

THE HIGH COURT**[2015 No. 2516 P.]****BETWEEN****JEAN CHAMBERS****PLAINTIFF****AND****POWERSCOURT ESTATES LIMITED****DEFENDANT****JUDGMENT of Mr. Justice Barr delivered on the 29th day of June, 2016****Introduction**

1. The accident in this case occurred on Saturday, 13th September, 2014. The plaintiff was pushing her mother in a wheelchair along a path in the gardens of Powerscourt House, when, owing to a very steep slope on the path, she was caused to lose control of the wheelchair and fell to the ground, causing a significant injury to her wrist. The essence of the plaintiff's case is that the defendant failed to take any or any reasonable steps to designate the path which was safe for use by wheelchair users from other paths, which were not safe for such use, due to the presence of a large slope thereon. The defendant, as occupier of the house and gardens, denies that it failed to provide a safe route for use by wheelchair users. In this regard, they state that there was a blue line designated on a map, which had been given to the plaintiff, which clearly showed a level path that was safe for use by persons using a wheelchair. Liability and quantum are in issue between the parties.

Liability

2. The plaintiff was born in 1968 and is employed as a promotions consultant at Dublin Airport. On Saturday, 13th September, 2014, she went, with her mother, to visit Powerscourt House and Gardens. On arrival at the reception area, they purchased two tickets for entry to the gardens. However, they decided to have something to eat in the cafeteria before embarking on the walk.

3. The plaintiff stated that after lunch, they came back to the reception area. There, the plaintiff was given a leaflet, which was folded and which extended to a little longer than an A4 page when opened out. On one side of the leaflet, there was information about a number of different points of interest that could be seen within the gardens. The entire of the reverse side of the leaflet constituted a map of the gardens, with various routes and points of interest marked thereon. The plaintiff stated that the lady at reception showed her a route marked on the map in blue, which was a disabled access route.

4. The plaintiff stated that having obtained a wheelchair for use by her mother, they proceeded out of the rear of the building into the gardens. They then turned to their right and came to the route marked in blue. They turned left and walked down the side of the main gardens, going in a clockwise direction. Towards the end of this path, they entered a wooded area and proceeded along the path turning to their right, coming to the pets' cemetery. The plaintiff stated that she brought the wheelchair to a halt just beside a wrought iron bench. She left her mother at this point and proceeded down the steps into the pets' cemetery. She stated that she had proceeded to this area, where the wrought iron bench was, by walking towards the camera as shown in photograph No. 8 of the engineer's booklet of photographs.

5. The plaintiff stated that when she returned to the area where her mother had been waiting, she was unsure as to the direction that she should take, due to the fact that to her left, as she faced the camera, there was another path going off in another direction into a different wooded area. The plaintiff stated that she was a bit confused as to whether they should proceed along the path on which they had been travelling, or whether they should make the left turn and proceed into the wooded area. This would have involved them to an extent turning back and proceeding somewhat in the direction from which they had come. The plaintiff stated that there was no sign or marker in the area to show the designated blue route, which was safe for wheelchair users.

6. The plaintiff proceeded to follow the path which led down a slope as shown in photographs No. 9 and 10 of the engineer's photographs. She would have been moving away from the camera in these photographs.

7. The plaintiff stated that this path sloped suddenly in a steep fashion, such that the wheelchair began to move quickly away from her. The plaintiff had to run after the wheelchair, holding onto it as best she could. She stated that she tried to bring the wheelchair to a halt by turning it into the embankment, but she was unable to do so, as she tripped and fell and suffered an injury to her left wrist. The wheelchair eventually came to a halt, but the plaintiff was unsure as to how this happened.

8. In cross examination, the plaintiff stated that she had been confused as to which path to take when she returned to her mother at the wrought iron bench. She stated that she did not take the map out of her pocket and consult it at that time.

9. Mr. Barry Tennyson, Consulting Engineer, gave evidence on behalf of the plaintiff. He stated that while the map on the reverse of the leaflet would have helped people ascertain where the various points of interest were, it was of very little use as a map, as it did not give any indication at all as to any dangerous slopes which occurred on the paths running through the gardens. In this regard, he stated that the building regulations provided that for wheelchair users, a slope should not have a downgrade of more than 8%. The slope at this particular locus had a downgrade of 16%. In these circumstances, he was of opinion that the path was dangerous for wheelchair users. He felt that that the path should have been identified as unsuitable for wheelchairs. It was his opinion that it was easily foreseeable that visitors would take the wrong turn and would end up on this path rather than continuing along the level path.

10. Mr. Tennyson was of opinion that where there were a number of intersections between various paths, some of which contained dangerous slopes, there should be signage at the various junctions, indicating which paths were unsuitable for wheelchair users. He stated that a simple and inexpensive sign at the locus would have prevented the plaintiff taking the wrong turn. He stated that a lay

person cannot distinguish between a slope that is safe and a slope that is dangerous for wheelchair users. They would need guidance on the matter. He accepted that the slope would be readily apparent to a person standing at the top of the slope, but they would not necessarily know how dangerous it was to proceed down the slope with a wheelchair.

