

THE HIGH COURT

[2009 No. 5619P]

BETWEEN

RAMBLERS WAY LIMITED

PLAINTIFF

AND

MR. MIDDLETON GARDEN SHOP LIMITED TRADING AS MR. MIDDLETON

DEFENDANT

Judgment of Mr. Justice Hedigan delivered on 14th day of November, 2012.

1. The plaintiff claims damages against the defendant for negligence, etc. as a result of a fire that occurred on the defendant's premises at 58, Mary Street in the City of Dublin at or about the 29th February 2004 around 11.00pm. As a result of this fire the plaintiffs adjoining premises at 57, Mary Street, suffered damage from smoke and water.

2. Damages are agreed at a figure of €185,000.

3. It is the plaintiffs claim that the defendant was negligent in a wide range of matters and thus is not entitled to the protection of the Accidental Fires Act 1943, Section 1 because the fire did not accidentally occur. The negligence alleged may be summarized as follow;

- (a) leaving the heater switched on in his office over two days,
- (b) placing the heating in the vicinity of flammable materials,
- (c) failing to unplug the heater.

4. Garret Queamey a director of the defendant in his evidence stated that on the 28th February, 2004, he and his assistant closed their premises at No. 58 at or about 5.30pm. He states that as he closed the grill over the door of the shop, he remembered that he had forgotten to turn off the convector heater in the small office or kitchen at the rear of the premises. His long time assistant, Vera McKenna, confirmed this account. He returned through the premises and turned off the heater by switching the rocker switch to zero and turning the thermostat to zero as well. This, he said, was his usual way. He is emphatic that he turned the heater off that night. He admits he did not unplug the heater. He does unplug its successor since that time.

5. It is agreed that in this confined space a host of flammable materials including polypropylene bags, cardboard, papers and timber was stored in very close proximity to the heater.

6. The following evening the fire broke out in these premises and it is agreed had its source with this heater in this room. I have heard two conflicting theories as to how this fire occurred from two distinguished engineers equally convinced of the validity of their respective theories and the falsity of the other. I do not think I have to choose between them for the following reasons.

7. It is agreed by both that the fire in all probability was caused by the heater. In one theory it was caused because the heater was left on, very close to flammable materials for thirty hours. On that theory it became so hot on its casing that it transformed into both a convector and a radiant heater and thus ignited the adjacent flammable material. In the other theory, the heater's switching mechanism malfunctioned and ignited. The fire caused thereby melted and ignited the surrounding plastic switch housing which in turn ignited the flammable material packed close by. This defective switch phenomenon could have occurred whether the heater had been turned down to zero as the defendant contends or left on as the plaintiff alleges. However, it is common case and obvious that the fire could not have occurred had the defendant unplugged the heater.

8. Was there a duty in the circumstances on the defendant to unplug the heater? The instruction manual for this machine *inter alia* states the following;

- (a) When the appliance is not in use, switch it off and unplug it.
- (b) Place the heater on a flat surface ... away from flammable objects.
- (c) Use the heater only for domestic purposes and for no other application as it could be dangerous.
- (d) Do not operate the heater near flammable objects.
- (e) Do not attach the heater to extension cables or multiple outlets.
- (f) The heater gets extremely hot during operation and should be handled with care. Never put flammable objects on or near the appliance as they could be set alight.

These seem to me to be the warnings most relevant to this case. In each case they were ignored by the defendant.

9. I do not think that all electrical appliances need to be unplugged when not in use. Heaters including radiant and convector heaters do however. This must be particularly so where the heater is located in a small area and close to flammable materials. It is the breach of this fundamental safety requirement, more than adequately emphasised in the instruction manual, together with the breach of the other warnings contained therein that caused the fire which damaged the plaintiffs premises. Thus the fire did not accidentally occur

but happened as a result of the negligence of the defendants, its servants or agents. In the result, the defendant is not entitled to the protection of The Fires Act and I must find for the plaintiff and will make the appropriate damages order in the amount agreed of €185,000.