

THE HIGH COURT

[2003 No. 2950 P]

BETWEEN

MARIA TAYLOR FLYNN

PLAINTIFF

AND

HASSAN SULAIMAN AND ADVANCED COSMETIC SURGERY LIMITED

DEFENDANTS

Judgment of O'Neill J. delivered the 23rd day of May, 2006.

1. The plaintiff in this case was born on 14th August, 1952. In July of the year 2000, when she was contemplating marriage, she was overweight, weighing about 15 stone at the time. She saw an ad in a publication for the second named defendants clinic. This ad was put in evidence and it shows a very attractive blonde slim young lady who was described as Helena Ashdown Shiels and as the manager of the second named defendant. She rang up and she received a letter of the 7th July, 2000, arranging an appointment for her to see a Doctor Alan Kingdon who was described as "our" lipo sculpture specialist and this appointment was arranged for 12th July, 2000, at 2.00 pm.

2. The plaintiff attended as arranged but unfortunately Dr. Kingdon did not show up. She nevertheless had an interview with the aforementioned Helena Ashdown Shiels, in the course of which Ms. Shiels exposed her own abdomen to demonstrate the great advantages of liposuction. Thereafter she filled out a questionnaire concerning her personal and medical details. When it was apparent that Dr. Kingdon had not arrived she was introduced to a Dr. Olympia Hadden. It was the plaintiff's evidence that this doctor declared herself unfamiliar with the procedure and that the discussion that did take place did not involve any discussion of the options which were available to the plaintiff or of the complications or sequelae from any of these, or in particular, from the liposuction procedure which apparently at that stage had been settled on.

3. A form described as a post consultation form was introduced into evidence by the defendants. This form was signed by Dr. Hadden but not by the plaintiff and the plaintiff denied that she had had the contents of this form read to her. Dr. Hadden did not give evidence.

4. In any event the procedure was arranged for the 19th July, 2000 and it was to be the liposuction procedure and it was to be done by Dr. Alan Kingdon. A letter of the 13th July, 2000, was sent to the plaintiff confirming the arrangement and in due course the plaintiff turned up at 8.00 am as advised. Her evidence was that she was interviewed, paid the balance of the money, that is to say £2,500, having already paid a deposit of £100 and she signed what she believed was the consent to the procedure. It was her evidence that this was not discussed or explained and thereafter she was admitted to a ward where she waited.

5. After some time it became apparent that Dr. Kingdon had not turned up again. The first named defendant Dr. Sulaiman came along and introduced himself to her. It was the plaintiff's evidence that he was gowned up and was prepared for theatre including wearing rubber gloves. The plaintiff said that he introduced himself, had a brief discussion and then proceeded to take photos of her standing at the side of her bed.

6. The first named defendant in his evidence said that there was a full consultation in which the options available were discussed together with the complications and sequelae from these and it was also discussed that the procedure was not a final solution, that a further procedure that is to say a tummy tuck was discussed and it was the first named defendant's evidence that following upon this the plaintiff signed the consent which is dated 19th July, 2000, as did he himself Dr. Sulaiman. Thereafter the procedure went ahead uneventfully. The plaintiff was kept in bed overnight because of a blood pressure problem. A difficulty was experienced with a compression garment which had to be worn for approximately a month. The one provided was too small and caused the plaintiff a great deal of unnecessary discomfort.

7. As to what has happened here, I prefer the evidence of the plaintiff where it differs from that of the first defendant. I think it is improbable that a full discussion in which all of the options, complications and sequelae were discussed took place in the circumstances that had arisen. The first named defendant's involvement occurred at very short notice because of the failure of Dr. Kingdon to turn up. I am satisfied that the first named defendant assumed that a normal pre-procedure consultation had taken place in which all of the various relevant matters had been discussed, as he was entitled to do. It is of course unfortunate in this case that this is not what had happened because of the fact that Dr. Kingdon had not shown up on the previous occasion or on the occasion for the procedure itself. I am satisfied that on the previous occasion the doctor who was substituted, Dr. Hadden was ill prepared for what was required, that is to say a full consultation with a discussion of the options available plus the complications and the sequelae.

8. I am satisfied that the result of all of these mishaps was that the plaintiff went into this procedure wholly bereft of the knowledge derived from qualified medical practitioners that would have enabled her to have given an informed consent to the procedure involved. This situation was unfortunately grossly compounded by the ill considered gesture on the part of Ms. Shiels to show her own abdomen as an example of the benefits of liposuction.

9. I am satisfied that the plaintiff's knowledge was deficient in every materially respect. *Inter alia* she was not aware of the choice of procedures available. Secondly, she was not aware of which would be the most suitable for her and in that regard I accept Dr. O'Reilly's evidence that it would probably be the abdominal plasty procedure. Thirdly, she was not aware that she should first lose weight. Fourthly, she was not aware that there were bumps and irregularities which occurred as natural sequelae of this procedure. Fifthly, she was not aware that she would be left with loose skin i.e. an apron which only a tummy tuck would cure. Finally, she was not aware that her muscle laxity would not be at all addressed by the procedure carried out. It is hardly surprising then that she was disappointed with the outcome.

10. I am satisfied that the second named defendant breached their contractual obligation to the plaintiff to ensure that the plaintiff had the benefit of the above advice before permitting the plaintiff to undergo the procedure undertaken. Insofar as the first named defendant is concerned I am not satisfied that he failed in his duty to the plaintiff. He found himself in a situation of substitution for another surgeon. It is not negligent for one surgeon of appropriate competence to substitute for another as happened here. In my view the first named defendant was entitled to assume that the plaintiff had been properly advised in the normal way. I do not think that the first named defendant in going ahead with the procedure in the circumstances that arose in this case, without conducting a full consultation, could be said to have fallen below the standard of care to be expected from a medical practitioner of the rank and speciality of the first named defendant.

11. Thus in the result I have come to the conclusion that the plaintiff is entitled to recover damages from the second named defendant for breach of contract. This brings me to the measure of damage.

12. The first question that arises is what is the plaintiff to be compensated for. In my view she must be compensated for undergoing a procedure which in the circumstances should not have happened. This necessarily contemplates the pain discomfort inconvenience and disappointment and also of course the cost of this procedure. An issue arose as to whether the actual results of the procedure rendered the condition of the plaintiff worse than it was before the procedure was carried out. Undoubtedly it is the case that the plaintiff herself felt and perceived that her abdomen was cosmetically degraded by the procedure.

13. In assessing cosmetic blemish in my view, an objective test must be applied. The question which must be asked is would a reasonable observer think that the plaintiff had been cosmetically degraded by the procedure.

14. In my view having seen the photos taken before and having seen the plaintiffs abdomen, in chambers, it cannot in my view be said that she has been cosmetically damaged or degraded by the procedure. She does have one problem that was either created by or made much worse and that is the occurrence of a red rash caused by the apron of skin lying on her lower abdomen. I have no doubt that the removal of fat in the procedures resulting in loose skin is the source of her ongoing difficulty in this regard. It must also be borne in mind that the procedure of abdominal plasty would rectify this problem and indeed much else of what clearly disturbs the plaintiff. The plaintiff is of course understandably reluctant to undergo that procedure.

15. In the result then I would award the plaintiff for general damages the sum of €15,000 and she is also entitled to recover the money she paid to have this procedure carried out which is the sum of €3,300. In total then the award is €18,300.