

THE HIGH COURT**[2013 No. 9541 P.]****BETWEEN****GERALD GRIMES****PLAINTIFF****AND****HIGHVIEW INNS LIMITED (IN RECEIVERSHIP)****DEFENDANT****JUDGMENT of Mr. Justice Barr delivered on the 13th day of October, 2015**

1. The plaintiff is a young man of twenty-five years of age, having been born on 15th July, 1990. His accident occurred on the evening of 3rd/4th March, 2012. Earlier that day, he had been in hospital with his father, who was gravely ill. He had left the hospital at approximately 23.00hrs. He had returned home and did not intend to go out. However, he changed his mind and went to a birthday celebration for a friend which was being held in a local pub. He arrived at the pub at 00.15hrs. He had a bottle of beer in the pub. The group of friends then left the pub and arrived at the defendant's nightclub premises in Skerries at 00.30hrs. The plaintiff states that he purchased a pint of Heineken, of which he had drunk half, when he decided to go to the toilets.

2. At approximately 00.40hrs, he went to the toilet in the nightclub. When he went into the toilet area, the brother of a friend of his, one Michael Caldwell, was waiting to go into one of the two cubicles. When a cubicle became free, the plaintiff skipped past Mr. Caldwell and went into the cubicle. He brought his pint of beer with him into the cubicle and placed it on a ledge. When he had finished in the cubicle, he opened the door and proceeded out through the door, placing his left foot on the ground. He stated that when he placed his right foot on the ground, it slipped from under him and he fell backwards onto the floor. The plaintiff stated that there was water and urine on the floor surface. He stated that his clothes were wet from coming into contact with the floor.

3. The plaintiff stated that his friend, Michael Caldwell, was at the sink washing his hands and that he turned around and saw the plaintiff lying on the ground. The plaintiff suffered a dislocation of his right knee joint. The plaintiff stated that Mr. Caldwell went to get assistance from one of his friends who was qualified in first aid. The plaintiff stated that there was a toilet attendant at the scene, who proceeded to mop the area around him.

4. A number of security staff came into the toilet to assist the plaintiff. One of these, Mr. Halpin, helped the plaintiff to his feet. He was taken to the front lobby, where he left the premises with the assistance of his friends.

5. Evidence was given by Mr. Michael Caldwell, who was a friend of the plaintiff. He stated that he had gone to the pub for the birthday celebration and had had a bottle of beer in the pub. He then proceeded on to the nightclub. He got another bottle of beer in the nightclub. He stated that he had taken two mouthfuls of the beer, and then went to the toilet area. He stated that when he went in, the cubicles were occupied and that there was a toilet attendant in the area. He waited for a cubicle to become free. He stated that the plaintiff came in and skipped the queue and went straight into the cubicle which became free. Mr. Caldwell stated that when the second cubicle became free, he went in. He stated that when he was finished, he was washing his hands and, when he looked behind him, he saw that the plaintiff had fallen on the ground at the area of the urinals. The plaintiff was lying on his back and his hand was on his right knee. He could see that the plaintiff was in severe pain. He was asked to get Killian McMahon, who was a friend of theirs who was qualified in first aid. Mr. Caldwell stated that he left the toilet to summon assistance.

6. Evidence was given on behalf of the defendant by Mr. Elijah Fatiroti, who was employed as a toilet attendant. He stated that it was his job to remain permanently in the toilet from the time that the nightclub opened at approximately 23.30hrs until the nightclub closed. He stated that his function was to keep the floor area clean and if there was a spillage to mop it up and then dry the area with a roll of large blue tissue which was available to him. He recalled the night of the incident. He stated that the plaintiff and his friend entered the toilet area and were messing. He stated that they were pushing and shoving in a form of horseplay. Mr. Fatiroti told the plaintiff and his friend to calm down. He stated that the plaintiff then went into the toilet cubicle and closed the door behind him. He stated that on coming out of the cubicle, the plaintiff went to make a jump kick to his friend's rear, as he was standing at the urinal. Mr. Fatiroti stated that the friend, Mr. Caldwell, moved, causing the plaintiff to kick fresh air, lose his balance, and fall to the ground. Mr. Fatiroti was adamant that there was no liquid on the floor surface at the time of the incident. He stated that when the plaintiff fell, some of the beer from his glass fell onto the floor and it was this that he cleaned up after the accident. He stated that he called for help from the security staff by means of a radio, which all the staff had. He stated that two security men then came into the toilet area and went to the assistance of the plaintiff.

