

THE HIGH COURT

[2016 No. 5401 P.]

BETWEEN

MARIE DICKER

PLAINTIFF

AND

THE SQUARE MANAGEMENT LIMITED AND

PICKERINGS LIFTS LIMITED

DEFENDANTS

JUDGMENT of Mr. Justice Barr delivered on the 7th day of October, 2016

Introduction

1. This action arises out of an accident which occurred on 31st August, 2012, at a shopping centre known as The Square Town Centre in Tallaght. The plaintiff had entered a lift at the premises in the company of her young son. The doors malfunctioned on the lift causing the plaintiff to be trapped in the lift for a short period of time. The plaintiff alleges that as a result of this accident, she was caused to suffer psychiatric injury in the form of an adjustment disorder, with some depressive symptoms and some symptoms of Post Traumatic Stress Disorder. She has been receiving counselling on a monthly basis since 2014. It is estimated that the plaintiff will require a further 18 months in therapy to reach a full recovery.

2. Liability for the accident is not in issue in these proceedings. There is no claim of contributory negligence made against the plaintiff.

The evidence at trial

3. The plaintiff is 54 of age. She is a married lady and has 3 children. On 31st August, 2012, she attended at the Square Town Centre, Tallaght, Dublin 24 to do some shopping with her young son. In the course of doing her shopping, the plaintiff and her young son entered a lift on the third floor and were intending to travel down to the ground floor. The plaintiff stated that the doors on the lift closed behind her and that the lift moved down some distance. However, it then came to a halt and when the plaintiff pushed the button to open the doors, they would not open. The plaintiff stated that with time she became more concerned for the safety of herself and her son. She stated that she pressed the alarm bell on the control panel, but nobody came to her assistance over the intercom. She then banged on the door of the lift and shouted out, but no-one appeared to hear her. The plaintiff stated that she then became quite concerned for her safety and telephoned her husband. He suggested that she should ring the emergency services by placing a 999 call.

4. The plaintiff was also anxious due to the fact that her mobile phone was operating on low battery and she had very little credit left on it. However, she was able to get through to the emergency services, but was not able to identify the precise lift in which she was, due to the fact that there was no identification mark concerning the lift on the inside of it. While placing the call, a member of the security staff at the premises managed to open the doors a little bit and then by wedging his foot in between the doors and by pushing hard, he was able to open them fully, so as to enable the plaintiff and her son to get out of the lift.

5. The plaintiff stated in evidence that her ordeal was quite prolonged and it felt to her as if she had been trapped in the lift for approximately 20 minutes. However, in the course of the defendants' evidence, a copy of an internal CCTV recording inside the lift, showed that she had in fact only been in the lift for 4 minutes and 35 seconds.

6. Having been released from the lift, the plaintiff stated that she was upset and felt weak. She was brought to the Customer Service desk by the member of security staff. There she was attended to initially by a lady called Marie. The plaintiff stated that she was not treated very well at the Customer Service desk. She was not offered a chair and they did not seem to take her complaint all that seriously. However, after some time, another security man arrived and he was more sympathetic. She had to wait until a more senior security man, called Pat, arrived. He took details of the incident. He said that the head of security, a Mr. Pat Edgeworth, would be in contact with her during the week. The plaintiff and her son were given lunch vouchers to use in the shopping centre.

7. The plaintiff stated that when she went home, she told her husband what had happened. She stated that at this time, she was very upset and distressed by the experience. This was partly due to the fact that as a child, she had suffered from claustrophobia. In addition, there had been an incident in her childhood, when she was being taught to swim, when she was physically thrown into the water by an instructor and, as a result, she had a fear of putting her head under water. She also did not like pulling clothes on over her head.

8. The plaintiff visited her GP, Dr. Lindsay, at Walkinstown Medical Centre that evening. In his medical report he stated that when he saw the plaintiff, she was still distressed and felt anxious and restless. He had a long chat with the plaintiff and discussed her distress and her obvious fear of being trapped. He prescribed Stilnoct 10mg to help her to sleep for approximately one week.

