

THE HIGH COURT

[2012 No. 10231 P.]

BETWEEN

DOMONIKOS KALMAN RACZ

PLAINTIFF

AND

THOMAS HIGGINS

DEFENDANT

THE HIGH COURT

[2013 No. 14315 P.]

BETWEEN

THOMAS HIGGINS

PLAINTIFF

AND

CASTLECOURT HOTEL LIMITED

DEFENDANT

JUDGMENT of Ms. Justice Costello delivered on the 20th day of July, 2017**Introduction**

The plaintiff sued the defendant for assault arising out of an incident which occurred on the night of 11th and 12th November, 2011, in MOJO's nightclub in the Castlecourt Hotel in Westport, Co. Mayo. The defendant brought separate proceedings against the Castlecourt Hotel Limited arising out of the same incident. The actions were linked and the evidence given was in respect of each action. This is my judgment in respect of the two claims.

1. Thomas Higgins, Brian Lavelle and David Fagan travelled to Westport on 11th November, 2011 to attend a friend's stag party. They spent the evening in the pub watching the Ireland — Estonia International soccer match. Thereafter they went on to two more pubs. Mr. Higgins said that he had 5 or 6 33cl bottles of Budweiser to drink. Mr. Lavelle said that he had about 8 or 9 pints. They heard that there was a disco in the Castlecourt Hotel and that entry was free before midnight. The three of them made their way to the Castlecourt hotel before 12 o'clock. Mr. Higgins had 2 drinks of vodka and Red Bull and Mr. Lavelle had 3 pints.

2. Unfortunately the evening ended badly. The security staff of the Castlecourt hotel removed Mr. Higgins from the nightclub. The plaintiff was one of the security men employed by the Castlecourt Hotel on the night. He says that while he and his colleague were removing Mr. Higgins from the premises he was assaulted by Mr Higgins and suffered injuries. Mr. Higgins says that he was suddenly grabbed from behind and forcibly removed from the premises and that he was assaulted by the security staff of the hotel and was gravely injured.

3. MOJO's nightclub is situated on the first floor of the hotel. It was accessed *via* a corridor that led to a lobby. From the lobby there was access to an outdoor smoking area and a flight of two stairs which led up to the nightclub. The nightclub is licensed to take up to 1,150 patrons. On this particular evening all parties are agreed that it was not busy. Four security men were on duty, the plaintiff, his superior, the head of security at the hotel Mr. Matt Rowley, Piotr Szejner and Mr. Janos Takacs. Mr. Takacs was on duty as a glass picker. All of the staff were trained and licensed security men. The plaintiff had been trained and licensed since 2006. Mr. Rowley had 25 years of experience as a security man and had worked in the Castlecourt Hotel for 22 years. No issue was taken to the number of personnel on duty and it was accepted that they had been licensed and trained.

The Plaintiff's Evidence

4. The plaintiff was born on 22nd July, 1976, and at the time he was residing at Money, Carrowholly, Westport, Co. Mayo. He was originally from Hungary. He was married and had one child. He had worked in the Castlecourt Hotel since April, 2006. He obtained his licence to work as a door security person (DSP) and had been employed as a security man by the hotel since he was licensed. On the night in question he held the required authorisations from the Private Security Agency. He had undergone specific training to obtain the licence. He had also obtained Maybo training, which is the standard training for the United Kingdom. He was on duty on the night of 11th and 12th November, 2011 as a DSP. He was initially downstairs at the door to the entrance to the nightclub. His colleague Janos Takacs, who was also a licensed DSP, was on duty upstairs in Mojo's nightclub as a glass picker. He came down at around one o'clock and requested the plaintiff and his colleague that evening, Piotr Szejner to come upstairs to the nightclub.

5. When he arrived in the nightclub he saw two groups: Mr. Higgins and one of his friends and the other group of at least three guys and two ladies. The plaintiff said that they were pushing each other and there was a verbal fight. He stepped closer and tried to find out what was going on. He tried to cool the situation down and said "Guys, just stop fighting and enjoy yourselves". Mr. Higgins and his friends moved away. The plaintiff and his colleague remained upstairs to monitor the situation. The plaintiff said that he saw Mr. Higgins go back to the dance floor and then he was pushing young lads. He said that Mr. Higgins was dancing with the two girls and the young lads tried to join the group and Mr. Higgins was pushing them away. The plaintiff intervened and said to Mr. Higgins "Don't push anyone". He saw Mr. Higgins pushing a young lad and a young lad pushing Mr. Higgins back. Mr. Szejner joined the plaintiff and they both tried to calm Mr. Higgins. The plaintiff asked him "Come over here and we'll talk" but Mr. Higgins started pushing the plaintiff.

6. The second time Mr. Higgins pushed the other dancers, the plaintiff said to the other patron "Just leave him [Mr. Higgins] alone", because he was of the opinion that Mr. Higgins was aggressive and would cause trouble. He said he approached Mr. Higgins on four different occasions. He did not ask Mr. Higgins to leave the premises voluntarily. The plaintiff witnessed Mr. Higgins run from the dance floor up to the counter, jump up and place his foot on the counter top and jump down and run back into the dance floor.

7. The plaintiff called Mr Rowley to help himself and Mr. Szejner as Mr. Rowley is an expert in situations of this kind. He was very good at diffusing aggressive situations. Mr Rowley said to Mr Higgins "Just calm down. We have to go away from the loud music and

we have to talk”.

8. He and Mr. Rowley took Mr. Higgins by an arm on either side and brought him from the dance floor down the stairs to the lobby. He said Mr. Higgins was shouting that he would not go anywhere. He denied that Mr. Higgins was complaining that they were hurting his arm as they brought him from the nightclub. He denied that Mr. Higgins fell on the dance floor or that he was punched in the head or the face. He denied that he punched Mr. Higgins while bringing him down the stairs. When the three men were passing into the lobby, Mr. Rowley suddenly felt his knee go and he fell over. Mr. Higgins and the plaintiff both fell and Mr. Higgins broke free from the plaintiff and Mr. Rowley.

9. Mr. Higgins tried to go back up the stairs into the night club. The plaintiff told him not to go upstairs and called on him to go outside. Mr. Higgins started to go upstairs and the plaintiff followed him. Mr. Higgins behaved very aggressively. He punched and kicked the plaintiff three times in the groin. The plaintiff protected himself with his hand and Mr. Higgins kicked him on the thumb. Mr. Higgins punched him in the face and on the arm on a number of occasions.

10. Mr. Higgins was trying to go back up the stairs into the nightclub. The plaintiff said that he had to try to stop this. Mr. Rowley was not in a position to help him. The plaintiff said that there was a fight between himself and Mr. Higgins. He grabbed Mr. Higgins and brought him to the ground and Mr Higgins hit his head off a door on the side of the stairs. The plaintiff was on top. The plaintiff shouted to Mr. Rowley to call the Guards. The plaintiff said that he did not expressly tell Mr. Higgins that he was calling for the Guards but that Mr. Higgins must have heard him shout to Mr. Rowley to do so. The plaintiff accepted that a raised fist visible on CCTV was probably his. He said in explanation that he was under attack.

11. When the plaintiff was satisfied that Mr. Higgins was calm he let him get up. Mr. Higgins then sprang up and became very agitated and aggressive. He pushed and punched the plaintiff again. He wandered in and out of the lobby area and stairs. Mr. Szejner came down and he and the plaintiff grabbed Mr Higgins and started walking along the corridor in the direction of the First Aid room. They “fell off again” and the plaintiff returned to the lobby area. His behaviour was very aggressive and he pushed one of his friends who had appeared and was trying to calm him. He was shouting abusively and saying “you don’t know who I am”, a reference to the fact that Mr Higgins is a member of An Garda Síochána.