7. Evidence was also given by Mr. Alan Halpin, who was a security man on duty in the nightclub on the night of the incident. He stated that he was just outside the toilet area dealing with another incident, when someone told him that there was a person arguing with the toilet attendant in the toilet area. He made his way to the toilet and, as he was doing so, he received a call for help over the radio. When he entered the toilet area, he saw the plaintiff lying on the ground. He stated that the plaintiff told him that he was in pain and hurt; he said that he tried to assist the plaintiff. At that point, one of the plaintiff's friends became somewhat aggressive and Mr. Halpin had to push him back and tell him to keep out of his personal space. He then assisted the plaintiff to get up. He asked the plaintiff whether he wanted to have an ambulance called, but the plaintiff stated that he had spent all day in hospital and was not going to spend all night in the A&E Department. Mr. Halpin assisted the plaintiff to the lobby area and from there he was taken home by his friends. When the plaintiff left the premises, Mr. Halpin returned to the toilet area and saw that the floor was dry. He stated that he did not see Mr. Fatiroti drying the floor while he was in the area. He stated that he always found Mr. Fatiroti to be most meticulous in relation to carrying out his duties as a toilet attendant.

8. Evidence was also given by Mr. Ian Kavanagh, an engineer retained on behalf of the plaintiff. He carried out an inspection of the premises on 19th April, 2012. He took a number of photographs of the interior of the nightclub premises and also of the toilet area. The toilets contained two WC cubicles, three wall mounted urinals, two wash hand basins, and two wall mounted hand dryers. The

toilets had an overall length of 3630mm and an overall width of 2900mm. The cubicle that the plaintiff was exiting measured 1470mm in length and 970mm in width. The door from the WC cubicle was approximately 300mm from the nearest urinal. The floor tiles in the area consisted of a dark grey coloured ceramic tile, measuring 200mm x 200mm. Mr. Kavanagh carried out a number of tests in relation to the slip resistance of the floor surface. These showed that when the tiles were dry there would be a low likelihood of a slip incident occurring. However, if the tiles were to become contaminated with a liquid, then the test results suggested that the potential for a slip incident increased to a moderate level. He stated that the mechanics of the plaintiff's fall, as recounted by the plaintiff in evidence, suggested that there was a film of liquid on the surface of the tiles which caused him to slip and fall to the ground. At the engineering inspection which was carried out on 19th April, 2012, the plaintiff initially indicated that he had been wearing dress shoes on the night of the incident. However, he subsequently changed this to state that he was wearing trainers on the night in question. He explained this difference in recollection by stating that he had thrown his jeans on top of his shoes on the night of the incident and that it was some weeks thereafter, when he lifted the jeans from the floor, that he saw that he had, in fact, been wearing trainers on the night of the incident.

9. The duty owed by an occupier of premises to visitors coming upon the premises is to take reasonable care for the safety of the visitors while on the premises. It seems to me that the nightclub owners could not do more than have a designated attendant stationed in the toilet area for the entire evening. The plaintiff can only succeed in his case if he can establish that Mr. Fatiroti failed in his duty to keep the toilet area clean during the course of the evening. There was a stark divergence between the account given by the plaintiff, which was supported by the evidence from Mr. Caldwell, and the evidence given by Mr. Fatiroti. I was not impressed by the account given by the plaintiff. It seemed to me that he was giving his evidence in a self-serving manner and was not telling the full truth. The court found his explanation for the change in his account of what footwear he was wearing to be implausible. Mr. Caldwell also was not an impressive witness; he gave his evidence in an evasive manner. When the account that was to be given by Mr. Fatiroti was put to him, he merely stated that his account was different to that of Mr. Fatiroti.

10. I prefer the evidence of Mr. Fatiroti. He gave his evidence in a clear and precise manner. I am satisfied that he carried out his duties to the best of his ability on the night in question. I accept his account that the plaintiff met with his accident because he was doing a jump kick against Mr. Caldwell, who moved, causing the plaintiff to kick fresh air, and that he then lost his balance and fell to the floor. I am satisfied that this accident occurred, not due to any negligence on the part of Mr. Fatiroti, but because the plaintiff and Mr. Caldwell were engaged in horseplay in the toilet area. It was as a result of this horseplay that the plaintiff lost his balance and fell to the floor. In the circumstances, I cannot see that there was any negligence on the part of the defendant. Accordingly, the plaintiff's case against the defendant is dismissed.