to how the plaintiff was taken from the premises as far as the double doors, I reject the plaintiff's evidence and that of his sister that he was immediately grabbed around the neck and dragged a distance equivalent to the width of a large courtroom across the nightclub premises in the course of which he was unable to breathe and was asphyxiated. I find as a fact that the plaintiff was walked backwards until he reached the foyer doors and that over that distance he was being led backwards by Mr. Tracey who had his two arms underneath the Plaintiff's arms. In so concluding, I have taken into account references in the personal injuries summons and in the replies to particulars delivered in February 2008, to the plaintiff being dragged from underneath his arms in the initial phase of his removal from the nightclub area. This was confirmed by Mr. Seán McCarthy in evidence when he accepted that Mr. Tracey's right arm was positioned under Mr. Danagher's right arm. In this regard, I note Mr. David Danagher statement to An Garda Síochána where he stated:-

"He (Mr. Paul Tracey) pulled him towards the front door and I followed. Alan was still on his feet but was being pulled back."

Dr. Niall O'Doherty in his medical report of 23rd February, 2006 described the assault as reported to him by the plaintiff in the following fashion:-

"He was initially dragged by the armpits and as he struggled in pain he was then dragged awkwardly by the neck and dumped with force on the ground in the cloakroom of the nightclub. He hit his head off the ground, was stunned, semiconscious and groaning."

(5) As to what occurred between the double doors and the plaintiff finding himself on the foyer floor, having heard the defendant's evidence and having seen the video I am satisfied that at no stage was Mr. Tracey's arm around the plaintiff's throat and that at all stages his right arm was under the plaintiff's right arm. Further, the plaintiff in his statement to An Garda Síochána stated as follows "I have slight bruises on the inside of my two upper arms". This seems consistent with the defendant's evidence that at all stages he was held underneath his armpits.

(6) As to how the plaintiff sustained his injuries, I am satisfied as a matter of probability that these occurred when what is described as a scrum fell to the ground. I have concluded that the reason the scrum fell to the ground was not because of any spear like tackle inflicted upon Mr. Seán McCarthy by one of the security staff, as alleged by the plaintiff, but rather as a result of the struggle between a large group of the plaintiff's family and friends who had attached themselves to the plaintiff and the security staff who were endeavouring to take the plaintiff out of the premises. In this respect, David Danagher in his statement to An Garda Síochána stated as follows:-

"At the cloakroom we stopped. A push came from behind us and people fell. When the push came I fell towards the door."

It may well be correct, as alleged by the plaintiff, that one of the defendant's security staff may have caught Mr. Seán McCarthy by the leg deliberately and that this contributed to the group collapsing. I note that the security man concerned has stated that it was the plaintiff's leg he caught hold of in an effort to assist Mr. Tracey to remove him from the premises. However, this to my mind is irrelevant. The simple fact of the matter is that the plaintiff would not leave the premises voluntarily. Efforts on the part of Mr. Tracey to reverse the plaintiff out of the premises in an orderly fashion were resisted by the plaintiff and a number of members of his family. They clung onto the plaintiff and grappled with the security staff so as to obstruct them in their efforts thus making it necessary for other members of the defendant's security staff to become involved to ensure the plaintiff was taken out of the premises.

The video tape evidence clearly establishes what was occurring as the group came through the double doors into the lobby area. Mr. David Danagher and Mr. Seán McCarthy are seen trying to drag the plaintiff away from Mr. Tracey. All of their weight is around the plaintiff's shoulders as the group proceeds to collapse on the ground. It was at this point that the plaintiff sustained his injuries probably by striking his head off the ground at the time of his fall.

(7) I find as a fact that at no stage was the plaintiff asphyxiated. There is no such allegation in the statement he made to An Garda Síochána even though he did refer to being pulled by the throat.

"As we approached the cloakroom, I was being pulled by the throat by the bouncer. I said to the bouncer we can walk out ourselves and as we approach the front door just past the cloakroom, I felt a push from behind and fell backwards against the ground the bouncer fell on top of me along with some other people."

Neither is there any mention of his airway being impaired in the report of Dr. O'Doherty, his general practitioner which was prepared on the 23rd February, 2006. Further, there is no mention of any allegation that he was choked or asphyxiated in the hospital records.

(8) I have viewed the video tape for all of the period during which the plaintiff was lying on the ground in the foyer of the defendant's premises. During that period, I find as a fact that the defendant's security staff behaved in an orderly and restrained fashion. At all stages, the plaintiff was being attended to by his family in the presence of the defendant's security staff. Prior to the ambulance arriving, the plaintiff had been moved by what appears to me to have been his own group of friends before being taken to Nenagh Hospital. It was not contested that the plaintiff was well enough to discuss the events of what had occurred inside the premises with Sergeant Lyons who spoke to him while sitting on a bench outside the premises. For this reason, I reject the evidence advanced on behalf of the plaintiff as to his condition whilst outside the defendant's premises and also of his condition in the course of his transference to Nenagh Hospital.