12. Mr. Higgins punched Mr. Rowley at this point and then the guards arrived. At this point Mr Szejner was on the floor with Mr. Higgins’ friend and when the guards arrived they handcuffed Mr Higgins. The Guards left with Mr. Higgins and the other man left also. The plaintiff stayed on duty until 7 am and drove home.

13. The plaintiff said that he was very, very stressed by the incident. He felt very bad because an event like this had never happened to him before. The following day his thumb was very sore and swollen and his head was bruised, though his testicles were not bruised or swollen. He attended work the following evening but could not work due to the condition of his hand. He went to see his family doctor at a date he could not pinpoint but which predated his X-ray at Mayo General Hospital, Castlebar on 15th November, 2011. He was examined, pain relief was prescribed and he was referred to Castlebar general hospital for X-ray. He attended for X-ray on 15th November and his thumb was still very swollen and painful. He could not move his hand at all. The X-ray revealed that he had sustained a hyperextension injury to his right thumb and that he had a tender and swollen metacarpopharyngeal joint. On follow up with the Accident and Emergency Department in the hospital his hand and arm was placed in a cast to below the elbow. He returned to his GP on 24th November because of the pain in this thumb and because he could not sleep well. After three weeks the cast was removed and his thumb was placed in a Spika splint. He could not remember how long he was in the splint. He had some physiotherapy which helped his thumb. He said he still feels pain sometimes and, though he is right handed, he cannot grab things well with this hand, though basically his thumb had resolved after a few months.

14. The plaintiff was badly shocked by the incident. He and his wife were very worried and fearful when they heard that Mr. Higgins was a guard. He was particularly worried that the Gardaí could behave in this fashion in light of his experience with the police in his own country. They were so worried that they felt that they had no alternative but to leave Ireland. He left on 5th January, 2012, and after a short visit to Hungary they moved to England for four years. He and his wife were not happy in London. He and his family have been in Hungary since 2015. He misses his life in Westport. He really liked living in Westport and he liked his job. All his friends are in Westport. He was asked by his employer to come back to work a couple of times but he no longer wanted to work in security because he cannot deal any more with people like Mr Higgins.

15. The plaintiff suffered psychologically for some time after the events of 12th November, 2011. He initially received medication to help him sleep from his family doctor. On 10th April, 2013, he was seen by Dr. John Connolly, consultant psychiatrist, on a referral by the plaintiff’s solicitor when the plaintiff was resident in London. Dr. Connolly was of the opinion that the plaintiff developed signs and symptoms of Post-Traumatic Stress Disorder including dreams and flashbacks about the event, low mood, lack of confidence and self-esteem, anxiety and mild depression. He received no psychiatric treatment, though the plaintiff said he found his consultation with Dr. Connolly to be very helpful in resolving his psychological issues.

The CCTV Evidence of Mr. Martin Stairs

16. Mr. Martin Stairs, a security consultant of very considerable experience, gave evidence on behalf of the plaintiff and the Castlecourt Hotel. He is a former president of the Irish Security Industry Association and a former member of the board of the Private Security Authority. He sat on the Critical Infrastructure Working Group and has represented Ireland at the Confederation of European Security Services. He noted that on the night in question there were four door supervisor personnel on duty, the plaintiff, Mr. Matt Rowley, Mr. Piotr Szejner and Mr. Janos Takacs. The premises were licensed for 1,150 people. On the night in question there were approximately 69 people on the premises and therefore there was a ratio of approximately 1 DSP to every 18 patrons. In his opinion that was much higher than the minimum for such a nightclub.

17. He said there was an extensive CCTV system installed in the premises comprising of three 16 Channel Digital Video Recorders. There were in excess of 40 cameras located throughout the premises. The incident was covered on a number of cameras. He was able to show some incidents from more than one camera angle.

18. Mr. Stairs displayed the relevant CCTV footage in the Courtroom for both his own evidence and the evidence of other witnesses.

19. Mr. Stairs said that there appeared to be incidents where there was pushing between Mr. Higgins and other patrons on the dance floor at 01.06.40. This occurred again at 01.09.00. At 02.14.30, Mr. Higgins is dancing and then runs at the bar and jumps up, putting his foot on the bar counter and runs back into the dancing area. He repeats this.

20. At 02.20.00, Mr. Higgins is lying on the dance floor. At 02.23.26 — 46 a DSP who has been watching the plaintiff comes onto the dance floor and moves across towards where the plaintiff is dancing and bumping into a group of males who are also on the dance

floor. The DSP observes matters for up to 20 seconds and then moves in and stands between the plaintiff and the group of males. He is joined by a second DSP. The two DSP escort the plaintiff from the dance floor.

21. At 02.24.34 Mr. Takacs is seen to move quickly from the dance floor area and head down the stairs to Mr. Rowley at the bottom of the stairs. They both head back up the stairs to the nightclub.

22. Mr. Rowley arrives at the dance floor in the nightclub at 02.25.04. A minute and a half later Mr. Rowley can be seen engaging with the plaintiff. He points towards his ear and then points towards the exit. Mr. Rowley is several feet away from Mr. Higgins. Mr. Higgins appears to be pointing to the ground and he does not follow Mr. Rowley. Fifteen or twenty seconds later Mr. Higgins' friend, Mr. Fagan, becomes involved in an altercation with Mr. Szejner and Mr. Rowley and the plaintiff move to restrain Mr. Higgins. They each hold an arm of Mr. Higgins and start to walk him in the direction of the exit from the nightclub which leads to the stairs. Mr. Higgins resists them and tries to break free.

23. He described the CCTV footage showing Mr. Rowley and the plaintiff bringing Mr. Higgins down the stairs from the nightclub to the lobby. He did not see any footage of Mr. Higgins hitting his head on a railing while going down the stairs. At 02.27.19 the plaintiff, Mr. Higgins and Mr. Rowley are seen entering the lobby together at the bottom of the stairs and Mr. Rowley falls over, bringing Mr. Higgins and the plaintiff down. The plaintiff struggles to break free.

24. Mr. Stairs played CCTV footage which showed Mr Higgins aggressively lashing out at the plaintiff with kicks aimed at the plaintiff's groin and punches being thrown. In these extracts, Mr. Higgins is attempting to head back up the stairs towards the nightclub rather than to exit from the premises, either to the smoking area or along the corridor to the exit. Mr. Rowley is limping and does not engage further with Mr. Higgins. The plaintiff tries to prevent Mr. Higgins from going up the stairs on his own.

25. Mr Higgins falls and hits his head against the door from the stairs into the hotel. At 02.28.08 the CCTV shows the plaintiff and Mr. Higgins on the bottom of the stairs with the plaintiff restraining Mr. Higgins on the floor.

26. Thereafter Mr. Stairs showed CCTV film showing Mr. Higgins moving very erratically around the lobby and kicking and punching the plaintiff. Mr. Rowley, the plaintiff and Mr. Higgins are joined by Mr. Fagan and Mr. Szejner and Mr. Lavelle, Mr. Higgins' other friend. It can be seen that Mr. Fagan is punching Mr. Szejner and that Mr. Lavelle is trying to pacify Mr. Higgins. There are other patrons passing by the lobby and stairwell and on one occasion Mr. Higgins tries to pass a girl on the stairs. She runs up the stairs away from the incident. Mr. Higgins is trying to get away from the DSP and head back up the stairs to the nightclub but he is restrained by three DSP and brought back to the lobby. The plaintiff is resisting and fighting and they all fall to the floor. Then separately Mr. Higgins' friend, Mr. Fagan, assaults Mr. Szejner.