9. There was some controversy as to whether the plaintiff was seen by her GP on a second occasion. The plaintiff stated that in the weeks following her first visit to the doctor, she continued to feel very anxious and distressed. She was not able to go into rooms without leaving the door open. She could not go into the fitting rooms in shops, as she could not bear to have the fitting room door closed. When she went to use the toilet in public toilets, she was afraid to lock the door for fear that it would not open again. She has to prop her handbag against the door to keep it closed. The plaintiff stated that when these symptoms did not settle, she returned to her GP, who prescribed some antidepressant medication called Lexapro, which she took for approximately one week. The defendants pointed out that in the only medical report furnished by Dr. Lindsay dated 24th September, 2012, there was no mention of the plaintiff returning to see him. Furthermore, Dr. John O'Connor, the consultant psychiatrist retained on behalf of the defendant, stated that it was highly unlikely that the GP would prescribe Lexapro for only one week, as it would not be effective when taken for such a short period of time.

10. The plaintiff stated that at the second consultation, Dr. Lyndsay suggested that she might benefit from some counselling. However, he did not arrange any counselling, but left it to the plaintiff to do so. The plaintiff stated that she did a search on the internet and came across a lady who was going to set up as a counsellor in the Rathmines area. She made contact with the lady who

agreed to take her on. However, some short time later, the lady phoned her back and stated that she had altered her plans and she was not going to set up in private practice after all.

11. The plaintiff then obtained the name of another therapist, whom she saw on a number of occasions. However, she did not remain with this lady, as she did not feel that she had enough experience to deal with her problems.

12. The plaintiff stated that at this time, she was unable to travel in lifts at all, when entering a room she would always have to have an exit open near her, she was unable to go into the stock room at her place of business without keeping the door open with boxes, she could not lock the toilet door, she could not wear tight fitting clothing and had to buy clothes that were one or two sizes too big for her and she was not able to pull garments over her head.

13. The plaintiff stated that she was quite distressed by her ongoing symptoms. However, she had been able to manage with the demands of her work as a supervisor in a department store in Dublin. She stated that there would be approximately 10 people working under her. She did not miss any time from work as a result of the accident.

14. In August, 2014, the plaintiff came under the care of Dr. Caroline Goldsmith, Clinical Psychologist. Dr. Goldsmith had done her undergraduate degree through the Open University. She had then done a Masters in Positive Psychology in the University of London. She had done her doctoral degree in Clinical Psychology in the University of Sheffield. When she first saw the plaintiff she came to the conclusion that the plaintiff was suffering from an adjustment disorder, with mixed anxiety and depressed mood symptoms. She stated that at that time she was of the opinion that the plaintiff needed immediate and ongoing psychotherapy. To this end, the plaintiff has been receiving counselling from Dr. Goldsmith on a monthly basis down to the present time.

15. When reviewed approximately one year later in September, 2015 Dr. Goldsmith noted that at that examination, the plaintiff talked about how therapy had improved her general outlook and had helped her to cope with the stress of her trauma. However the plaintiff still suffered from a phobia of lifts, a fear of having anything put over her head (such as tight clothes) and claustrophobia. However the plaintiff stated that her fears were becoming more manageable and she could see a day in the future, where she would no longer be completely ruled by her phobias. This contrasted with the position which had existed a year previously, when the plaintiff expressed the view that she could never imagine that she would one day get past her difficulties.

16. Dr. Goldsmith noted that the plaintiff was still somewhat stressed and continued to have phobic reactions in her everyday life. She had some increased capacity to participate in enjoyment of life with her work and family, but was still not functioning as she would ideally like to be. There continued to be somewhat of a preoccupation with making sure that she was in, and going to, a safe place with no danger of being confined in any way. She still suffered from anxiety, claustrophobia and panic attacks related to the incident when she was trapped in the elevator. Although the panic attacks had become less frequent, this had affected her relationship with her husband and family, as she could not go out and enjoy life with them due to her preoccupation with making sure that she had an exit from any place that she may find herself in. She noted that the plaintiff was hopeful about the future and expressed the view that she could one day see herself being free from phobias and trauma. Dr. Goldsmith remained of the view that she suffered from an adjustment disorder, with mixed anxiety and depressed mood. She stated that it was usual in these situations for people to require counselling for a total period of approximately 12 – 36 months.