11. Evidence was given on behalf of the defendant by Ms. Kaleigh Greene, who had been a receptionist at the main house that day. She had worked for the defendant up until August 2015. She stated that she recalled the plaintiff and her mother coming to the reception desk. They bought two tickets. The witness gave the plaintiff the tickets and also a map. The plaintiff stated that she was going to have some lunch first and Ms. Greene stated that that would not present a problem as the tickets were valid for the entire day.

12. She stated that she recalled the plaintiff and her mother returning to the reception area after lunch. They proceeded directly to take one of the wheelchairs which was nearby, which she thought was a little unusual, as people normally asked whether the wheelchairs were available for hire.

13. Ms. Greene stated that she approached the plaintiff and showed her the disabled route, which was marked as the blue route on the map. She stated that the plaintiff inquired about visiting the pets' cemetery, to which she replied that they could not get the wheelchair into the pets' cemetery due to the steps leading down to that area. She stated that the plaintiff's mother could go in if she was able to manage the steps. She stated that the plaintiff also wanted to visit the Japanese Garden. Ms. Greene stated that if the plaintiff's mother needed a wheelchair, she would not be able to go there, as there were a number of slopes on the path leading to the garden and also there were steps at the Japanese Garden itself. She stated that the slopes would be too steep for a wheelchair and that they would not be able to get back again. Ms. Greene stated that she stood beside the plaintiff and pointed these sloped areas out to the plaintiff on the map. She had a clear recollection of telling her that she could not go down the slope marked on the path with the red dotted line leading from the pets' cemetery to the Japanese Garden.

14. In cross examination, Ms. Greene stated that she highlighted the whole route leading from the pets' cemetery to the Japanese Garden as being a steep slope. She stated that she pointed this out to the plaintiff on the map. She recalled telling the plaintiff that she could not go to the Japanese Garden as there was too steep a slope on the red dotted line. There is a slope at the beginning of the path in the area of the pets' cemetery and also at the end of that route at the Japanese Garden itself. She stated that she told the plaintiff to follow the blue line and not to go onto the red line.

15. Evidence was also given by Ms. Sarah Slazenger, the general manager of Powerscourt House and Gardens. She stated that the front part of the gardens had been constructed in the 1740s and that the terraces were added in the period 1840 – 1875.

16. The gardens were first opened to the public in the 1940s. There was an increase in people visiting the property in the 1950s and 1960s, where the total number of visitors rose to one hundred thousand per year. The house was refurbished after an extensive fire in 1997 and the gardens became a very popular visitor attraction. Today there are approximately two hundred thousand visitors per annum.

17. The witness stated that they were conscious of the requirements of wheelchair users visiting the property, so a significant portion of the garden was accessible on one level path which was suitable for wheelchair users. This was designated as the blue route on the map. She stated that wheelchair users might be individuals, who either had their own wheelchair, or would use the complementary wheelchairs that were supplied at the property, or they could be groups of wheelchair users, who would come with their carers. Ms. Slazenger stated that this type of accident had never happened before. She stated that they looked for feedback from their visitors and no one had ever complained about accessing the gardens.

18. The witness stated that she was surprised that the plaintiff was not able to follow the blue route, as designated on the map. She stated that when you stood at the top of the slope, it was clear that it was not suitable for wheelchair users. She thought that it was extraordinary that people would bring a wheelchair down that slope. She thought that the wheelchair accessible route was adequately designated on the map. She did not think that it was necessary to put a sign at the locus indicating that it was dangerous to bring a wheelchair down the slope.

19. The witness stated that the blue route was quite obvious on the map and was clearly suitable for use by persons using wheelchairs as it was level throughout. She stated that they did not consult with any engineers in relation to this route because the path was completely flat. She stated that wheelchair users used this route without any difficulty.

20. Finally, evidence was given by Mr. Seán Walsh, Consulting Engineer, on behalf of the defendant. He stated that he thought the map was an excellent pictorial representation of the grounds, which would be of great assistance to persons using the area. He accepted that it did not show any particular slopes and was not drawn to the exactitude of an OS map. However, he thought that it was perfectly suitable for ordinary recreational users visiting the property.

21. He accepted that there was no evidence of topography on the map, but when a person emerges from the house, the topography of the site was obvious. A person would immediately see that there is a large depression to the rear of the house. He stated that the landmarks in the grounds were graphically represented on the map.

22. In this case, the plaintiff and her mother went down the path to the side of the main garden and then turned to their right and eventually came to the pets' cemetery. At this time, the plaintiff was on the correct blue route. She then turned backwards and left the blue route and took the path going down the slope. She went down an extremely steep gradient. He stated that it was patently dangerous. He stated that it would be clear to anyone looking at the path that it was sloped and dangerous.

