

THE HIGH COURT

[2009 No. 10014 P.]

BETWEEN

RAYMOND MCGORMAN

PLAINTIFF

AND

LAKELAND ELECTRICAL LIMITED AND TOWN OF MONAGHAN CO-OPERATIVE AGRICUTRUAL AND DAIRY SOCIETY LIMITED

DEFENDANTS

JUDGMENT of Ms. Justice Irvine delivered on the 30th day of July, 2013

Background Facts

1. The plaintiff was born on 4th September 1986, and is now living in Australia where he works in the steel manufacturing business.
2. In these proceedings, the plaintiff claims damages for personal injuries which he sustained on 8th June 2010, when he fell from a double extension aluminium ladder at the second named defendant's premises just outside Monaghan town. At the time he had completed two years of his apprenticeship as an electrician with the first named defendant who was the electrical contractor for all works required upon this site. It is common case that the second named defendant and in particular it's principal, Mr. P.J. Hand, spent a great deal of time working at this location.
3. On the day in question, the plaintiff, Mr. Hand and another apprentice were involved in an operation which required electrical cables to be installed in the roof space above one particular area of the Monaghan premises. To get the cables from point A to point B, it was necessary for one of them to be in the roof space above what is known as the cream packing room. Access to that area is through a trapdoor in the ceiling which is about 12 ft. above floor level.
4. As there is some dispute between the parties as to what actually happened on the day in question, I will briefly set out the differing accounts of the parties as to what they maintain occurred.
5. The plaintiff asserts that the first thing that happened on the morning of his fall was that a ladder was borrowed for the operation from the local co-operative store. Then, a forklift was used to hoist a caged platform, on which Mr. Hand was standing, up to ceiling height. From that elevated position he was able to safely open the hatch to the roof space in the cream room. The plaintiff maintains that the cage was then brought down to ground level because the forklift was required for use elsewhere on the premises. On other occasions, he said the cage would have been left in the elevated position for the duration of an operation that was taking place at ceiling level. Next, the extendable ladder was lifted into position with the upper rungs protruding through the open hatch into the roof. Then the plaintiff footed the ladder so as to hold it in a secure position while Mr. Hand made his ascent into the roof space. Having reached the top of the ladder, he leaned into the roof space and secured the ladder to an RSJ using a blue nylon rope which was kept up beside the hatch for this purpose.
6. Mr. Hand, according to the plaintiff, spent most of the morning in the roof space feeding the cables across the ceiling so that they dropped down to the plaintiff in another room where they were cut to the desired length. The plaintiff also maintains that on a couple of occasions, he went up the ladder to hand a tool or cable ties to Mr. Hand.
7. By the time the plaintiff was going off for his lunch he felt that the cabling work had been completed. Accordingly, when he came back after his lunch, he proceeded to tidy up as this was his responsibility as Mr. Hand's apprentice. He decided to take down the ladder which had been erected earlier in the day. To do this, he went up the ladder and untied it at the top. He had intended dragging the trapdoor back over the opening before descending the ladder, believing that the trapdoor would then slot into place once the ladder was removed. However, he did not get the opportunity to do this as once he untied the ladder it immediately slipped beneath him causing him to fall to the ground. As a result, the plaintiff sustained a serious injury to his right wrist which required surgery and subsequent rehabilitation.
8. In terms of his training, the plaintiff maintained that while he had completed two years of his apprenticeship at the time of his fall, he had not been given any formal instruction by Mr. Hand as to how to maintain his own safety when working at a height or as to the safe use of ladders. Further, he told the court that he had not been furnished with any written documentation containing such advice or warning him of the risks attached to this particular job. While he had spent a three-month period working with FAS during his apprenticeship prior to his fall, this course did not cover the issue of the safety when working at a height, nor any instruction as to the safe use of ladders.
9. Mr. Hand's account of events differed from that of the plaintiff to the following extent. He said that having regard to the location at which access to the roof space was required, it would not have been possible or practicable to have left the forklift with the cage in position for the duration of the operation. Had they done so there would have been complaints from the workers as the fork lift would have obstructed them in the carrying out of their work in a normal fashion. This was the reason why the ladder was used for any job that required access to the roof space in the cream packing room and this happened every couple of weeks. It was his practice only to use the cage for the purpose of opening up the hatch safely. Once that was done workers could get safe access to the roof space using an extendable ladder once properly secured. Mr. Hand commonly accessed the roof area in the cream room using such a ladder and this is why the blue rope which had been used to secure the ladder on the day of the plaintiff's fall was left permanently in the attic space. It was his invariable practice to require some worker to foot the ladder at the bottom until it was safely secured to the RSJ at the top by himself or somebody else. He denied that the cage was not left in place for the duration of the operation because it was required elsewhere by the second named defendant. The cage he said was only used for opening and closing the hatch.
10. Mr. Hand told the court that he spent the entirety of the morning in the roof space and that the only equipment he required for

