Neutral Citation: [2014] IEHC 182

THE HIGH COURT

[2013 No.121CA]

BETWEEN

SYLVIA DEEHAN

PLAINTIFF

AND

LOUGHLINSTOWN INNS LIMITED T/A THE LOUGH INN PUBLIC HOUSE

DEFENDANT

JUDGMENT of Mr. Justice Barrett delivered on the 1st day of April, 2014

Facts

1. This is a personal injuries action arising from an incident that occurred at The Lough Inn on the evening of 21st January, 2011. It comes to the court by way of appeal from a failed Circuit Court action brought by Ms. Deehan. During the course of the appeal the court was presented with conflicting evidence as to what happened at The Lough Inn on the date in question. On the whole the court prefers the version of events as recounted by Ms. Deehan. Her testimony was corroborated in important respects by that of a disc jockey who was present, witnessed much of what occurred and appears to have no reason to tell falsehoods. Thus the court finds that on the balance of probabilities the following is the sequence of key events that transpired at The Lough Inn on that January evening.

2. Ms. Deehan attended a 'Ladies' Evening' at the Inn. This was a ticketed event to which there was paid admission. The section of the Inn in which the evening's entertainment was conducted was less than half-full. Some alcohol was consumed by Ms Deehan. At some point during the evening's entertainment a spot prize was thrown into the audience. Several people jumped to catch the prize, among them Ms. Deehan. In the excitement of the moment someone pushed against Ms. Deehan and she fell and hit herself on the leg of a loudspeaker that was sitting on the floor. As a result of the fall, Ms. Deehan suffered the personal injuries that have led to the present action.

3. During the course of her testimony, Ms. Deehan indicated that one reason for bringing the present appeal was that she did not want people to think that she has been telling lies. The court has accepted Ms. Deehan's version of events as substantively true. The question arises whether she is entitled in law to compensation for the injuries that she has suffered.

Applicable principles

4. The Occupiers' Liability Act 1995 imposes a "*common duty of care*" on occupiers in respect of visitors. Under s. 3 of the Act the extent of this duty is "*to take such care as is reasonable in all the circumstances ...to ensure that a visitor to the premises does not suffer injury or damage by reason of any danger existing thereon*." Counsel for Ms. Deehan contended that in fact there was a heightened duty of care arising in the circumstances in issue in this case. Two cases were cited before the court in this regard, namely the decision of the Supreme Court in *Coleman v. Kelly and Others* (1951) 85 ILTR 48 and that of the High Court in *Rodgers v. J.A.C.K.S. Taverns Limited* [2012] IEHC 314.

5. In *Coleman*, the plaintiff, a paid entrant to an agricultural show at Elphin, was knocked down and injured by a horse which had thrown its rider and was galloping at a fast pace. In an action against the show's promoters, a jury found them to be guilty of negligence. On appeal to the Supreme Court, that court declined to set aside the findings of the jury, holding, *inter alia*, that a higher duty of care is owed to a paid entrant to an organised event. However, a detailed consideration of the judgments in *Coleman* indicates that the case does not afford the unqualified support to Ms. Deehan's cause of action that it may at first glance appear to offer. Thus, per Maguire C.J.,at 51:

> *"It was not the duty of the defendants to provide against improbable or unlikely happenings ....They were, however, under an obligation to provide against damage ...from happenings which any reasonable occupier of premises in their position ought to foresee ....The jury were also, entitled to hold that danger arising from such a happening could have been guarded against by the erection of a wooden paling or even a wire fence leading towards the opening into the paddock. Either of those methods could have been easily and inexpensively adopted"*

Two key points arise from the above: that event promoters are not required to guard against improbable or unlikely happenings; and that the commercial and practical feasibility of such safeguards as might be taken is relevant to a consideration of whether those safeguards ought to be taken.

6. In his concurring judgment, Black J., at 54, observed that:

> *"[T]he promoters of outdoor games and sporting events were not insurers of spectators, even when they paid for admission. They were not bound to warn or protect spectators against every kind of possible danger that might materialize. There were many potential dangers incidental to such events that the "reasonable man" expected to encounter and did not expect to be guarded against."*

This, Black J., again at 54, attributed to either or both of two factors:

> *"[T]he remoteness of such a danger becoming operative, and the magnitude of the trouble and expense that would be necessary to guard effectually against it."*

7. Black J.'s observations appear equally relevant to an indoor event ofthe type that is at the centre of the present proceedings. As with the Chief Justice, Black J. had regard both to the probability of a dangerous event arising and the degree of trouble and expense that would be necessary to guard against such danger. He also makes the point that there are dangers that reasonable people expect

to encounter, in respect of which they do not expect to be guarded against, and for which, this Court would add, they ought not to expect compensation.