27. The plaintiff is walking around the lobby area and the smoking area, sometimes calm and sometimes aggressive in his demeanour. He suddenly comes and punches Matt Rowley who throws an arm up to defend himself. Two Gardaí arrive and the plaintiff confronts a female Garda as Matt Rowley tries to restrain the plaintiff. The two Gardaí try to put handcuffs on the plaintiff to restrain him.

Mr. Matt Rowley's Evidence

28. Mr Rowley impressed as a calm and very experienced security professional. He wanted a quiet night and he dealt with people by talking to them. On the night in question he was not in the club. He was called on the radio at about 2.20 am to come up to the club. On his way up the stairs he met Mr Takacs who had come to fetch him. The music was loud. He said he wanted to speak to Mr Higgins somewhere quieter where he could hear him. He asked Mr Higgins to come with him. He gestured with his hand towards the corridor off to the side of the club and to his ear to indicate that he couldn't hear properly in the nightclub. Mr Higgins moved two or three steps towards Mr Rowley in the direction of the corridor and then he stopped. He said "There's no effing way I'm coming with you."

29. At this point Mr Fagan jumped on Mr Szejner right beside Mr Higgins and Mr Rowley decide that they needed to remove Mr Higgins from the nightclub. He held Mr. Higgins by his triceps and wrist and the plaintiff did the same on the other side. When they were going down the stairs he had one hand on Mr. Higgins and one hand on the hand rail. He denied that either he or the plaintiff punched Mr. Higgins.

30. At the bottom of the stairs going into the lobby he fell over when his knee "went" and then they all three fell to the ground. He heard the plaintiff say to Mr. Higgins "please would you just go".

31. His knee was very painful and he did not engage directly with Mr. Higgins at this point. He saw Mr. Higgins engage with the plaintiff downstairs. He said that the plaintiff was going backwards and Mr. Higgins was going forwards. He saw the plaintiff hold Mr. Higgins on the ground and then release him. He denied that Mr. Higgins was unconscious. He said he "jumped up like a spring lamb" and made a miraculous recovery if he had been unconscious. When the plaintiff held Mr. Higgins on the floor, the plaintiff called to Mr. Rowley to summon the guards and Mr. Rowley did so.

32. Mr. Rowley described Mr. Higgins' behaviour as being very aggressive and erratic. He said he would be calm at one moment and then suddenly become very aggressive. This is what made the situation so worrying.

33. When the Gardaí arrived he was standing against the wall on one leg due to the pain in his knee. Mr. Higgins punched him in the face and "rattled his teeth". Mr. Higgins then went to assault the female Garda (Garda Clancy) and Mr. Rowley lunged at Mr. Higgins in order to protect the female Garda. At that point the Gardaí handcuffed Mr. Higgins.

34. Throughout the incident Mr. Higgins was abusive and using foul language and threatening the staff of the Castlecourt Hotel. He said "you don't know who I am. You don't know who I am". This was a reference to the fact that Mr Higgins was a member of An Garda Síochána, though this was not known to Mr Rowley at the time. When the Gardaí arrived, he kept saying "I'm in the job. I'm in the job". Once the handcuffs were applied, Mr. Higgins calmed down and he was removed by the Gardaí from the premises.

35. Mr. Rowley accepted that he did not ask Mr. Higgins to leave the premises or warn him in relation to his behaviour before Mr. Higgins was taken from the nightclub. It was suggested that he ought to have handled matters differently upstairs in the nightclub. He said that he would never turn on the lights as a means of diffusing an incident. In his opinion this would draw attention to the scene which would then potentially escalate.

Janos Takacs

36. Mr. Takacs impressed as a careful, considered witness. He had worked in the Castlcourt hotel for 11 years. He was a trained and licensed as a DSP since 2007. On the night in question he was the floor manager and it was a quiet night. At around 1 o'clock Mr.

Higgins and his two friends arrived. Mr. Higgins started to disturb a group on the edge of the dance floor. He watched the two groups argue and he watch their body language. He said it was easier to deal with a situation when people were arguing than when they were fighting. Mr. Takacs watched them for a couple of minutes to see if they would stop arguing and when they did not he then went downstairs to call the two bouncers to deal with the situation.

37. The plaintiff and Mr. Szejner came upstairs and they both spoke to Mr. Higgins. It appeared at that stage that the problem was solved.

38. Mr. Higgins did not in fact calm down. Mr. Takacs saw the bouncers speaking to Mr. Higgins a few times. He said that Mr. Higgins' behaviour was very dangerous. He was running and jumping on the bar. One of Mr. Takacs' duties was to collect up empty glasses. He was carrying two lines of glasses and it could be very dangerous if Mr. Higgins knocked into him. He said that Mr. Higgins' behaviour was disturbing the other guests.

39. He witnessed the removal of Mr. Higgins from the dance floor. He said Mr Higgins did not want to go down, he was putting up resistance and shouting. After he checked the nightclub area he went downstairs to check the smoking area. In the lobby he witnessed the altercation between Mr. Higgins and the plaintiff. He appears in the CCTV footage standing against the wall. He described Mr. Higgins as attacking the plaintiff by kicking out and then following up the kick with two punches. He said that the plaintiff was jumping backwards and put his hand in front of his body. He did not see Mr. Higgins' kick connect with the plaintiff as it was out of his line of sight but he heard the contact. He said it sounded like a kick being blocked with a hand. This was a different sound to a kick making contact with a jacket or trousers. He was firmly of the view that Mr. Higgins was attacking the plaintiff and not the other way around.

40. He saw the plaintiff holding Mr. Higgins on the ground. Mr. Takacs asked the plaintiff if he could help. The plaintiff asked him to fetch Mr Szejner to help him. Mr. Takacs was definite that Mr. Higgins was not unconscious at this time. Mr. Higgins made eye contact with Mr. Takacs and he was making small movements. He ran back upstairs to the club to fetch Mr Szejner.

41. When he came back down with Mr. Szejner, the plaintiff and Mr. Higgins were in the lobby. Mr. Fagan and Mr. Lavelle also came downstairs. Mr. Takacs was adamant that Mr Higgins was attacking the plaintiff and not the other way round. He said Mr. Lavelle tried to calm Mr. Higgins but he was pushed away. He saw Mr. Higgins kicking and punching the plaintiff. He saw the Gardaí arrive and just at that moment Mr. Higgins attacked Mr. Rowley who was standing by the wall. He did not see the Gardaí apply the handcuffs but he saw the plaintiff led away by the Gardaí in handcuffs. At that point in time he was calm. As a lot of the guests were coming down from the night club, he asked them to wait for a couple of minutes to let the Gardaí and Mr Higgins leave.

The Evidence of Garda Thomas Ryan

42. Garda Ryan was on duty that night in the squad car with Garda Clancy. They responded to the call to go to the nightclub at the Castlecourt Hotel. They arrived at about 2.30 am on 12th November, 2011. Garda Ryan arrived and went to find out what was happening. Mr. Higgins told Garda Ryan that someone had hit him. Mr Higgins then lunged towards Mr Rowley who was standing up against the wall. Garda Clancy took out her handcuffs and Garda Ryan assisted her to put the handcuffs on Mr Higgins. They decided to handcuff Mr. Higgins because he was acting aggressively towards Mr. Rowley.

