

## THE HIGH COURT

Record No. 2011/6349 P

BETWEEN

MARK INGLIS

PLAINTIFF

AND

THE SALVATION ARMY (REPUBLIC OF IRELAND)

DEFENDANT

**JUDGMENT of Ms. Justice Bronagh O'Hanlon delivered on the 10th day of February, 2017**

1. The incident the subject matter of these proceedings occurred on 21st August, 2010. The plaintiff was a resident in the defendant's premises at York House, Dublin on the date in question when another resident poured boiling water from a kettle over his face, chest, abdomen, perineum and legs. The essence of the plaintiff's case is that the defendant owed him a duty of care, that he had indicated his fear of this individual, Mr. J.F., and complained of the threats received from him to the defendant's agents and that the defendant should have acted to remove Mr. F. and prevent the assault. The defendant accepts that the plaintiff was assaulted in their premises and suffered significant injuries as a result. However, the defendant does not accept that the plaintiff informed them of any threat so that the actions of Mr. F. were not reasonably foreseeable. The defendant also argues that, while they have a duty of care to their residents, it cannot be so high as to require them to exclude any person who has behaved badly. Liability and quantum are in issue between the parties.

**Summary of Evidence**

2. The plaintiff was born on 14th July, 1970. He lives in Aldershot, England, is a single father of one child and is a casual labourer. The plaintiff had lived in the defendant's hostel for approximately eight or nine months prior to the incident. He referred in evidence to the "Residents' Handbook" which outlines the rights and responsibilities of the residents and the defendant and he outlined his view that he should have been free from unnecessary intrusion and abuse.

3. The plaintiff's evidence was that, one week prior to the incident, he complained that Mr. F. was making excessive noise and banging doors on his floor in the hostel. The plaintiff asserts that Mr. F. became aware that he had complained about the noise. The plaintiff's evidence was that, as a result of this, Mr. F. threatened him, using terms such as "you've burned your bridges now" and "there's no going back from this". The plaintiff asserts that he made two members of the defendant's staff, Ms. Alana McCormack and Ms. Marjorie Parrott, aware of these threats and that they informed him that nothing could be done and that Mr. F. could not be moved.

4. On the night of the incident, the plaintiff was in the television room by himself when Mr. F. came into the room and boiled the kettle repeatedly. The plaintiff stated that Mr. F. then turned the lights off and he believed he had left the room until he felt the boiling water pouring over him. His evidence was that he grabbed Mr. F., threw him to the floor and ran down downstairs. He banged on the door of the security room and his evidence was that he was refused entry. Mr. F. then appeared downstairs wanting to carry on the confrontation according to the plaintiff. The plaintiff stated that he then ran to a nearby take away restaurant where he was given two bags of ice and the restaurant called the Gardaí and an ambulance. He was transferred to the Accident and Emergency Department of St. James' Hospital.

5. The plaintiff spent an extended period in the Burns Unit. The plaintiff accepted that Ms. Cora Whitney and Ms. Alana McCormack visited him in hospital for which he had thanked them indicating that it was manners to do so and he stated that he did not want to get into an argument in the Burns Unit. The medical reports have been agreed between the parties. There was agreement to the admission of Mr. McHugh's medical report and this indicated that the plaintiff suffered from superficial and partial burns to the face, chest wall, left thigh, genital area and that his wounds were cleaned by a consultant. He was treated by a consultant plastic surgeon and had daily dressings and was discharged for follow up. It was noted that he has residual scarring on his chest and has difficulty passing urine with reduced sensation in his genital area which has not improved two and a half years after the accident. Mr. McHugh stated that the abnormalities concerning the difficulties with his urine stream are likely to be permanent. The plaintiff has suffered from flashbacks and can be "heightened" although the Court was asked to disregard any claim for psychological damage.

6. Two statements were taken by An Garda Síochána for the purpose of the investigation. The plaintiff did not mention to the garda taking the statement, on either occasion the alleged threats received by him from Mr. F. in advance of the incident. The Court was told that Mr. F. was prosecuted but failed to attend court and a bench warrant exists at the moment for his arrest.

7. It was put to the plaintiff that he had previously complained of receiving threats in the hostel in a Dublin County Council application and that Ms. McCormack addressed this with him and that he had told her that the complaint was purely in order to get on a housing priority list. He denied this. A previous altercation involving another resident, T.M. was highlighted where a 21 day notice to quit was rescinded after the plaintiff indicated that he no longer felt threatened. The plaintiff distinguished this as involving a different person.

