

THE HIGH COURT

2003 14169 P

BETWEEN

PADRAIG CULL

PLAINTIFF

AND

JOHN PAUL CONSTRUCTION LIMITED AND OAKLEY FORMWORK

DEFENDANTS

Judgment of Mr. Justice de Valera delivered on the 4th day of June, 2010.

It is common case in this matter that the plaintiff, Padraig Cull, an employee of Oakley Formwork fell from a ladder on a building site then under the control of John Paul Construction Limited at 67, Inchicore Road in Dublin on the 9th October, 2003.

What is not agreed between the parties is the manner in which that fall occurred, or the sequelae to the injuries which the plaintiff suffered.

There are two versions as to how the plaintiff came to fall.

The plaintiff's version may be summarised as follows: when disassembling shuttering (which was leaning against a vertical surface on the site) made up of a number of individual panels the plaintiff, who was standing on a ladder then being steadied by his assistant, Patrick Breslin, was knocked from the ladder by the panel which he had just freed from the assembly and which had been allowed or caused to swing suddenly into him.

The first named defendant's version may be summarised as follows: when the plaintiff was disassembling the shuttering panels, again from a position on a ladder, he, the plaintiff, improperly and negligently, removed the clamps holding the panel to be removed from the assembly thus allowing the upper removed panel to fold outwards (as the lower panels moved inwards) without having warned the defendants' crane operator and/or Banksman of his intentions and, crucially, without ensuring that the upper panel was properly secured by the crane.

This incident itself was witnessed by four people:

- (a) the plaintiff, Padraig Cull,
- (b) the plaintiff's assistant, Patrick Breslin,
- (c) the Banksman, Keith Phelan,
- (d) the crane operator, Stephen Kennedy.

The evidence given by Padraig Cull and Patrick Breslin is mutually consistent and supports the plaintiff's contention and version of events. The evidence given by Keith Phelan and Stephen Kennedy is also mutually consistent and, in turn, supports the version of events contended for by the defence.

The evidence of all the eyewitnesses to the event was given in a forthright and credible manner without any obvious evasion, exaggeration or untruthfulness. It has proven very difficult to decide which of the two, completely different accounts, represents what actually occurred and in deciding this matter on the balance of probabilities I acknowledge the fine distinction between possibility, probability and certainty and I am very conscious of the fallibility of judgment in this regard.

The position of the ladder at the time of the plaintiff's fall is central to deciding what actually occurred. The plaintiff's version is that a ladder, of sufficient length to rest above the joint between the upper panel and the main assembly, was positioned at the time of the fall to the left of the assembly; that the crane's chains were attached and tightened and that, when the last clamp was struck off the panel it swung to the left (towards the plaintiff on his ladder) dislodging him. At all material times the ladder was being "footed" by Patrick Breslin. According to Mr. Breslin the freed panel swung out (or over) and "the ladder and him went". Mr. Breslin ran because he could no longer hold the ladder which was being pushed back towards him as a result of the force of the strike. If I accept this version of events the necessary implication is that the crane was improperly sited causing the panel to move sideways.

The defence version is that the plaintiff was using a ladder which did *not* reach to the join line between the upper panel and the main shuttering assembly and that the ladder was sited centrally on this shuttering assembly, resting upon it. Again in this version the chains attached to the crane were *not* under tension – they were slack. When the last clamp was removed the upper panel folded outwards (the remaining assembly moving inwards). The upper panel thereby dislodging the plaintiff from the ladder as it, in turn, move inwards with the rest of the assembly. In this version the chains attached to the crane were *not* under tension – they were slack.

Mr. Phelan, the Banksman, when questioned by me, was just a little vague about the manner in which the freed panel fell and what happened to the ladder which, he accepted, was being footed by Mr. Breslin at the time.

The crane operator, Mr. Kennedy, (who insists that tension had not been applied via the lifting chains to the panel at that time) places the plaintiff on a ladder, the top of which did not reach the join between the upper panel and the main assembly but that the ladder was situated centrally on the assembly and described the ensuing events in accordance with Mr. Phelan's recollection.

As I have indicated, because of the manner in which the witnesses have given their evidence, it is very difficult to draw any conclusion or conclusions from those descriptions alone. However, I think it is improbable, for the reasons given in evidence, that the plaintiff would have used the "short" ladder as claimed (and all the ladders were supplied by John Paul Construction Limited). I also think it improbable that the plaintiff would have tried, or would have been able, to remove all the clamps from the central position as contended by the defendants' witnesses and it is more probable, in my view, that to reach all the clamps he would have moved his ladder to the left-hand side of the assembly as he himself describes. If he is correct in his description of this, as I have already said I think he probably is, then I accept his (and Mr. Breslin's) evidence of how the panel came to strike him and the ladder is more probably correct.

I am, therefore, satisfied that the plaintiff is entitled to recover damages against the first defendant and I find no contributory negligence against him (I am also satisfied that it would not have been possible or practical to lay the assembly horizontally on the ground in the circumstances obtaining on that particular site, although this would have been the preferred mode of operation).

On the facts as I have found them no liability rests with the second defendant.

Damages

The plaintiff suffered:

(a) Soft tissue injuries to his back which appear to have been the exacerbation of a previously dormant degenerative condition.

(b) An injury to his right shoulder.

These injuries have resulted in the plaintiff being unable to continue at the very physically demanding occupation of a shuttering carpenter but he has been able to obtain, and perform, work of a lighter nature albeit with a reduction in earnings. This reduction amounted to about half his present remuneration.

As I have no proper evidence relating to future loss of earnings, but satisfied that some such will occur, I propose to deal with this aspect of the plaintiff's claim by including in the general damages figure an otherwise unquantified amount for loss of opportunity on the labour market taking into consideration the changes in the construction sector over the past years and indeed, probably and sadly, into the future.

Determining figures for pain and suffering I am proceeding on the basis that the plaintiff's condition, dormant at the time of the accident, would eventually have become symptomatic.

I therefore award the plaintiff:

(a) For pain and suffering to date	€30,000
(b) For pain and suffering into the future	€40,000
(c) Agreed special damages	<u>€10,000</u>
Total:	€80,000