

**TRANSCRIPT OF PROCEEDINGS**

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**Neutral Citation Number: [2018] EWHC 4004 (QB)**

Ref. QB/2018/0135

**IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION**

The Royal Courts of Justice  
Strand  
London

**Before THE HONOURABLE MR JUSTICE MARTIN SPENCER**

**IN THE MATTER OF**

**SHELBOURNE (Claimant)**

**- v -**

**CANCER RESEARCH UK LTD (Defendant)**

**MR GROVER appeared on behalf of the Claimant**  
**MR WHITE appeared on behalf of the Defendant**

**JUDGMENT**  
**11<sup>th</sup> DECEMBER 2018, 13.08-13.20**  
**(AS APPROVED)**

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MR JUSTICE MARTIN SPENCER:

1. This is a renewed oral application for permission to appeal against the decision of Mr Recorder Catford, delivered at the Southend County Court on 2 May 2018, when he found that the defendant, Cancer Research United Kingdom, was not liable for injuries sustained to the claimant, Sandra Shelbourne, at a Christmas works party that took place on 7 December 2012. The accident occurred when another employee of the defendant, one Robert Bielik, when inebriated, picked the claimant up without her consent and then dropped her causing her a serious back injury.

2. Permission to appeal is sought on the basis that the learned Recorder directed himself or mis-assessed the evidence, both in relation to the direct duty of the defendant owed to Mrs Shelbourne in relation to the organisation of the works party and also in relation to the question of whether the defendant was precariously liable for the actions of Mr Bielik.

3. It is submitted that there is an arguable appeal with a good prospect of success, in relation to three aspects of the defendant's duty towards the claimant. Firstly, the duty to devise and implement an adequate risk assessment and, in particular, risk assessment addressing the risk arising from consumption of excess alcohol by those attending the party. Secondly, in relation to the duty on those enjoined with the task of supervision to intervene where inappropriate behaviour took place. Thirdly, the duty of care in relation to supervision.

4. Without rehearsing, in detail, the submissions which have been made, which are more properly to be considered at the full hearing of the appeal, in my judgment, there is sufficient in the matters raised by Mr Grover on behalf of the claimant, for me to conclude that permission to appeal should be granted. In particular, in relation to the risk assessment, the defendant did consider that it was under a duty to carry out a risk assessment because one was indeed carried out by Dr Hatfield. Therefore, addressing this question, on the basis of the defendant's own perceived need to devise a risk assessment, the question is whether the risk assessment adequately addressed the risk arising from alcohol consumption. The fact is that the risk assessment addressed alcohol consumption in relation to one very narrow and specific area - that is the risk of employees re-entering the laboratories of the defendant - but not what might be thought to be the more immediate and realistic risk of inappropriate behaviour as a result of alcohol consumption at the party. The failure to address that was it is argued exhibited by the fact that the behaviour of Mr Bielik in relation to Mrs Shelbourne was preceded by inappropriate behaviour even in relation to one of those who were attending the party in a supervisory role; that is Michelle Pugh. This was behaviour which should arguably have been regarded as wholly inappropriate and potentially dangerous and yet nothing was done, no words were exchanged with Mr Bielik, no warning was given to him as to his activity. It was not made clear to him that the behaviour was inappropriate, with the result that he may have thought there was nothing wrong with what he did in relation to Mrs Pugh and therefore was at liberty to repeat the behaviour in relation to Mrs Shelbourne.

5. The fundamental submission, on behalf of the claimant, is that the duty arising out of a risk assessment is a preventative and proactive one and that it is not enough to react to

behaviour, but that risk involves foreseeing potential harm and taking measures to minimise that harm. Of course no risk can be wholly avoided, but the law requires that a reasonable employer to recognise situations where there is risk of potential harm and take reasonable steps to minimise that risk, and it seems to me, at least arguable, that in that regard the defendant failed to comply with its duty to this claimant.

6. So far as the question the carer's liability is concerned, it was made clear in the recent decision in *Bellman v Northampton Recruitment Ltd* [2018] EWCA Civ 2214, that the question of whether there is a sufficient connection between the position in which the wrongdoer is employed and his wrongful conduct, so as to make the employer liable under the principle of social justice which requires the court to conduct an evaluative judgment, is a question of law based upon the primary facts as primary. Thus, this is not merely a question of fact for the judge but, the judge having made findings of fact, it is then a question of law whether or not the sufficient connection does or does not exist.

7. Whilst there are always precedents which come on one side of the line or another and which may or may not be helpful, it seems to me that with a works related party where the employer has provided the occasion and opportunity for the wrongful conduct, although that is clearly on the law by itself insufficient, it is an important starting point in judging whether or not the activity is then sufficiently connected with the position in which the wrongdoer is employed.

8. The location of the conduct is also a further factor - although not a governing factor - so that even conduct away from the work place may give rise to precarious liability, but of course this was conduct at the work place, and it seems to me that it is at least arguable that the relationship between these two employees - both employed by CRUK, both attending a works social event and both expected to behave in a way which was consistent with the reputation of the defendant and the responsible and serious nature of the work carried out by the defendant - was such as to give rise to a reasonable expectation, on the part of the claimant, that Mr Bielik would behave appropriately and that if he failed to do so, that would be something for which his employer would be responsible at that particular event, at that particular location and in those particular circumstances.

9. I do not suggest for a moment that the facts of this case are sufficiently clear one way or the other for it to be appropriate for me to give any kind of indication as to which way an appellate court should decide the case. What I do say is that it is a question of law and that, in my view, it is arguable that the learned Recorder erred in his assessment in relation to these circumstances and therefore the claimant should certainly have the right to argue the point on appeal, and for those reasons I give permission.

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*We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.*

This transcript has been approved by the Judge