8. Ms. Alana McCormack, Acting Assistant Centre Manager since 2003, described the unit as a homeless residential centre and that the maximum stay for a resource user would be eighteen months. Ms. McCormack confirmed that there were rules of the house. She stated that there were five stories in the building plus a reception area. She confirmed that she knew the plaintiff, that she had a very good working relationship with him and that he was very open with her. Ms. McCormack gave evidence about another incident which occurred with T.M. She confirmed to the Court that the plaintiff had said later that he did not feel threatened in relation to a conditional notice to quit being served on Mr. M., that he did not want the man excluded from the premises and that a condition of that person's licence was that he would stay away from the plaintiff. Ms. McCormack indicated that she understood that the plaintiff had complained that he was in danger or at risk to Dublin County Council and that she followed this up with the plaintiff and advised the Gardaí. She gave evidence that the plaintiff had told her that he did not feel under threat and that it was a good way to "get the ball rolling" regarding housing. Under cross-examination she was asked about any complaints regarding Mr. F. She pointed out that, given the nature of the accommodation and the limits of the service, it was not unusual for altercations to occur both inside and outside the building. She described alcohol as being a factor in many instances. Ms. McCormack referred to a 2008 incident as being the main one where Mr. F. and another resident were given a warning letter.

9. She did accept however that there were complaints regarding Mr. F. for a week or two before the incident in question here. This

witness also pointed out that any physical altercations would have to be documented and that any complaint would be investigated by the management team. She gave evidence that quick action would be taken in relation to any complaints. Ms. McCormack confirmed that she went to visit the plaintiff in hospital after the incident and that there was absolutely no suggestion on that visit of any failure by the Salvation Army. She was not aware that he had communicated with his solicitor. Ms. McCormack stated that she first became aware of his complaint that she had failed to act earlier on the day of the trial. She confirmed that on 16th August, 2010 she sent an email regarding the noise issue to Marjorie Parrott. She stated that the plaintiff never told her that he was physically threatened. This witness confirmed that she had received an email from the key worker regarding the plaintiff's noise complaint but she insisted that the alleged conversation regarding threats never took place. She confirmed categorically that the plaintiff never said to her that he was under threat from J.F. before or after the incident.

10. Marjorie Parrott had worked for 30 years in the Salvation Army, including eight years in the hostel concerned and was a programme coordinator. She stated that she knew Mr. F. longer than she knew the plaintiff. This witness confirmed that there were 80 places in this residence for single men often with difficulties including addiction problems, mental health problems and obviously homelessness. This witness pointed out that to exclude people would be a last resort. Ms. Parrott confirmed that she approached the plaintiff and told him she was aware of the complaint regarding noise and asked him what he wanted to do and that his response was that he did not want anything to happen and that he did not want Mr. F. to know that it was he who had complained. This witness confirmed that she was on call on the evening of the incident but was not present in the building. She confirmed the procedure in the case of a threat of violence and noted that either party could be moved and separated so that one could be on each floor.

11. Ms. Parrott indicated that she became aware on the day of the trial what the plaintiff's allegation was. She was cross-examined regarding the intervention sheet concerning the incidents in 2008 and she said that the two people were prevented from further fighting and that neither managed to exchange blows within the centre. She confirmed that there was a notice to quit to J.F. following that incident which was conditional. She accepted that there was also an incident in 2007 when Mr. F. brought in a bottle of vodka in respect of which he received a caution. Ms. Parrott gave evidence that she would not agree that there was a pattern of behaviour in relation to Mr. F. as it was in the nature of the people they work with. It was put to her that she was informed regarding the threats but she denied this and denied that Alana McCormack would have to deal with it or that she indicated same. Ms. Parrott further added that the plaintiff did not say why he did not want Mr. F. to know that he had complained about the noise.

12. Mr. Bill Swan, night project worker who was there on the night in question along with a security person and a CCTV monitor, gave evidence. He indicated that the aim of the hostel was to try and arrange accommodation for residents elsewhere but sometimes that they go back living on the streets. This witness confirmed that Marjorie Parrott was on call but he was the person actually present. Mr. Swan confirmed that at midnight and at 6.30a.m. he and a security man walked around the building and the security man does other checks on his own. It takes about 30 minutes to do such a check. He explained that he had gone into the toilet and that there was a noise and he went out to find out what was happening as soon as he could. This witness indicated that he met Mr. F. who had a bad contusion above the eye and had lost a lot of blood so Mr. Swan administered first aid. He explained that if there is a threat one goes to a project worker who reports to management and that the CCTV would be examined to better understand a situation. He said that the CCTV of that night showed the plaintiff lying back over three chairs watching television and that there was nothing that showed a threat or that the plaintiff was in fear. Mr. Swan confirmed that he had no dealings with the plaintiff that night and he did not see the plaintiff at all except on the CCTV. Mr. Swan gave evidence that the key worker keeps the personal files and that one looks at the holistic needs and the people who use the hostel can opt in or opt out of treatment and courses.