the cabling operation was a pair of cutters and some cable ties, both of which he had brought up with him. Consequently he denied that the plaintiff had gone up and down the ladder at any stage during the morning.

11. Mr. Hand agreed that by lunchtime most of the cabling work had been completed. However, he had not asked the plaintiff to tidy up or to take the ladder down as the temperature gauges for which the cabling had been installed had not been fitted or tested. As far as he was concerned the ladder should have been left in position until the installation was completed and the equipment tested lest further access to the roof area be required to either install additional cables or to check the existing cables.

12. Mr. Hand told the court that when he came back after lunch, he was called to carry out some repairs to the lighting in a refrigeration unit which was relatively urgent. It was while going off to get some equipment to repair this unit that he became aware of the fact that the plaintiff had fallen while trying to take down the ladder.

13. As to training, while Mr Hand agreed that he had never formally taken the plaintiff and sat him down to teach him how to use a ladder safely he was adamant that he was trained in relation to the safe use of ladders on the job and on an ongoing basis. He had explained the relevant safety principles to the plaintiff and had shown him by example and in the course of their work together, much of which involved using ladders at a height, how to use them safely. He had shown the plaintiff how to foot a ladder and how to secure it and he was satisfied that the plaintiff knew that an extendable ladder was not safe unless secured at the top or bottom. This was his own practice and the practice operated on a day-to-day basis including on the day of the accident.

14. Mr. Hand was also satisfied that in the course of the plaintiff's first period of work with FAS, that he would have been trained in relation to safety whilst working at a height and that he would also have been trained in relation to the safe use of ladders.

Liability

15. The evidence led on behalf of the plaintiff as to the defendant's negligence at the end of day centred upon an assertion that the caged platform should have been used for the duration of the operation, that the extendable ladder was unsuitable for accessing the roof space and that the plaintiff had not been adequately trained to maintain his own safety while working at a height and in particular whilst using a ladder in such circumstances.

16. I reject the plaintiff's claim that the first named defendant was negligent in permitting a ladder, as opposed to the cage platform, to be used for the operation being carried out at the second named defendant's premises on 8th June, 2010. I accept the evidence of Mr. Hand that the reason the forklift truck and the cage were not left in position for the duration of the task was because it would have caused an obstruction and made it difficult for workers to operate the cream packaging plant if he had done so. I believe that Mr. Tennyson's photographs support this assertion. I am also satisfied that an extendable ladder was used safely by Mr. Hand and his staff for this purpose at this location for a number of years prior to the plaintiff's fall.

17. I am further satisfied that the use of the ladder borrowed from the co-op for the cabling operation, while it only had small rubber feet, was safe for the purpose for which it was erected once it was properly secured. In this regard, Mr. Hand saw to it himself that the ladder was secured in a safe and appropriate manner. He made sure the ladder was held firm at the bottom by the plaintiff while he ascended it to tie it off at the top. Once tied into position, that ladder was safe to be used by any other worker wishing to ascend or descend into the roof space.