43. Mr. Higgins was injured with a cut under his right eye. There was a good deal of blood on his face and his shirt. He was brought to the Garda Station and arrangements were made for him to be brought to a doctor at West Doc. When they were leaving the hotel Garda Ryan asked Mr Higgins what had happened. His response was "I don't know." Garda Ryan said that in his opinion alcohol may have caused a lot of the problems on the night.

The Evidence of Garret Croke

44. Garret Croke is a designated officer of the Garda Síochána Ombudsman Commission. He is not a member of an Garda Síochána. He has been with GSOC for 10 years. Previously he was with the HSA. He was investigating a complaint that an altercation took place between Garda Higgins and the security staff at the night club on the night of 11th and 12th November, 2011. It was alleged that two security staff were assaulted and that Garda Higgins attacked one of the staff, that he kicked and punched a staff member a number of times and that he kicked and punched another security staff member.

45. Mr. Croke stated that Mr. Higgins submitted a statement that he prepared with his solicitor and that he attended for voluntary interview under caution in April, 2012 about five months after the incident, possibly on 23rd April. He produced a verbatim note of the interview which was witnessed by Mr Higgins and his solicitor.

46. Mr. Croke described how he played CCTV footage of the events in question to Mr Higgins. He, Mr. Croke was able to identify Mr. Higgins and Mr. Lavelle on the footage. Mr. Higgins was not able to identify himself or Mr. Lavelle in the recordings on ten separate occasions. Mr. Higgins could not describe what he was wearing on the night, though it was established in evidence that he was wearing a check shirt and he appeared to be the only person in all the CCTV footage shown to the court who was wearing a check shirt. On four occasions he stated that he could not recall what clothes he was wearing though he did say that they were covered in blood.

The Evidence of Mr. Thomas Higgins

47. Mr. Higgins' first account of the events was to Garda Ryan where he stated that he did not know what had happened. Five months later he prepared a written statement with his solicitor where he gives an account of the incident. This was the statement that was presented to Mr. Croke as part of the GSOC investigation. At p. 2 of the statement he stated: -

"The crowd started to fill up in the disco and I remember at one stage, one of the bouncers asking me to calm my dancing down. I apologised and said that, I was just dancing and I would not be causing any trouble. A short time later, I remember being grabbed from behind, my two arms caught and my right arm being wrenched upwards, I got the sensation of it clicking like a ratchet. I had an image in my head that my arm was being wrenched out of the socket. I could not move. I was powerless. I could feel darts of pain in my shoulder and I screamed out 'please let me go, your (sic) breaking my arm'. I kept screaming 'please, please let me go your (sic) breaking my arm' but to no avail. I then seen (sic) that it was two of the bouncers, who had me caught. They looked to be foreign and there was another one of them to my side, he was Irish and had a goatee beard. The pain was unbearable and I was then knocked to the ground beside the pillars between the dance floor and the stairs. I can remember getting boxes to my head and face at this stage. I can remember feeling something sharp striking my right cheek, like a knuckleduster or a ring, and I remember feeling blood running down my face. I kept begging them to release my arm as the pain was killing me, but they just kept wrenching it upwards, almost taking it out of its socket. I can remember feeling kicks on my chest. I looked up at them and saw them smiling. The two foreign bouncers were over six feet tall with tight haircuts. I remember that they

then dragged me down the steps and I can remember them banging my head off the steel handrail. I think at one stage I lost consciousness because everything went blank and I wondered if this beating was ever going to stop. I was frightened for my life and I did not know where my friends were and if anybody was going to help me. I can remember hearing my friend David Fagan shout 'let him go, let him go, you will kill him'. I was then put outside the door and I remember looking down at my shirt which was covered in blood. I was alone and in shock..."

48. At his interview with Mr. Croke he agreed that his case was that he was a completely innocent party who was suddenly grabbed by security staff, viciously assaulted by them and brought out of the nightclub.

49. It was particularly remarkable that a member of An Garda Síochána was unable to identify either himself or Mr. Lavelle on ten occasions on the CCTV footage even though everyone else who viewed the footage was able to identify both individuals. It was equally remarkable that he could not confirm that he was wearing a check shirt, claiming he could not remember, even though the shirt was, according to him, covered in blood, and therefore must have been highly identifiable after he recovered from the events of the night.

50. His personal injury summons essentially repeats what was set out in his witness statement to GSOC and was verified on affidavit by him.

51. In his testimony he stated that he was only approached once by the security staff, when he was asked to calm down his dancing. He denied that he was approached on three or four occasions. He says he was not approached by any of the security staff before he was grabbed. He said that he did not cause trouble and that he was given no reason why he should be removed. He says that he remembers receiving wallops on the stairs and that he was knocked unconscious for a period of about one and a half minutes. He says that everything went blank for a period. He said he tried to go back up the stairs into the nightclub as he did not know how to get out of the premises and he wanted to get back to his friends' upstairs. He said that he did not kick anyone and that he was in fear of his life.

52. Both the plaintiff and Mr. Rowley denied that Mr. Higgins was suddenly grabbed from behind. This is clear from the CCTV footage where Mr. Rowley can be seen approaching Mr. Higgins and gesturing towards him. In cross examination Mr. Higgins stated: -

"I'm not denying that Mr. Rowley was beckoning me out".

53. Both the plaintiff and Mr. Rowley denied that Mr. Higgins was knocked to the ground beside the pillars between the dance floor and the stairs. He was not boxed in his face and head IN the nightclub. He was not kicked in the chest in the nightclub. He was not dragged down the steps banging his head off the steel handrail. The evidence of the plaintiff and Mr. Rowley is completely corroborated by the CCTV footage. None of this occurred in the nightclub as described by Mr. Higgins. Mr. Takacs' account of the removal of Mr. Higgins corroborates the account of the plaintiff and Mr. Rowley and contradicts that of Mr. Higgins.

54. Mr. Higgins said he was only approached once when he was asked to calm down his dancing but both Mr. Takacs and the plaintiff indicate that he was approached on three or four occasions. Mr. Higgins said he remembered receiving wallops on the stairs but there is no image of this on the CCTV footage which shows his removal down the stairs and both the plaintiff and Mr. Rowley deny that it occurred. Mr. Higgins claims that he was knocked unconscious for a period of about one and a half minutes. The plaintiff, Mr. Rowley and Mr. Takacs all deny this. Mr. Takacs said that he made eye contact with Mr. Higgins and he was not unconscious. Mr. Rowley, in somewhat colourful language, expressed his incredulity at the suggestion. Mr Higgins himself made no reference to being knocked unconscious when he attended the West Doc or when he prepared his witness statement for GSOC or when he prepared his personal injury summons or when he met with his consultant, Mr. Prasad.

55. One explanation for the inconsistency between Mr. Higgins' evidence and that of the other witnesses and the CCTV footage is Mr. Higgins' condition on the night as a result of the alcohol he had consumed (he admitted to drinking five or six bottles of Budweiser and two vodka and Red Bulls) and the blows that he undoubtedly sustained to his head. It may be that he has no accurate recollection of the events. This accords with the fact that immediately after the incident he told Garda Ryan that he did not know what had happened. The only conclusion I can reach is that, even with the best will in the world, he is not a reliable historian regarding the events of the night in question. I do not accept any of his evidence as set out above. It does not accord with and in some instances is completely contradicted by the images visible on the CCTV footage or with the evidence of the plaintiff, Mr. Rowley and Mr. Takacs.