13. Cora Whitney who recently retired after sixteen years working in the defendant's premises the previous year due to health reasons described herself as familiar with the plaintiff who came and went from the hostel and was independent compared to other residents. This witness described a lot of programmes being available in terms of life skills training and counselling so that when a person leaves the defendant's premises they can sustain accommodation themselves. Ms. Whitney was of the view that there was never an incident which was ignored in the hostel. Ms. Whitney described this organisation as a Christian one aimed at developing and helping people change their lives and they tried to keep the peace and used log books, incident books and a complaints procedure.

14. Ms. Whitney indicated that the organisation was shocked and saddened by what had happened to the plaintiff. This witness made reference to the allegation from the plaintiff that he had told the security man on the 12th of August, 2010 about threats but her response was that she was not aware of that. She indicated that there was no pattern of behaviour concerning Mr. F., that he is vulnerable and that they cannot just exclude somebody as there would be dire consequences for him. She saw the duty of care of the organisation as to do the best they could for the men. She described many residents as having diagnosed mental health issues and also alcohol issues which had to be dealt with as they came up. Ms. Whitney said that occasionally people had to leave the hostel and usually one month's notice is given. Ms. Whitney described the centre as a "dry centre" and that a lot of the residents are in recovery from different addictions so there may have been warnings to Mr. F. about alcohol. Her general point was that they would monitor in this centre and speak to and pay very much attention to what people said to them if there were any threats. She gave her view that Mr. F. was generally not a violent person. Ms. Whitney said there was no complaint to her about a security man cautioning Mr. F. in front of the plaintiff. If there was a complaint there would usually be a copy or record available and she said she was not certain about specific dates but she felt it was just a complaint about noise. At the end of the evidence, the Court requested and was given the personal file of Mr. F. and the relevant log books.

### **Legal Submissions**

15. There is agreement that the plaintiff was assaulted and suffered injuries within the defendant's premises. The defendant is arguing the issue of liability.

16. The plaintiff's position, as presented by counsel, is that the defendant failed in its duty of care to him and is therefore liable for the injuries. The plaintiff argues that the duty of care is established within the defendant's own "Resident's Handbook". This handbook sets out the rights and responsibilities of the residents as including a right to be free from unnecessary intrusion, a right to feel safe and secure and a right to be protected from exploitation and abuse. The handbook also sets out the responsibility of the defendant as including a responsibility for health and safety and that appropriate action will be taken in response to aggression and violence.

17. Counsel for the plaintiff submitted that the assault was foreseeable on two grounds. The first ground argued is that the plaintiff informed the defendant through Ms. McCormack and Ms. Parrott that he had been threatened by Mr. F. Counsel for the plaintiff accepted that there is a conflict of evidence although he submits that the plaintiff has been consistent as to the terminology in the threats received by him. It was submitted that, if the Court accepts that they failed to act after being informed as to the threats then the defendant is clearly liable.

18. Counsel for the plaintiff submitted that the second ground is that the defendant should have acted upon Mr. F.'s pattern of previous bad behaviour and excluded him in advance of this incident. Counsel for the plaintiff summarised this pattern of behaviour as including drinking alcohol, breaching the rules, over use of the computers, causing noise problems and generally being difficult and

troublesome. It was submitted that the probability of Mr. F. assaulting someone within the defendant's premises was very high and they should not have given him so many chances. It was accepted that the defendant fills a very difficult role although it was submitted that they failed in their duty of care to the plaintiff in this situation.

19. It is the defendant's position that they were not warned about any threats. The evidence of Ms. McCormack and Ms. Parrott was in complete contradiction to that given by the plaintiff. It was submitted on behalf of the defendant that the plaintiff has been inconsistent, he did not mention threats in reports to the Gardaí and he did not say it to Ms. McCormack and Ms. Whitney when they visited him in the hospital shortly after the incident. It was further submitted that the staff members' credibility and character have not been questioned and that it was not put to any of them that they have ever failed in their duty in the past. Counsel for the defendant submitted that it is difficult to assess what the duty of care actually is and in these types of cases it would be normal to have expert evidence in this regard to indicate what the appropriate steps would have been to reach the required standard of the duty of care. It was submitted that the defendant has an obligation to balance the needs of each of the residents against each other and they believe that it would not be right to exclude everyone, that it would cause a greater social injustice. It was further submitted that the incident the subject matter of these proceedings was not a common occurrence for the defendant and it was a total shock to the staff members.

