

**THE HIGH COURT**

**[2009 No. 835 P.]**

**BETWEEN**

**CIARA O'CONNELL**

**PLAINTIFF**

**AND**

**BREANAGH CATERING LIMITED TRADING AS COPPER FACE JACKS**

**DEFENDANT**

**JUDGMENT of Mr. Justice Ryan delivered the 28th June, 2013**

The case concerns an accident that occurred on the 4th August, 2006, at the nightclub known as Copperface Jack's on Harcourt Street, Dublin. It was a Thursday night before the August bank holiday.

The plaintiff is a sales representative who was born on the 12th January, 1980 and was accordingly 26 years old at the time of the accident and is now 33 years old.

The plaintiff suffered a severe injury in the accident to her left non dominant arm. Although she has made a good recovery after surgery consisting of open reduction and internal fixation, she has some residual restriction of movement, significant scarring and there is evidence present of the metal work that was used to stabilise the fracture.

Ms. O'Connell was one of a group of people from her work who, went for a night out on this occasion. They went home after work and then came back into town and met in a public house. Ms. O'Connell got there about 10.30. Among the colleagues were Mr. Noel Humphries, Mr. John Houston and Mr. Mark Byrne. They were part of a larger group, but I am not sure how many more there were from the office. At the time in the public house, they left at about 12.30 am for the nightclub, Copperface Jack's, in Harcourt Street. They went in and spent a little time on the ground floor at a bar where they had a drink. Then they went downstairs to the dancing area and proceeded to dance.

Although the people in the group had had drinks and had come from a pub, there is no suggestion that any of them including the plaintiff was drunk or incapable. They had gone home after work and met in the pub sometime around 10.30 pm.

Part of the group was dancing and they included the plaintiff and Mr. Humphries. It was modern dancing of the kind that takes place in night clubs and which is not easy to describe in terms that make sense. Mr Condon SC for the defendant described it as dirty dancing, after the film.

There were video cameras in operation in the dancing area and the pictures have been made available. They do not unfortunately capture the circumstances of the accident except fleetingly.

The plaintiff and Mr. Humphries were in a group. At the critical time when the plaintiff suffered her injury, she was dancing with Mr. Humphries. The particular dance involved Ms. O'Connell moving in a backwards direction with Mr. Humphries dancing similarly in unison with her – more or less – close to her and in front of her. Her hands were resting on his forearms. He was moving backwards in time with her as she danced behind him and resting her hands on his forearms. This meant that they were quite close together. As they moved backwards in this fashion, Mr. Humphries fell back and on top of Ms. O'Connell who hit the ground heavily and sustained the injury to her left arm.

Ms. O'Connell stayed lying on the ground while she was attended to. Her group realised that she was hurt and security staff came on the scene and an ambulance was sent for. She was brought to hospital at St. James's where she was detained and treated by operation. Her sister Ms. Bronagh O'Connell went to the hospital and took the plaintiff's clothes.

What made Mr. Humphries fall? Did he slip on a wet floor? Was the floor slippery? These are the essential liability questions.

Witnesses say that the floor was wet. The plaintiff's sister, Bronagh says that she found Ms. O'Connell's jeans to be wet when she helped her to get into hospital clothes in St. James's. Mr. Houston and Mr. Byrne say that they spent some time kneeling beside the plaintiff in the location where she fell in the nightclub and when they got up they found the knees of their trousers wet. Mr. Humphries says that when he got up he felt his hands wet, but he qualified that by saying that he did not know if it was perspiration or wetness from the floor.

Could the floor have been wet? The evidence of the defendant's security staff admitted the possibility, but said that they were alert to the danger of the floor being wet and tried to ensure that that did not happen. Nevertheless, it seems clear on the evidence that the possibility existed. Moreover, I think that the evidence on the video taken from various cameras in different locations does indicate that some patrons in the dancing area its periphery appear to have been drinking from bottles while dancing. Spillages were also possible when people carried drinks away from the bar.

In the circumstances, I am satisfied that the floor in the area where Ms. O'Connell was lying was indeed wet. However, it does not follow that the floor area where Mr Humphries fell was wet.

I have some reservation as to whether Mr. Humphries actually remembers having slipped as opposed to having fallen. His evidence on this was somewhat tentative and cautious although he did eventually say in answer to me when it was put to him very specifically that he felt his foot slip.

However, I think there is a more basic issue. The question is not, as I see it, whether the floor was wet, but whether the floor was

slippery. In normal circumstances, evidence that a floor was wet would be sufficient because it would also be clear that if the floor was wet it would be slippery. There is usually engineering evidence to that effect and very often it is unnecessary because the matter is obvious. On a tiled or polished floor, it is plain to anybody that if it is wet, then it is likely to be slippery. But that is not the situation here.

The plaintiff's consulting engineer, Mr. J.D. Kirwan Browne tested the floor in the course of his inspection in 2009. The dance area consists of pine flooring boards with hardwood –iroco—board inserts to provide contrast and pattern. In order to test it, Mr Kirwan Browne poured water onto the floor and test it for slipperiness using recognised equipment. He found that the pine boards that account for the great majority of the dance floor were safe even when wet. The hardwood insert were not porous as the pine was and if they were wet, they would be slippery.

It follows therefore that if the floor was in the condition that it was in when Mr. Kirwan Browne examined it, there could be no complaint about the arrangements even if there was wetness on the floor provided that the accident happened in the pine area and not by reason of a slip on the iroco hardwood.

Is there any evidence that the accident happened by Mr. Humphries slipping on the hardwood strip? The video evidence does not support the proposition that the plaintiff or Mr. Humphries was in the vicinity of a hardwood strip, still less a wet hardwood strip at any material time – ie. moments before the accident. The position of the plaintiff after the accident is also not indicative that Mr. Humphries's position close in front of the plaintiff could have been affected by a wet hardwood strip that could have caused the fall.

There is no evidence that Mr. Humphries was at the hardwood strip when his foot slipped. Neither is it apparent that there was a hardwood strip in any relevant close vicinity. Neither is there evidence that a hardwood strip in any relevant location was wet.

The possibility exists that the floor might have become less slippery between the accident in 2006 and the engineering inspection of 2009, but there is no evidence to support that or to explain how the floor could have gone from being unsafe to quite safe when wet. I am afraid that that is entire speculation.

Counsel for the plaintiff Mr. Senan Allen S.C. suggested that the principle of *res ipsa loquitur* would apply but I do not think that is correct. That principle cannot apply to this case. The circumstances of the accident locus were in a general sense under the control of the defendant and certainly the floor was, but not the activity that the plaintiff and Mr Humphries were engaged in and the manner in which they were doing so, namely, the dancing.

Is it possible for the accident to have happened without having a slippery floor or a dangerous locus? In my view, the answer to this must be yes. The plaintiff and Mr. Humphries were dancing backwards in close proximity in a situation that did indeed carry the risk that Mr. Humphries or Ms. O'Connell would miss a step or lose their footing and that could happen, I think, relatively easily.

I do not think that this was in any way reckless or dangerous dancing, but it did carry with it the risk of falling. The accident was an unfortunate one and the plaintiff was, I think very unlucky to suffer the injury that she did or even any injury. It was just the combination of circumstances that meant Mr. Humphries fell on top of her which precipitated the heavy fall and which resulted in her sustaining the injury that she did.

In the circumstances, I do not think that the plaintiff's injuries can be attributed to a slippery floor maintained by the defendant and there is no room therefore for a finding of negligence against the defendant.