The Evidence of Mr. Brian Lavelle

56. Mr. Brian Lavelle was with Mr. Higgins on the night in question. He drank between ten and twelve pints so his recollection of events was vague. He confirmed that he was clearly identifiable on the video clips. He remembered Mr. Higgins shouting as he was removed from the dance floor that they were breaking his arm. His recollection is that they were over aggressive and hurt his arm. He agreed that jumping up to the counter or lying on the dance floor was not acceptable behaviour.

The Evidence of Mr. Darren Campion

57. Mr. Campion was at the nightclub celebrating his 18th birthday. He said due to the passage of time and the fact that he had taken four or five drinks his recollection had become vague. He saw a commotion when a man was taken off the dance floor. He saw a tall man, a bouncer, hit Mr. Higgins three, four, five times. He said he was particularly aggressive. This was later down in the lobby.

58. He accepted in cross examination that he made a statement to GSOC. In that statement he said that the man (Mr. Higgins) was very aggressive and trying to fight. He accepted that his earlier statement was probably more accurate. He did not see anyone kick Mr. Higgins in the chest or any ring or knuckleduster.

The Evidence of Mr. Joseph O'Malley

59. Mr. O'Malley was celebrating with Mr. Campion. He was in the lobby when the plaintiff, Mr. Higgins and Mr. Rowley came down the stairs. His evidence was that Mr. Higgins did not want to leave. The three men fell in the lobby. When Mr. Higgins got up there was a lot of blood on his face. He said that at the time he thought too much force was used but he did not get a great view.

The Evidence of Mr. Christy Walsh

60. Mr. Walsh was the disc jockey on duty in the nightclub on the night in question. He did not witness any objectionable behaviour on the part of Mr. Higgins. He stated *"I honestly say I can't say I saw anything"*.

The Evidence of Mr. Brendan Conway

61. Mr. Conway was the manager of the Castlecourt Hotel since 2001. Prior to that he had managed another nightclub for three years

and previously he had managed a bar for two years.

62. He stated that all barmen and security men are required to complete a FETEC Level 4 course. These are provided by Mark Toner ICSE. Once they are certified and trained they can apply for a licence. He produced the certificates confirming the training of the plaintiff, Mr. Szejner and Mr. Takacs. They all received further training in Dublin from MAYBO which is the United Kingdom equivalent to FETEC Level 4. In addition the plaintiff and Mr. Conway completed the Irish nightclub association courses.

63. Mr. Matt Rowley was the head of security at the Castlecourt Hotel. He had been there for 20 to 25 years. His primary role was to calm people down. When he was asked to comment on the behaviour of Mr. Higgins in jumping up to the bar and lying on the floor he said it would cause him alarm and that it was crazy and he had never seen it happen before.

64. He confirmed that the plaintiff and Mr. Szejner were trained in approximately 2007/2008 and that the plaintiff had attended a refresher course in April, 2010.

65. Under cross-examination he disagreed that a person should always be asked to leave before being ejected from the premises. He said it depended upon the circumstances and that you had to judge every incident on its own merits. He said that the plaintiff, Mr. Szejner and Mr. Rowley had to deal with it as they see it. They have to evaluate what was happening. He said "I cannot see that they overreacted".

The evidence of Garda Siobhan Clancy

66. Garda Clancy confirmed that she attended the scene in the company of Garda Ryan. In the foyer she met Mr. Rowley who stated "I was just about to call you again". She described Mr. Higgins behaviour as "like a charge...with his fist raised". For his safety and the safety of others she decided to cuff him. She said he seemed to be really aggressive and she believed he was intoxicated. She said she couldn't talk to him. She confirmed that he was bleeding from cuts to his face and that back in the station photographs of Mr. Higgins face were taken. She said she could not remember Mr. Higgins saying that he lost consciousness.

Medical Reports

67. The reports of all the doctors involved for both the plaintiff and Mr Higgins were admitted. West Doc noted that Mr Higgins presented with a gash to his forehead that looked fairly deep. He had a cut under his right eye which was treated with steri strips. He had an injury to his right cheek. There was no reference to any injury to or pain in his shoulder or to a loss of consciousness. There was no reference to Mr Higgins being groggy or dazed.

68. Mr Higgins' GP, Dr. Tom Meagher reported on 13th February, 2013, that Mr Higgins attended him on 23rd November, 2011, in a stressful state upset over the incident. He had a painful right shoulder, left maxillary frontal bone type swelling and pain over his right upper orbital area with bruising to the left shoulder, face, fingers and arms. The laceration to the right orbital area had healed and was tender. Both shoulders were bruised with decreased and painful shoulder arc movements, swelling over the left maxilla with tender cystic type swelling and tenderness and bruising to the fingers. Dr. Meagher reviewed him on 05.12.11, 21.12.11, 14.02.12 and 12.03.12. He noted that he had been referred to Mr. Prasad and underwent arthroscopy of his right shoulder. On the last occasion he reported that his progress had been slow especially due to the psychological impact of the experience. He suffered from mood swings, was unable to sleep and felt a loss of confidence and unable to cope with a loss of interest in his usual activities and work. He had made a good recovery from his physical injuries but he would take longer to recover from the psychological impact of the incident.

69. Mr. Cormac Tansey, orthopaedic surgeon of the Galway Clinic saw Mr. Higgins on 6th December, 2011, 23rd December, 2011, and 23rd January, 2012. He reported that Mr. Higgins was referred by his GP for further assessment and treatment of a right shoulder injury following an alleged assault during the course of his duties at work as a Garda. On examination he had good range of motion in his right shoulder and his right shoulder was clinically stable. He had evidence of clinical impingement at about 90 degrees of abduction. There was some tenderness over the right humeral head at the rotator cuff insertion. The rotator cuff was clinically intact although stressing the supraspinatus caused some discomfort. On the 23rd December, 2011 Mr. Tansey injected his right subacromial space with a steroid injection and by the 23rd January, 2012 he had had some improvement in his symptoms but he was still having residual impingement symptoms at 90 degrees when abducting his right arm. He was referred to Mr. Prasad, Consultant Orthopaedic Surgeon, who subsequently performed a right shoulder arthroscopy and a right subacromial decompression on 30th March, 2012, at the Galway Clinic.

70. In Mr. Tansey's opinion, Mr. Higgins sustained a soft tissue injury to his right shoulder. The arthroscopy is reported as showing a glenohumeral joint partial surface tear of the rotator cuff. It was Mr. Tansey's opinion that Mr. Higgins' MRI scan showed evidence of a pre-existing features about his right shoulder that would have pre disposed him to the development of right shoulder impingement and following his soft tissue injury he developed symptoms of right shoulder impingement for which he required injection treatment and ultimately surgical treatment and he has reportedly responded very well to that treatment.

71. It is possible that the arthroscopic finding of a glenohumeral joint partial surface tear of the rotator cuff was caused by the incident but, in itself, this did not require any further treatment. It is possible that the tear of the antero-inferior glenoid labrum with an associated 7mm paralabral cyst was caused by the incident but, in Mr Tansey's opinion, this is equally likely to have been an incidental finding that pre dated this incident and this not require any further treatment.

72. Based on the information available, Mr. Higgins responded very well to the appropriate treatment for right shoulder infringement that he had made a very good functional outcome by 19th September, 2012. Mr. Tansey expected that any residual symptoms would gradually have settled down and he would not expect any significant long term symptoms or disability as a direct result of this incident. In his opinion, Mr. Higgins was not at increased risk of long term osteoarthritis in his right shoulder as a direct result of this incident.