17. Dr. Goldsmith issued a third report from an assessment carried out on 14th July, 2016. She found that the plaintiff was more cheerful. The plaintiff felt that she had made significant improvement, particularly in relation to her confidence and functioning. She had forward-looking goals in her plans for the future regarding work and family life. She stated that she saw much improvement from the previous year. She stated that she was now enjoying life much more. She continued to suffer from anxiety around lifts, but she had been able to get into a lift on two occasions in the company of members of her family. This was a significant improvement. However, she continued to have difficulty with anything put over her head (such as tight clothes) and claustrophobia. She said that these fears were becoming more manageable and she was able to see a day in the future where she would no longer be completely ruled by her phobias and fears. She was able to go into the stock room at work without any appreciable difficulty. She was able to lock some doors when using a public toilet, if she was sure that the locking mechanism was easy to open. She continued to buy clothes that were a few sizes bigger, so that she would not feel confined in them.

18. However Dr. Goldsmith stated that it was noteworthy that the plaintiff stated that in times of panic (which were becoming less), when a perceived threat encompassed her mind, she sometimes lost the ability to rationalise, she felt out of control and unable to get her mind back on track. The description given by the plaintiff signified traits of PTSD, although she did not meet the criteria for a full clinical diagnosis of that disorder. Dr. Goldsmith noted that she appeared to be a lady who was still somewhat stressed, with some phobic-type reactions to her present situation. She had some increased capacity to participate in enjoyment of life with her work and family; however she was still not functioning as she would ideally like to be either socially or emotionally. There was still somewhat of a preoccupation with making sure that she was in, and going to, a safe place, with no danger of being confined in any way. The doctor was of opinion that the plaintiff continued to suffer from anxiety, claustrophobia and panic attacks, although these were becoming much less and were further apart, related to the incident of being stuck in the elevator.

19. Dr. Goldsmith noted that subsequent to the incident the plaintiff had been diagnosed with an adjustment disorder, with mixed anxiety and depressed mood. Her current presentation of symptoms was best described as traits of PTSD related to memory impairment, hypervigilance and overreacting to trauma-related stimuli. The plaintiff had participated in ongoing intervention in the form of Cognitive Behavioural Therapy to treat her heightened state of anxiety, stress and phobia. She continued to respond well to her treatment regime. Typically treatment could take 12 – 36 months from the date of commencement of treatment. The plaintiff was then 20 months into her treatment programme and she had shown a good response due to dedicated attendance and participation in sessions, off-site exercises and practice which it was expected would continue for a further 12 – 18 months. Dr. Goldsmith noted that she continued to see the plaintiff on a monthly basis. She was hopeful for a good outcome to the plaintiff's treatment.

20. Evidence was given on behalf of the defendant, by Dr. John O'Connor, Consultant Psychiatrist. He saw the plaintiff on one occasion on 5th July, 2016. As already noted, he doubted that the plaintiff had been prescribed Lexapro for a period of one week, as the antidepressant drug would not be effective if taken for such a short period.

21. He stated that he did not find any symptoms of an anxiety disorder when he saw the plaintiff. He stated that if she had such a disorder, the plaintiff would have a fast heartbeat, quickened breathing and would have nausea and vomiting and could also have numbness in her legs and headaches. None of these symptoms had been found in the plaintiff's case. He stated that on examination, she had no signs of suffering from anxiety or agitation. He felt that her mood was euthymic at the time of his consultation with her. He stated that he had been led to believe that the incident in the lift had lasted for some 20 minutes. If it only lasted for 4 minutes and 35 seconds, this was a much shorter period. He accepted that it would not be unusual to have some anxiety after such an incident. However, he would have expected the anxiety to last for only a number of hours and perhaps, at a maximum, a day or two.

He also noted that the plaintiff had not missed any time from her work as a supervisor in a department store, which was a demanding job, as she had 10 people working under her.

22. Dr. O'Connor stated that he did not find any signs of a psychological disorder. Nor did he find any evidence of a psychiatric illness. He stated that if the plaintiff had suffered an adjustment disorder, she would have had emotional symptoms with marked distress in excess of what would be normally expected, together with marked impairment of social and work functioning. He stated that this was not present in the plaintiff's case.