20. Counsel for the defendant highlighted that the defendant is not an insurer and there is no strict liability upon the defendant. It was submitted that the plaintiff has to establish the relevant and appropriate duty of care and they also have to establish foreseeability. The defendant's position is that the plaintiff has not discharged the necessary burden of proof. It was further submitted that the duty of care proposed by the plaintiff is too high. Counsel for the defendant cited the case of *Martin v. Dunnes Stores* [2016] IECA 85 which he accepted was not on all fours with the instant case as it related to employer liability which requires a higher duty of care than that on the defendant here. Irvine J. set out the principle at para. 18 as follows:-

"Time and time again the courts, in personal injuries litigation, have stressed that the duty of the employer to their employee is not an unlimited one. The employer is not to be taken as an insurer of the welfare of their employees. In *Bradley v. CIE* [1976] I.R. 217 at 223, Henchy J. stated as follows:-

'The law does not require an employer to ensure in all circumstances the safety of his workmen. He will have discharged his duty of care if he does what a reasonable and prudent employer would have done in the circumstances.'"

## Conclusion

21. This Court takes the view that the defendant took reasonable care for the safety of the plaintiff at all material times, and had in place, a system, well monitored, and recorded in order to deal with any incidents as they occurred in relation to those who use their facilities. It is noted that the defendant argues that while they have a duty of care to the residents in the hostel it cannot be so high as to require them to exclude any person who has behaved badly. In that regard, the aims and objectives of the organisation vis-à-vis the residents were clearly set out by more than one witness in evidence. To exclude a person was seen as an absolute last resort because the aim was to help each resident overcome their difficulties.

22. One point of particular note in relation to the plaintiff's credibility around the issue of the threats. This Court accepts the evidence of the defence that there were two different Garda statements taken for the purposes of the investigation and on neither occasion did the plaintiff refer in these statements to the alleged threats received by him from Mr. F., in advance of the particular incident, which gave rise to these proceedings. This Court accepts the evidence proffered by the defence witnesses that there were no complaints made by the plaintiff of threats from Mr. F. to him.

23. This Court accepts Ms. McCormack's evidence that she followed up the issue of whether or not the plaintiff had previously complained of receiving threats in the hostel, in a Dublin County Council application for housing and the plaintiff admitted in relation to this issue, that the complaint was made purely in order to get on a housing priority list with the Council. This Court accepts Ms. McCormack's evidence in relation to this issue and it seems highly probable to this Court that the plaintiff used the complaints about alleged threats in order to get on a housing priority list.

24. This Court has had the opportunity of observing the plaintiff and the witnesses called on behalf of the defendant while they were giving evidence and this Court is of the view that the evidence of the defence witnesses is more credible.

25. This Court accepts the evidence that Ms. McCormack and Ms. Parrott first became aware of complaints being made by the plaintiff in respect of threats, on the first day of the trial in this case. This Court considers that to be quite telling and accepts the evidence of Ms. McCormack and Ms. Parrott in full. This Court accepts Ms. Parrott's evidence when she says that the plaintiff did not say why he did not want Mr. F. to know that the plaintiff had complained about noise, a week prior to the accident. This Court also had the benefit of Mr. Swan's evidence and he observed the CCTV of the night showing that the plaintiff was relaxed, lying over three chairs watching television and that there was nothing on the CCTV that showed a threat or that the plaintiff was in fear.

26. Ms. Whitney gave convincing evidence that there was no pattern of behaviour concerning Mr. F. but rather that he was a vulnerable person and that there would be dire consequences for him had he been excluded. She stressed the duty of care of the defendant organisation to do the best they could for men in the hostel, describing the organisation as a Christian one aimed at developing and helping people change their lives and that it was managed in a way to keep the peace using log books, incident books and a complaints procedure. Having reviewed Mr. F's file, this Court noted that while there was an incident in 2007 and in 2008, his behaviour could hardly be described as forming a pattern as suggested by the plaintiff's counsel.

27. In all the circumstances while the defence accept that an incident occurred in which the plaintiff was injured on their premises, this Court considers that the defendant did not fail in its duty of care to the plaintiff and is not therefore liable for the injuries sustained by the plaintiff. The system in place used by the defendant was in line with their own procedures and this Court considers that the assault was certainly not foreseeable and this Court does not accept that the plaintiff had made complaints of having been threatened by Mr. F., prior to this incident. This Court considers that there was no failure to act after being informed about threats as clearly the evidence from the defendant is convincing that, in fact, no allegations of threats were made.

28. This Court notes that no expert evidence was called in relation to what might be seen as the required standard of the duty of care in a case such as this and that the simplistic idea of just excluding people would cause a greater social injustice. What occurred was not a common occurrence and shocked the staff. This Court therefore dismisses the plaintiff's case. As the case falls at the liability stage there is no need to make an assessment as to the quantum of damages.