73. Mr Prasad reported that Mr Higgins was referred to him by Mr. Tansey and he saw Mr Higgins on 2nd February, 2012. He admitted Mr Higgins to the Galway Clinic and performed an arthroscopy on his right shoulder on 30th March, 2012. He had a labral tear of his right shoulder and a partial under surface tear of the right rotator cuff. The labral tear did not require repair. He performed a subacromial decompression and advised physiotherapy. The injuries healed in time and Mr Higgins regained full function of his right shoulder with normal muscle strength, though he experiences occasional discomfort or pain for a brief period. Mr. Prasad said this symptom is likely to be permanent but he did not expect any complications in the future. In his opinion the injuries were consistent with forced twisting of the right shoulder.

The Expert Evidence of Mr. Stairs

74. Mr. Stairs considered that Mr. Higgins' behaviour in particular in relation to jumping up at the counter of the bar was unacceptable for a number of reasons. It carried a risk of injury to himself or others. There were people near him who had glasses in their hands and

it is adjacent to the bar so Mr Higgins could bump into somebody and there could be an accident or an incident involving glass. He felt that the security systems and procedures on the night were fair and reasonable to meet the risks that existed. He was of the opinion that it was fair and reasonable for Mr. Rowley to seek to talk to Mr. Higgins away from the noise as he sought to do and as appears on the CCTV footage. In his opinion, the security staff assessed the situation over a long period. They spoke to Mr. Higgins on a number of occasions. They tried to move the point of conflict away from where it occurred out to an area where they could talk to him. He believed that the response was proportionate.

75. He did not agree that the security staff should have turned on the lights or turned off the music. The situation escalated too quickly when Mr. Fagan jumped up on Mr. Szejner. The option of turning on the lights or turning off the music had the potential to make matters worse as it would draw attention to the incident of which other patrons might not have been aware, while it would create no benefit. He did not agree that in every case a person should be warned that they were likely to be asked to leave before they were asked to leave or actually removed.

76. Once the incident between Mr. Fagan and Mr. Szejner occurred it had the potential for Mr Higgins to get involved. The DSPs were left with a decision and they decided to remove Mr Higgins from the nightclub. He believed that this was a balanced decision in the circumstances in respect of the safety of everybody. The situation had the potential to be a far more dangerous situation had he been allowed to remain in the area because he could have become involved in the altercation involving his friend.

77. Once the decision was taken to remove Mr. Higgins from the nightclub they could not let him go back upstairs. He said, based on the actions of Mr. Higgins and his attempts to break free of restraint, he found that the force used by the DSPs was proportionate to what they were faced with. They were correct to call for the Gardaí when they did.

78. He emphasised that the staff had to deal with a dynamic situation and they had to have regard to the interests of other patrons of the nightclub. He said that the staff of the Castlecourt Hotel had to engage in dynamic risk assessment. He defined this as :-

"the continuous assessment of the risk in the rapidly changing circumstances of an operational incident in order to implement the control measures to ensure an acceptable level of safety."

He analysed the definition. In terms of the assessment in this incident, it is a continuous assessment because the staff do not know how the person they are engaging with is going to respond to their actions. It is, by definition, a rapidly changing circumstance. Therefore, you cannot be very prescriptive as to how matters should be handled. The responders have to implement control measures to meet the risks. They make a cumulative assessment of all the incidents and circumstances. In this case there were risks to all persons present. The requirement is to ensure an acceptable level of safety because, in a dynamic situation, you cannot have a very, very high level of safety. "Acceptable" has to mean that in the circumstances of the incident the response is proportionate and is acceptable to the potential risks that may occur at the time. He concluded that the response of the DSPs fitted in with this recognised policy in this area. They had provided an acceptable level of safety for all parties concerned, even those who were not involved in the incident.

The Evidence of Mr. Bobby Duggan

79. Mr. Duggan is an independent security consultant with more than 40 years experience in the security industry and 38 years experience in the DSP sector. He is a former deputy president of the Security Institute of Ireland and he is an experienced qualified trainer and instructor. He gave evidence on behalf of Mr Higgins. He viewed the CCTV footage and inspected the premises and spoke with Mr Higgins. He accepted that the CCTV coverage was of good quality. He said that the number of security staff on duty was appropriate, though he did criticise the fact that they were not in uniform or displaying identification.

80. He criticised the actions of the security staff on duty in the Castlecourt Hotel on the night in question. He said they ought to have intervened earlier when Mr Higgins rolled on the dance floor or when he jumped on the counter. He said they should have spoken to Mr Higgins and to his friends. When the incident developed on the dance floor he said they ought to have turned on the lights and turned off the music rather than forcibly removing Mr Higgins from the premises. He said when they did act to remove Mr Higgins they moved too quickly and without warning and in his view this started everything. He said when they brought him down the stairs they ought to have stopped half way and reassured him. He said that their actions were unjustified and unnecessary and that they used unnecessary, excessive and disproportionate force. He said once they had taken him in charge they should have brought him to the front door. Instead they released him a number of times and brought him to the ground at least three times and subjected him to a sustained beating.

81. Under cross-examination he accepted that the conduct of Mr. Higgins posed as risk to himself and, up to a point, to others. He agreed that it was behaviour which required preventative action by security staff. He said that in those circumstances the staff should speak to the individual. He also thought it was strange that Mr Higgins could not identify himself from the CCTV footage when he was interviewed by GSOC.

82. I found Mr. Duggan's evidence to be more partisan than I would expect of an experienced expert witness. He produced two reports and said he had covered everything relevant in his reports, yet he made no reference to the running and jumping on the counter by Mr Higgins or the rolling on the floor. His evidence was that he saw no evidence of any misconduct by Mr Higgins. This may best be described as disingenuous given that he accepted that it was behaviour that would warrant intervention by security staff. He said the CCTV footage clearly showed Mr Higgins being repeatedly beaten by the security staff while being taken down the stairs. I find this surprising, having viewed the footage a number of times and I could not identify any punch in the footage shown to the court. While he described the arrival of the two Gardaí he made no reference at all to the assault by Mr Higgins on Garda Clancy or the assault on Mr Rowley when he was standing by the wall.

Discussion

83. Mr. Higgins accepted that he had been socialising and had had a few drinks. He said he was dancing and that he was not doing anything different to any of the other parties. He accepts that on one occasion he was approached by a member of the security staff and asked to "calm down his dancing".

84. The CCTV footage was viewed in detail on a number of occasions. This showed Mr. Higgins dancing "vigorously", to use the description of his senior counsel, with his arms outstretched moving between the other patrons of the nightclub. It showed him squatting down on the dance floor and, on two occasions lying down on the dance floor and rolling in what Mr. Higgins described as a "backflip". Towards the end of the evening Mr. Higgins could be seen running across to the bar and jumping up to the counter and springing back down to resume his dance. Mr. Higgins accepted that these events occurred and described them as "just dancing".

85. The staff of the hotel were concerned about Mr. Higgins's behaviour. While much of the evidence was hotly disputed, it is not

disputed that Mr. Takacs, who was on duty as a glass picker on the night, went at approximately one o'clock in the morning to ask the two security men on duty at the door, the plaintiff and Mr Szejner, to come up to deal with the situation. This would not have been necessary if there had not been some untoward interaction between the patrons as described by Mr Takacs. The two security men remained in the nightclub for approximately an hour watching events including those shown on CCTV footage.