23. In cross examination, Dr. O'Connor stated that if a person was suffering from an adjustment disorder, the stress experienced must be of sufficient intensity. He stated that all people suffer from anxiety from time to time. That was natural. It was put to him that before the accident the plaintiff had worked well without suffering undue anxiety; he accepted that that appeared to be the case. It was put to him that the accident had had a marked effect on the plaintiff's life. Dr. O'Connor stated that he had not seen the plaintiff previously. He noted that she had been attending Dr. Goldsmith for two years. She had responded well to counselling. He stated that counselling and CBT would be the treatment of choice. Usually CBT would be given over 6 – 10 sessions. He accepted that the counselling appeared to be working in this case.

24. In re-examination, Dr. O'Connor stated that the Mental State Examination results as recorded by Dr. Goldsmith in her first report, did not fit the description of someone who was unduly anxious. There was nothing particularly unusual there, and there was no sign of anxiety features.

25. He stated that the plaintiff's habit of looking for exits when she entered a crowded room, was not uncommon. He stated that he would do the same when he goes to the theatre. He did not think that all of the plaintiff's symptoms were caused by being trapped in the lift for a little over 4 minutes. He stated that many people have issues in their lives. The plaintiff suffered from claustrophobia when she was a child. The plaintiff was dealing with this condition through counselling.

26. Finally, evidence was given on behalf of the defendant by Mr. Pat Edgeworth, the operations manager at the Square Town Centre in Tallaght. He stated that he investigated the incident after it had been reported to him. While he had no recollection of actually meeting the plaintiff herself, he stated that he must have authorised the giving of luncheon vouchers to her, as only he was authorised to direct the issuing of such vouchers. He stated that when the incident was reported to him, there was no report of any injury having been suffered by the plaintiff or her son.

27. He produced the CCTV footage which had been taken from inside the lift. It showed that the plaintiff had been trapped within the lift for 4 minutes and 35 seconds.

28. The court viewed the CCTV footage. It showed the plaintiff and her son entering the lift. Her son seemed to be in reasonably good form and was moving around the lift. However, after a short time, it became clear that the plaintiff could not exit from the lift. She was shown pressing the buttons on the control panel a number of times. Her son stopped moving about and appeared to become quiet. The court was satisfied that this was indicative of the fact that his mother was suffering some distress at the time. The CCTV footage showed her making a number of calls on her mobile phone. It also showed her banging on the lift door.

29. Mr. Edgeworth stated that when an incident is reported to him, he would decide whether it was necessary to take the matter further with the customer. He had no recollection of calling the plaintiff. The plaintiff, in her evidence, had stated that no-one from the shopping centre had contacted her after the incident.

30. In relation to the plaintiff's allegation that the alarm button did not operate, he stated that it was necessary to press the bell continuously for 3 seconds in order for the call to be routed through to the lift monitoring centre. He stated that it would be unusual for the security man to force the doors open, without being called. However, he accepted the plaintiff's evidence that the security man had to open the doors and that he used his hands to do so.

Submissions

31. Counsel for the defendant submitted that this case was similar to the facts which arose in *Fletcher v. Commissioners of Public Works* [2003] 1 I.R. 465 where the Supreme Court ruled that an irrational fear that one would suffer an injury at some future date, which gave rise to psychiatric symptoms was not compensatable in damages. It was submitted that in this case, the plaintiff had had an irrational reaction to being trapped in the lift and that therefore she should not be compensated in damages.

32. In response, counsel for the plaintiff submitted that in this case, one was not dealing with a situation where a person had a fear of suffering a physical injury at some date in the future, but rather the plaintiff had in fact suffered a psychiatric injury as a result of being trapped in the lift. That this plaintiff had a reaction to the incident which was perhaps out of line with the norm, due to the fact that she had suffered from claustrophobia as a child, put her in the position of a person with an "eggshell skull" and the defendant had to take the victim as he found her. Therefore, it was submitted that the plaintiff was in fact entitled to be compensated for the psychiatric injury which she suffered as a direct consequence of being trapped in the lift.