## **Conclusion**

21. I am satisfied having regard to the findings of fact just referred to that the defendant discharged its duty of care to the plaintiff and other patrons of Mr O's Nightclub on the 26/27th Dec 2005. It employed competent staff, all of whom were professionally trained. No complaint had ever previously been made regarding the conduct of any of the security staff involved on the night in question. Having heard all of the oral evidence and having seen the video recording the defendant appears to have acted in a professional and responsible fashion. They did not intervene in a premature fashion. Neither did they use unnecessary or unreasonable force. Sergeant Lyons said that in general Mr O'S night club was a well run establishment and I believe that this statement is borne out by the video evidence.

22. All too often, cases become before this Court where it is alleged there was a failure on the part of security staff in a public house or nightclub to intervene sufficiently early to avoid an injury being inflicted on a customer. The plaintiffs in those cases are often young people who have sustained significant facial scarring which unfortunately they end up wearing every day for the rest of their lives. Scarring of that nature changes a victim's life forever. They are inevitably psychologically damaged and also find themselves discriminated against in their social and working lives. The court is told regularly that injuries of that type can be avoided if security personnel act promptly in the presence of perceived danger.

23. I can readily understand the difficulty faced by the defendant in seeking to supervise a nightclub premises containing over three hundred and fifty people on one of the busiest nights of the year and on which night undoubtedly a substantial number of its patrons had consumed perhaps a greater than normal amount of alcohol. In our litigation oriented society premature or overly robust policing of an establishment to protect its patrons exposes the management to claims of the present type. On the other hand, any delay on their part in intervening to remove anybody perceived to be involved in a fight from their premises may lead to the infliction of appalling injuries of the nature just referred to and a claim that those injuries were the result of culpable negligence on the part of the management. In this regard it is clear to me that in most cases decisions as to whether and/or how someone perceived to be a danger should be removed from a busy nightclub premises needs to be made with almost immediate effect. It is easy with the benefit of the retrospectoscope to demonstrate that the event might have been better managed had a different approach been taken on the night. But that does not render the management liable in negligence.

24. To conclude, I am satisfied that the intervention of the defendant's security staff to remove the plaintiff from the premises was warranted for fear of injury being caused by him in circumstances where they had good reason to believe that he had been involved in the fight of the floor of the premises some moments earlier. I am also satisfied that in moving him from the nightclub premises to its foyer area that they did not use unreasonable force. Insofar as the plaintiff sustained injuries, these were brought about firstly, as a result of his having become involved in the fight on the defendant's premises justifying his immediate removal and secondly by his refusal to comply with the request of the security staff that he would peacefully and voluntarily accompany them out of the premises. Instead, his physical resistance to their efforts to remove him combined with the obstruction of his family and friends ultimately led to the collapse of what has been called a scrum comprising patrons and security staff thus causing the plaintiff any injuries actually sustained by him.

25. For the aforementioned reasons the plaintiff's claim on liability must fail.

26. That however is not the end of the matter as far as this Court is concerned. Not only has the plaintiff failed to substantiate liability as against the defendants, he has to my mind sought to mislead the court and the defendant by grossly and deliberately exaggerating his claim in a number of respects.

27. Firstly, the plaintiff maintained that for several years, post this incident, he suffered from persistent neck and back pain to the extent that this injury wreaked havoc with his third level studies and sporting activities. In particular, he maintained that these injuries caused him to drop out of college for the latter part of the academic year 2005/2006 and for all of the year 2006/2007. In this regard he maintained a claim for €8,000 for all of his living expenses for these periods. In further support of his evidence as to the severity of his neck and back pain, he told the court that he had required some 70 sessions of physiotherapy in the two year period post this incident and that he had attended his general practitioner on no less than 50 occasions over the same period. He claimed travelling expenses of in excess of €2,000 euro in respect of all of these attendances. The extent of the plaintiff's injuries as particularised to the defendant's solicitors and the claims for the cost of physiotherapy and travelling expenses above were verified by affidavit.

28. To the court's dismay, following a careful cross examination of the plaintiff in the course of which he described to the court the persistent and disabling physical symptoms experienced by him in the year following this incident, he denied that he had participated in a parachute jump for charity in July 2006, an event covered by a report in the local newspaper. He maintained that this parachute jump had taken place the previous year ie 2005. He then went on to explain the apparent delay in the reporting of this parachute jump in the newspaper. He told the court that the reason the article did not appear in the paper until the following year was because it was only at that stage that the monies collected were being handed over to the relevant charity.