86. The plaintiff and Mr. Takacs each said that they saw Mr. Higgins pushing and shaping up to other patrons. On more than one occasion the plaintiff asked him stop pushing and to calm down. The plaintiff intervened on a number of occasions and observed the situation. One of the patrons complained to the plaintiff that Mr. Higgins should be asked to leave.

87. Mr. Higgins denies that he was engaged in any pushing or shoving or doing anything wrong and he denies that he was approached by the security staff of the hotel at any time, save for the one occasion when he was asked to calm down his dancing.

88. It is not disputed that the plaintiff summoned Mr. Matt Rowley, his superior, to the premises. CCTV footage shows Mr. Rowley coming up to the nightclub and engaging with Mr. Higgins. Mr Takacs also asked him to come up to the nightclub. This was after Mr Higgins had rolled on the dancefloor and had twice made running jumps to the bar. There was no reason to summon him unless the plaintiff and Mr Takacs were concerned that Mr Higgins' behaviour was becoming more difficult to manage. There were no complaints made about any other patron present in the nightclub.

89. Mr. Rowley said that it was noisy and that it was not possible to talk to Mr. Higgins in the nightclub. He gestured to his ear and then pointed to the door to invite Mr. Higgins to come with him so that he could talk with him. He said that initially Mr. Higgins started to come with him but then he turned around and refused to leave. Mr Rowley said that he refused to leave in strong terms. The CCTV footage shows Mr. Higgins gesturing to the floor and not accompanying Mr. Rowley out of the nightclub.

90. At that moment Mr. Higgins's companion, Mr. Fagan, is seen to jump upon the plaintiff's colleague, Mr. Szejner, and then Mr. Rowley and the plaintiff swiftly move in and take Mr. Higgins by either arms and remove him from the nightclub.

Was It Reasonable To Remove Mr. Higgins From The Nightclub?

91. There was ample evidence, clearly visible on CCTV footage, of Mr. Higgins behaving in an erratic fashion on the dance floor and in the bar area of the nightclub. All of the witnesses including Mr Duggan described the behaviour as unacceptable. Mr. Takacs stated that he was very concerned that Mr. Higgins might crash into him when he was carrying lines of glasses and that this could cause a grave risk to himself, Mr. Higgins and other patrons and staff present in the nightclub.

92. I am satisfied that concern in relation to Mr. Higgins's behaviour was aroused and then grew as the evening progressed. Firstly, Mr. Takacs, a trained and licensed security man, summoned his colleagues to the nightclub. On Mr. Higgins's own admission, they spoke with him at least once. I prefer the evidence of the plaintiff where he says that he spoke to him on a number of occasions in relation to his behaviour. It was corroborated by Mr Takacs. It is not disputed that two security men remained in attendance for over an hour. There was no suggestion that there was any reason for them to do so other than their concern to observe and monitor the behaviour of Mr. Higgins. They felt obliged then to summon Mr Rowley to deal with the situation.

93. Mr. Rowley is an experienced security man who had worked in the Castlecourt hotel for 25 years. He impressed as a very experienced security man, used to dealing with people and used to diffusing situations. On more than one occasion he emphasised that he was in the entertainment business and he wanted people to enjoy themselves and he wanted a quiet night. He was summoned by his colleagues to deal with Mr. Higgins at 2.23 on the morning of 12th November, 2011. His interaction with Mr. Higgins can be seen on the CCTV footage. There is nothing remotely aggressive or threatening in Mr. Rowley's engagement. He clearly tries to speak to Mr. Higgins and he gestures to his ear and then to a quieter area off to one side. This is consistent with his evidence that he wanted to talk to Mr. Higgins. This was accepted by Mr Higgins. I accept Mr Rowley's evidence that at that point in the evening he only wished to speak to Mr. Higgins.

94. Unfortunately, for all concerned, at this point the situation became much more volatile when Mr. Fagan attacked Mr. Szejner. The images on the CCTV footage looked like a melee. In the circumstances, I do not believe it was unreasonable or inappropriate for Mr. Rowley and the plaintiff to react swiftly. The situation had the potential to degenerate still further in the middle of the nightclub with the attendant risks to or concerning other patrons and staff. Mr. Higgins had already indicated that he was not prepared to go with Mr. Rowley and he had previously ignored the interventions of the plaintiff.

95. On behalf of Mr Higgins in his defence to the first action and as plaintiff in the second action that first, he was doing nothing wrong, there was no need to remove him from the nightclub, that he was not requested to leave the premises, he was not warned that if he refused to leave the premises that he would be forcibly ejected from the premises and that the staff of the hotel escalated rather than de-escalated the situation.

96. Secondly, it was argued that Mr. Higgins was removed from the nightclub approximately five minutes before the disco was scheduled to end. His security expert, Mr. Duggan, says that the lights should have been turned on and the music turned off and that it was not necessary to remove him at that late stage of the evening.

97. Thirdly, it was submitted that he was removed with excessive force and there was a failure to take due care of him. Mr. Higgins said he was seized from behind out of the blue by two security men who used excessive force in ratcheting up his arms behind his back. He was in great pain and was shouting out at them to stop hurting him, that they were breaking his arms.

98. I do not accept these submissions. Firstly, it is clear that Mr. Higgins had behaved in an unacceptable manner throughout the evening. After disregarding a number of interventions by the plaintiff he had just refused in no uncertain terms to come away to speak to Mr Rowley. Suddenly, due to the actions of Mr Fagan, matters came to a head and it was not unreasonable to act swiftly at that point to prevent further trouble boiling over and to protect the other patrons on the premises that night. I reject the argument that Mr Higgins should have been warned at that stage with the fight right beside him that he would be asked to leave the premises before Mr Rowley or the plaintiff should have taken any further steps. That ignores the rapidly changing dynamic of the situation.

99. In relation to the second argument, I accept the evidence of Mr. Stairs, Mr. Conway and Mr. Rowley that it would not have been appropriate at this stage to turn up the lights and turn off the music. This had the potential to escalate the incident. At this stage two patrons were involved, Mr. Higgins and Mr. Fagan. The staff hoped to manage the situation by removing them. I do not believe the fact that the disco was due to finish within about five minutes alters this judgment. The fact is, responding in the manner that was suggested by Mr. Duggan would have thrown a spotlight, both literally and figuratively, on a volatile incident which could then have become the focus of attention of all of the patrons, while it would not necessarily have resolved the fast moving melee involving Mr. Fagan.

100. I do not accept that unreasonable force was employed in removing Mr Higgins from the nightclub. He was held by each of his arms at his side. If he had cooperated he would have experienced no difficulty whatsoever. It is apparent from the video footage that he resisted quite forcefully and the two DSPs struggled to keep hold of his arms. They did not exert the force: he did and they held on. I do not believe this amounts to the use of excessive force by them where they were trying to remove him from the premises in the circumstances. Mr Higgins evidence is so unreliable in relation to so many other matters that occurred on the night and Mr Lavelle accepted that his memory of events was vague, so I do not accept the evidence that Mr Higgins was shouting that the plaintiff and Mr Rowley were breaking his arm while he was being walked from the nightclub between them. I reject his evidence that he was assaulted by the staff of the hotel while being removed from the nightclub.

The Removal Of Mr. Higgins From The Nightclub

101. The plaintiff, Mr. Rowley and Mr. Takacs gave evidence that Mr. Higgins struggled with the plaintiff and Mr Rowley when they removed him from the floor of the nightclub. He can be seen to be struggling in the CCTV footage. He was brought down the stairs between the two security men. There is no evidence on the CCTV footage that he was punched at all or repeatedly, or that he banged his head off the railing. Each of these allegations was denied by the plaintiff and Mr. Rowley and I accept their evidence on this point.