18. I reject the evidence of Mr. Kavanagh that there was any breach of duty on the part of the defendant in leaving the ladder *in situ* for more than half an hour or for the duration of the intended project regardless of the Guidelines to which he referred in evidence. There were practical reasons to leave the ladder tied in position until such time as the cabling operation and the testing of the new equipment was completed. I accept Mr. Hand's evidence that even after the cabling was completed, it may have been necessary to get back into the roof space to check the cables or add further cables should there be any difficulty with the testing of the new equipment.

19. As for the alleged failure on the part of the first named defendant to train the plaintiff in the course of his apprenticeship, I reject this submission. I accept Mr. Hand's evidence that the plaintiff was trained on the job in the course of his apprenticeship and well knew how to maintain his own safety when working at a height or on a ladder of the nature used by him on 8th June 2010. It is clear to me from the fact that he himself secured the ladder at the bottom while Mr. Hand went up the ladder to secure it at the top, that he understood that it was unsafe to ascend or descend a ladder such as this unless it was either tied at the top or footed at the bottom. He accepted in his own evidence that this was a two-man operation until the ladder was secured. There was no evidence to suggest that extendable ladders were used by Mr Hand or any of his staff in a manner different from that deployed on the day of the plaintiff's fall and the court heard no evidence that Mr Hand, who I found to be an impressive witness, ever use or condoned the use of methods of work which exposed his employees to a risk of falling from a height from unsecured ladders.

20. Insofar as the plaintiff's training with FAS is concerned, on the balance of probabilities, I accept the evidence of Mr. Hand and Mr. Tennyson that it is likely that the plaintiff would have received safety training in relation to how to protect himself when working at a height and also in the safe use of ladders in the course of his first period of time working with FAS i.e. at least a year prior to his fall. I reject the plaintiff's own evidence that he only received this training after he had the fall the subject matter of these proceedings and after he had completed two years of his apprenticeship. This, to me, would make no sense. Logic would suggest that safety training of this nature would be carried out at the very outset of an electrician's apprenticeship. In this regard, the court heard uncontroverted evidence that Apprentices are expected to be in a position to work at a height even in the first year of their apprenticeship and accordingly, on the balance of probabilities I believe the plaintiff would have received safety training in relation to the use of ladders when at FAS long prior to the accident the subject matter of these proceedings.

21. Regrettably, I have come to the view that the plaintiff was the author of his own misfortune. I have no doubt, from the manner in which the plaintiff gave his evidence, that he was then and is now a very good and enthusiastic worker. Indeed, perhaps it was his enthusiasm which caused him to take a risk of doing a task that could only be safely carried out by two workers. He ought to have known that the manoeuvre which he had intended to perform on a ladder which was not secured at the bottom was dangerous. He had intended, having untied this ladder, to reach out sideways to try to drag the hatch door back into position so that it would drop down into the opening when the ladder was removed. This would have required him to lean out and exert a change of pressure on the ladder which had only the tiniest of grips in contact with what may well have been a slightly wet floor. However, in reaching my judgment, I have proceeded on the basis that the plaintiff fell immediately he untied the ladder and before he had commenced this operation. That fall, in my judgment was caused by the fact that he departed from what was the standard practice of his employer which was that the ladder had to be secured at the bottom before it could be untied at the top. Regrettably, he took on a task he was not asked to do and did so without advising Mr. Hand of his intention to do so or seeking any assistance from his fellow workers to foot the ladder so that he could take it down safely. From the evidence, I think it is likely that there were other workers on site who the plaintiff could easily have called upon to give him assistance for the short period of time that it would have taken him to

ascend, untie and then descend the ladder. I am quite satisfied that had he adopted this approach or advised his employer of his intention that he would not have sustained the injury, the subject matter of these proceedings. According, I believe that in a moment of enthusiasm or perhaps impetuosity caused by an idea that came into his head that the co-operative might have needed the ladder back for sale that caused him to risk his own safety to take it down alone.

22. I am not satisfied that there was any negligence on the part of the defendants nor any breach of duty or statutory duty. I can find no liability in respect of the plaintiff's injury.