Conclusions

33. On 31st August, 2012, the plaintiff was trapped in a lift at the defendant's premises for 4 minutes and 35 seconds. In normal circumstances, this would not be seen as being a particularly serious incident, giving rise to any serious physical or psychiatric injury. However, in this case, the plaintiff had suffered from claustrophobia when she was a child. As a result, this accident caused her to suffer psychiatric symptoms that may be regarded as being somewhat outside of the norm.

34. It appears that the plaintiff suffered from the anxiety symptoms which have been set out *in extenso* above. Some two years after the accident, she came under the care of Dr. Caroline Goldsmith, Clinical Psychologist. She diagnosed the plaintiff as having suffered an adjustment disorder, with some depressive symptoms and latterly some symptoms suggestive of PTSD.

35. The plaintiff has received counselling from Dr. Goldsmith on a monthly basis since August, 2014. Since that time, she has made considerable improvement in relation to her symptoms. In particular, she has been able to use a lift on two occasions, without suffering any adverse *sequelae*. Dr. Goldsmith is of the opinion that the plaintiff will probably make a full recovery, but will require counselling for a further 18 months.

36. It is noteworthy that the plaintiff only saw her GP on two occasions in 2012. She has not required any medical, as distinct from psychological, intervention since that time.

37. The plaintiff has a responsible job as a supervisor in a large department store in Dublin. She did not miss any time from work as a

result of the accident.

38. There is a difference of opinion between Dr. Goldsmith and Dr. O'Connor as to whether the plaintiff has suffered the symptoms and psychiatric *sequelae* as referred to by Dr. Goldsmith. Dr. Goldsmith struck me as a diligent practitioner, who has taken considerable care to diagnose the plaintiff's psychiatric *sequelae*. She has seen the plaintiff on a monthly basis since August, 2014. Over the years, she has built up a close relationship with her patient. This has given her a deep insight into the plaintiff's psychiatric difficulties. On the other hand, Dr. O'Connor only saw the plaintiff on one occasion in July 2016, almost four years post-accident. Insofar as there is a conflict between Dr. Goldsmith and Dr. O'Connor, I prefer the evidence of Dr. Goldsmith in that regard. Nevertheless, I do have regard to the fact, already mentioned, that the plaintiff did not think it necessary to return to her GP after the two occasions in 2012 already referred to.

39. I note that the plaintiff has made considerable improvement in the last two years. It is likely that she will achieve a resolution of her symptoms within a further 18 months. The fact that it will take this long was caused by the fact that the plaintiff only came under the care of Dr. Goldsmith in 2014. The accident caused an exacerbation or resurfacing of the claustrophobia, which the plaintiff had suffered as a child. It must be recognised that some proportion of the treatment which the plaintiff has been receiving from Dr. Goldsmith, is directed not to the effects of the accident, when she was trapped in a lift in August, 2012, but deal with the underlying conditions of claustrophobia and anxiety, which had existed beneath the surface since she was a child. Thus, a significant proportion of the treatment which the plaintiff has received to-date and will receive into the future, is dealing with that underlying condition, which was not caused by any wrongful act on the part of the defendants.

40. I do not accept the defendant's submission that this case is governed by the decision in *Fletcher v. Commissioners of Public Works* [2003] 1 IR 465. I am satisfied that in this case the plaintiff has suffered a psychiatric injury as a direct result of being trapped in the lift. The extent of this injury was somewhat out of the norm, due to the fact that the plaintiff had suffered from claustrophobia as a child. Her present treatment is treating not only the direct *sequelae* of being trapped in the lift, but also the pre-existing problem of childhood claustrophobia, which resurfaced as a result of the accident.

41. In reaching a decision on the quantum of general damages in this case, I have had regard to the judgments of the Court of Appeal in *Payne v. Nugent* [2015] IECA 268, *Nolan v. Wirenski* [2016] IECA 56 and *Shannon v. O'Sullivan* [2016] IECA 93. In the circumstances, in an attempt to be fair to both parties, I award the plaintiff general damages of €20,000.00. To this must be added the sum of €5,060.00 as special damages. This latter sum was in respect of counselling and travel expenses, both to-date and into the future. This gives an overall award of €25,060.00.