102. In my opinion, there was no mismanagement by the staff of the hotel up to the point where the plaintiff, Mr. Higgins and Mr. Rowley came into the lobby and all three fell to the ground. Once they fell, the situation escalated. From then onwards, Mr. Higgins was the aggressor. He is to be seen lashing out, kicking and punching the plaintiff. The plaintiff was now obliged to manage the situation on his own as Mr. Rowley could no longer assist him. He was clearly being attacked and Mr. Higgins was trying to go back up the stairs. I am satisfied that Mr. Higgins attacked the plaintiff first. Initially the plaintiff reacted defensively. The plaintiff did pin Mr. Higgins to the ground and Mr. Higgins's head banged against the doors into the hotel. On the balance of probability, the plaintiff threw at least one punch at Mr. Higgins.

103. I reject the evidence of Mr. Higgins that he was knocked unconscious. I accept the evidence of Mr. Takacs and Mr. Rowley. I accept that Mr. Higgins must have heard the plaintiff calling Mr. Rowley to call for the Gardaí. Mr. Higgins himself is a Garda. The fact that the Gardaí were to be summoned did not moderate his behaviour. If anything, it became even more erratic and aggressive. He persisted in trying to rush upstairs when he must have known that he was not going to be allowed back into the nightclub. He refused to take the opportunity to leave the hotel, even though the plaintiff called upon him to do so.

104. He resisted Mr. Lavelle's efforts to calm him. He assaulted two people who most definitely were not attacking him – Mr. Rowley and Garda Clancy.

105. In my judgment, Mr. Higgins assaulted the plaintiff. He kicked him at least three times in the groin area. He made contact with the plaintiff's right hand and injured the plaintiff. He also punched the plaintiff on the head and arms. He is liable to the plaintiff for the damage that resulted. I believe the plaintiff when he described the anxiety and worrying he experienced when he heard that Mr. Higgins was a member of An Garda Síochána. He explained this by reference to his background as a Hungarian national. What can only be described as a flight from Ireland is an eloquent testimony to the reality and gravity of his fear. He was injured on the 12th November, 2011, and by the 5th January, 2012, he and his family had left Westport for good. He suffered psychologically and felt obliged to leave the town he had made his home for five years. I award him damages of €65,000.00 for pain and suffering for his assault, the injury to his right thumb, his psychological stress and the fact that he and his family felt obliged suddenly to leave Westport where he had settled and was happy.

106. I dismiss Mr. Higgins' case against the Castlecourt Hotel Ltd. ("the defendant"). I find that Mr. Higgins has failed to prove any negligence. There was no criticism made of the CCTV systems in the hotel or of the number security staff on duty. It was established that they had all been suitably trained and licensed. I accept Mr. Stairs' evidence that they responded to the situation in a measured and proportionate way. Firstly, Mr. Takacs observed the situation and then he summoned two DSPs. The plaintiff spoke to Mr. Higgins and initially he calmed down. The plaintiff and Mr. Szejner stayed and observed the situation. They intervened more than once to calm the situation and in particular Mr. Higgins. Towards the end of the night, at 2:14am Mr. Higgins twice ran and jumped at the bar. All the witnesses agreed, with the exception of Mr. Higgins, that this was unacceptable and dangerous behaviour. Five minutes later he lay down on the dancefloor. At this point the plaintiff called Mr. Rowley as he is an expert in calming situations. Also and separately Mr. Takacs asked Mr. Rowley to come upstairs to help.

107. Mr. Rowley came into the nightclub and approached Mr. Higgins. He tried to talk with him. Mr. Higgins acknowledged that Mr. Rowley was beckoning him and that he did not go with Mr. Rowley. I accept Mr. Rowley's evidence that Mr. Higgins refused forcefully. Up to this point the staff of the defendant have acted reasonably in dealing with the situation posed by Mr. Higgins behaviour. The issue is whether thereafter they behaved in a negligent manner towards Mr Higgins.

108. Before Mr. Rowley or the plaintiff could take any further steps, Mr. Fagan jumped on Mr. Szejner and a fracas ensued. There was a clear risk, given Mr. Higgins prior erratic behaviour, his ignoring of the plaintiff's interventions and his refusal to come and talk to Mr. Rowley, that matters could rapidly deteriorate and that Mr. Higgins would become involved. I accept the evidence of Mr. Stairs and Mr. Conway that it was reasonable and not disproportionate for Mr. Rowley and the plaintiff to decide to remove Mr. Higgins there and then from the nightclub. I have already specifically rejected the idea that they should either have warned him or asked him to leave at that point or that excessive force was used in removing him. I have also rejected the idea that they should have dealt with the matter by way of turning on the lights and turning off the music.

109. I reject the evidence of Mr. Higgins that the plaintiff ratcheted his right arm up his back and that he was shouting at the plaintiff to stop it as he was breaking his arm. In my judgment the CCTV footage reveals the fact that Mr. Rowley and the plaintiff took an arm each as described. Mr. Higgins resisted forcefully and it is apparent that the plaintiff is struggling to hold on to his arm while Mr. Higgins bends over. The plaintiff did not ratchet Mr Higgins' right arm behind his back as claimed by Mr Higgins. In my opinion the plaintiff was not responsible, if, as result of his resistance, Mr. Higgins sustained an injury. Specifically, I do not believe that the plaintiff held him in an inappropriate hold as was suggested by Mr. Duggan.

110. Once Mr. Higgins broke free in the lobby, the situation was spiralling out of control. The plaintiff felt he was obliged to prevent Mr. Higgins from returning to the nightclub via the stairs. Mr. Stairs gave evidence that this was the correct decision and I accept his evidence in this regard. It was suggested that the staff of the defendant should at this point have ceased to engage with Mr. Higgins and should instead have relied upon the Gardaí to deal with the situation when they arrived. I reject this submission for two reasons. Firstly, it is clear from the CCTV footage that at all times there were patrons of the defendant passing up and down the staircase and the staff of the defendant had to be concerned for their safety. Secondly, there might well have been a considerable delay in the Gardaí attending at the hotel. It was simply fortuitous that the squad car was at the time actually at the Garda station in the town, two minutes away from the hotel. A situation of this nature could not be left to develop pending the arrival of the Gardaí.

111. I also accept the evidence of the plaintiff that when he, Mr. Higgins and Mr. Rowley fell in the lobby he called upon Mr. Higgins to "just go". I also accept the evidence of the plaintiff and Mr. Rowley that when matters had deteriorated, the plaintiff called to Mr. Rowley to summon the Gardaí and that Mr. Rowley called for Garda assistance. Mr. Higgins had the opportunity to leave the hotel before matters really deteriorated but he did not. The staff of the defendant acted correctly in summoning the Gardaí when they did and letting the Gardaí deal with matters when they arrived.

112. I was concerned at the level of injuries Mr. Higgins sustained on the night. However, after due consideration of all of the evidence I cannot hold that the defendant was responsible for those injuries. They were inflicted upon him while the staff of the defendant were trying to manage an increasingly violent incident where other patrons of the hotel were passing back and forth and at risk of injury. The violence was of Mr. Higgins' own making and at all stages he was the aggressor and increased the level of violence. The physical responses of the staff of the defendant were responses to Mr. Higgins' aggression and not the other way around. For these reasons, I dismiss his claim against the defendant.