23. Mr. Walsh did not think that it was necessary to put a sign at that particular junction as the danger was clearly obvious. The map clearly showed an appropriate route for wheelchair users.

24. He noted that from the evidence of Ms. Greene, there had been some discussion between Ms. Greene and the plaintiff about slopes and the importance of staying on the blue route had been addressed with her. He stated that the blue route was perfectly suitable for wheelchair users and was communicated well on the map. In this case, the plaintiff had made the extraordinary decision to go down the slope. He was not surprised that there had been no similar accidents prior to this accident.

25. Mr. Walsh stated that a person was standing at the top of the slope, would be struck by the exceptionally steep gradient. When one stood at the top of the path, one would get a sense of a very steep slope.

26. He stated that the blue route was a level path for disabled users; it was not a complex route and was clearly delineated on the

map. The plaintiff had been given a very clear map and had also been given very clear instructions by Ms. Greene. She was told that the blue route was level and that she should stick to it. He accepted that not all the red line route was sloped, it was a level path for parts of it, such as down by the Triton Lake. He accepted that it would not be an expensive thing to put up a sign at the locus. However, he did not think that the sign would have prevented an accident. The plaintiff had a map in her pocket and there was a patent risk in going down the slope. If she was confused, she could have retraced her steps and gone back to the house by the same route that she had taken to the pets' cemetery. He was of opinion that where a person had a clear map and could see that there was a patent slope on one particular path and then proceeded down that path, a sign was not a relevant issue.

Conclusions on Liability

27. It is clear that on this occasion, the plaintiff and her mother intended to walk among the gardens, while her mother used a wheelchair. The plaintiff had been given a map which clearly depicted a blue route thereon, which was suitable for wheelchair users.

28. I accept the evidence of Ms. Greene that the plaintiff had indicated to her that she would like to see the pets' cemetery and the Japanese Garden. To this, Ms. Greene had stated that it would not be possible for the wheelchair to be brought down to the pets' cemetery itself, as this was down a number of steps. I also accept the evidence given by Ms. Greene, that she indicated that the route leading from the pets' cemetery as designated by the red dotted line and going to the left on the map, towards the Japanese Garden, would be unsuitable due to the fact that there were slopes on this path. I accept the evidence of Ms. Greene that she specifically pointed this out to the plaintiff, when they had come back to the reception area having had their lunch.

29. It is common case that the plaintiff went out of the back of the house and turned to her right, moving along the terrace to the rear of the house and then turned left and proceeded down the side of the formal gardens. She then came into a wooded area and turned to her right, coming, after some short distance, to the pets' cemetery. The plaintiff stated that she left her mother beside a wrought iron bench and she proceeded down the steps to look at the cemetery itself. She then returned to her mother and it was at this point that she was confused as to which path she should take. If the plaintiff was confused, she should have taken the map out of her pocket and looked at it. That map clearly showed that persons, who had turned right and come to the pets' cemetery on their left hand side, should proceed on, keeping the pets' cemetery to their left and then make a right turn leading to the Dolphin Pond. This was clearly visible on the map. It would not require any specific training or ability on the part of the plaintiff to be able to work out which was the correct path to take, if following the blue route. Unfortunately, the plaintiff did not do this, but instead somewhat turned back on the route that she had taken and proceeded down the red route, which immediately brought her to a steep slope. If the plaintiff had thought about it for a moment, she would surely have realised that this was not the correct path, as Ms. Greene had informed her that the blue route was entirely level.

30. At the time that the plaintiff had reached the pets' cemetery, she had done so entirely safely by following the blue route. If she had been confused at that time, all she had to do was take the map out of her pocket and look at it. She would then have seen that the blue route proceeded on to the right so that she would keep the pets' cemetery on her left at all times. In the circumstances of this case, where very clear instructions had been given by Ms. Greene and where the plaintiff had in her possession a clear map, which showed her a safe route to follow, it is not appropriate to find liability against the defendant for the accident which occurred.

31. Under the Occupiers Liability Act 1995, an occupier owes what is called "*the common duty of care*" towards a visitor such as the plaintiff. This is a duty to take such care as is reasonable in all the circumstances to ensure that a visitor does not suffer injury or damage by reason of any danger existing on the property. In essence, the occupier has to take reasonable care for the safety of the visitor. I am satisfied that in this case, where clear instructions had been given by Ms. Greene and where the plaintiff had been supplied with a clear and easily understood map of the gardens, the defendant has not failed in the common duty of care it owed to the plaintiff. While the provision of a sign at the top of the path which had the slope on it, may have prevented the accident, it seems to me that the fact that there was a slope on that path, was something which should have been readily observable to the plaintiff.

32. Accordingly, I dismiss the plaintiff's case as against the defendant.