29. Before the evidence concluded, the defendant, through additional inquiries had procured additional evidence to establish that the parachute jump did, as originally put to the plaintiff, take place in July 2006, some six months after alleged assault. Rather than the defendant call the relevant witness to establish this fact, the plaintiff, through his counsel, accepted that his earlier evidence was given in error. On his behalf his counsel asked the court to accept that the plaintiff had made an innocent mistake when he told the court the parachute jump had taken place the previous year.

30. Having observed the plaintiff give his evidence on this matter I am satisfied that when he told the court definitively that the parachute jump had taken place the year before the night club incident, that he did so deliberately, hoping to mislead the court on this most material issue knowing full well that if he admitted his involvement in that jump, just six months after his alleged assault, that it would completely undermine the extent of the injuries which he was contending for. It is simply not credible that the Plaintiff could make a mistake as to the year in which he participated in what was likely to be a once in a lifetime type of event. Even less so the possibility of him not being able to tell if it occurred in the year before rather than in the year following an assault which he contends caused him life changing physical and psychological injuries.

31. I am satisfied that the plaintiff further misled the court when he maintained that he attended his physiotherapist on well over 70 occasions and his general practitioner's practice on some 50 occasions for either ongoing treatment or prescriptions. Again, I believe he did this deliberately hoping to impress upon the court the severity of his symptoms. I do not believe that he attended his general practitioner or physiotherapist on even a small percentage of the occasions alleged although I accept that he attended them occasionally. If he had done, it is to my mind inconceivable that he would not have produced invoices in relation to such visits, or an overall statement of account from these practitioners. Not only have no such statements of account been furnished but the reports of Dr. O'Doherty, the Plaintiff's General Practitioner and that of his Physiotherapist, Ms. Audrey Ryan, are deafening in their silence as to the frequency of the plaintiff's attendances upon them. Further, I note that the Plaintiff claims the cost of travelling to his physiotherapist on five occasions and to his general practitioner on two occasions in the month of July 2006, the month in which he now admits that he participated in his parachute jump. Accordingly, the plaintiff's claim insofar as it relates to travelling expenses for what I consider to have been phantom visits to his general practitioner and physiotherapist is false apart altogether from the fact that the evidence of these alleged visits was undoubtedly destined to influence and mislead the court as to the severity of his symptoms.

32. Finally, the plaintiff contended that he had developed Post Traumatic Stress Disorder as a result of his alleged assault. In the course of the proceedings before the court he maintained that he continued to suffer from the psychological injuries caused by his assault and that not only had he not returned to any of his sporting activities but that he still felt somewhat introverted and was consequently still restricted in his ability to participate in certain types of social activity. He maintained to his Psychologist, Dr. Pender, as late as November 2009 that he had not returned to any of his previous sporting activity and that he was still depressed and feeling worthless as of November 2009.

33. Once again the defendant has succeeded in establishing that the plaintiff has sought to deliberately mislead the court as to the extent of his alleged psychological injury. Recent entries on the plaintiff's face book page were produced to undermine his evidence in this regard. A number of self authored entries record the plaintiff's current participation in hurling, rugby and other sport. Further, other entries refer to his social life and many such entries advertise the plaintiff's apparent enthusiasm for nightclubs, dancing and drinking. One such entry states as follows:-

"Activities: playing hurling, rugby and Gaelic football.

Favourite music: anything that will get me dancing and hitting the roof."

Another stated as follows:-

"Ya I tink we mit be going out alrite, ul probably come across me drunk on a dance floor somewhere during d night anyways."

34. It is regrettable that having considered all of the evidence that I am driven to the conclusion that the plaintiff has deliberately overstated his injuries. I have no doubt whatsoever that he sustained some injuries when he fell to the floor and his head hit the ground particularly having regard to the fact that a number of security staff and family members appear from the video to have collapsed on top of him. However, those injuries are a far cry from the significant persistent and disabling injuries contended for by him in the course of this claim.

35. Given that the plaintiff's claim has failed on liability, there is technically no need for me to consider the effects of s. 26 of the Civil Liability and Court's Act 2004 which is a mandatory provision that must be operated by the court should the defendant be in a position to establish that the plaintiff deliberately misled the court in relation to a material issue and requests the court to invoke the sanction provided, namely the dismissal of the proceedings. Suffice to say that I am satisfied that the plaintiff's denial of the parachute jump in which he participated in July 2006 was a deliberate effort to mislead the court and was an act of dishonesty done for the purposes of advancing his claim. It is not for the fact that the court was dismissing the claim on liability grounds the court would, in any event, have been obliged to dismiss the Plaintiff's claim by reason of this statutory provision given the defendant's application in this regard having regard to the falsity of the plaintiff's evidence on this issue.

36. For all of the aforementioned reasons this claim must fail.