8. In his concurring judgment in *Coleman*, Lavery J., at 56, elected to treat the case before him as one of contract law, holding that:

> *"The terms to be implied in the contract should be that the defendants undertook to use reasonable care and skill to make the premises safe for the purpose for which they were being used and to use reasonable care and diligence to see that the competitions were conducted without risk to the spectators. The spectators in general and the plaintiff in particular undertook on their part to take reasonable care for their own safety ....The spectators further undertook to accept, subject to discharge by the defendants of their responsibilities, the dangers inherent to the entertainment."*

9. Lavery J. appears, if anything, to impose positively onerous requirements on persons attending paid events. Provided the operators of an event use reasonable care and skill to make premises fit for purpose and to operate competitions without risk to attendees, he was prepared to conclude that, in the case before him, the attendees undertook to take reasonable care for their own safety and to accept the dangers inherent to the entertainment.

10. Before seeking to reduce the foregoing to a set of principles that might usefully be applied in the present case, it is worth mentioning briefly the *Rodgers* case referred to by counsel for the plaintiff. That was a personal injuries action arising from a melee outside a pub where a fancy-dress night was being held. In the course of giving judgment in that case, Peart J. noted, at para. 27, consistent, it might be observed, with the judgment of the Supreme Court in *Coleman*, that:

> *"In my view the duty of care owed by the defendant [pub-owner] to its patrons is to take all reasonable steps to safeguard patrons on their premises. I would extend that to a duty to safeguard patrons immediately outside the premises also. But the duty is to guard against risks and dangers that are foreseeable."*

11. What principles does the foregoing consideration of applicable case-law suggest arise to be applied in the case presented by Ms. Deehan? First, the duty of a pub operator is to take all reasonable steps to safeguard patrons against risks and dangers that are foreseeable. Second, a pub operator is not required to guard against improbable or unlikely happenings. Third, the commercial and practical feasibility of such safeguards as might be taken by a pub operator is relevant to a consideration of whether those safeguards ought to be taken. Fourth, there are dangers that reasonable people expect to encounter, in respect of which they do not expect to be guarded against, and for which they ought not to expect compensation. Fifth, provided a pub operator uses reasonable care and skill to make premises fit for purpose and to operate competitions without risk to attendees, it may be possible to infer a contractual obligation whereby attendees undertake to take reasonable care for their own safety and to accept the dangers inherent to the entertainment.

Conclusion

12. Applying the principles just considered to the present case, the court concludes as follows. First, it has not been proven in these proceedings that The Lough Inn failed to take all reasonable steps to safeguard its patrons against risks and dangers that were foreseeable. The proprietors of The Lough Inn cleared a space for entertainment that took place in a pub that was more than half-empty, setting aside one alcove for the entertainment and cordoning off another alcove for the disc jockey. Second, the fact that Ms. Deehan fell to the floor does not seem an improbable or unlikely event at a venue where alcohol has been taken and spirits are high and thus is an event in respect of which reasonable safeguards ought to have been, and were, taken. Third, it is not clear to the court what additional safeguards might have been taken to render The Lough Inn safer on the evening in question. It has not been proven to the court that the loudspeaker against which Ms. Deehan fell was negligently positioned; on the contrary, the evidence suggests that care was taken to ensure that it was safely positioned. Moreover, the truth is that Ms. Deehan could have fallen anywhere in the pub and the only means of effectively guarding against the risk of such a fall would have been to swaddle every available surface in the pub in protective material. For The Lough Inn to 'accident-proof its premises in such a manner would be both highly expensive and entirely impracticable, factors to which, as the judgments in *Coleman* make clear, this Court can have regard in determining, as it does, that such a measure is not required by law. Fourth, a person who freely elects to go to a pub, who freely elects to drink alcohol, who freely elects to engage in a party game and who freely elects to jump for a spot prize, can reasonably anticipate that she may fall, cannot reasonably expect that every part of the pub will be proofed so that there can be no injury occasioned if she does fall, and ought not to assume that she will be entitled to compensation when in fact she falls. Bad things can happen to good people and still no compensable event may arise. Fifth, to the extent, if at all, that the matter now before the court falls to be treated as one of contract law and not tort, the court finds that Ms. Deehan had undertaken to take reasonable care of her own safety and to accept the dangers inherent to the party game in which she engaged.

13. Ms. Deehan impressed the court in her testimony as a decent woman who is entitled to, and has, the court's sympathy for the painful injuries that she suffered at The Lough Inn. However, for the reasons stated, her action against the defendant in these proceedings must fail.