[2020] IEHC 660

THE HIGH COURT

Circuit Court Record: 2016/466

BETWEEN

SHIRLEY FARRELL

PLAINTIFF

– AND –

MINISTER FOR AGRICULTURE, FOOD AND THE MARINE

– AND –

APELONA HSG LIMITED

DEFENDANTS

JUDGMENT of Mr Justice Max Barrett delivered on 15th December 2020.

1. Ms Farrell is a civil servant employed by the Department of Agriculture, Food and the Marine. The first named defendant requires no introduction. The second named defendant is a limited liability company and was at all material times engaged as a facilities manager by the first-named defendant.

2. On the evening of 22 October 2015, Ms Farrell left the Backweston premises in Celbridge where she works. These are large premises and there were about 10 other employees in the premises at the time. When Ms Farrell stepped outside there was no light from the waist-high lights that lead from the said office premises to the nearby car park, nor were any of the standard streetlights lighted. The whole area was, she maintains, in pitch darkness. Ms Farrell proceeded towards her car and had made her way safely along circa. 119 yards of the circa. 120 yard-distance to the car. This was a route that she had taken on every day that she was at work for the previous few years. Just before she got to the car she trod on something – she thinks it was leaves – and fell backwards, throwing out her hands to stop her fall but doing something to her left ankle as she fell. She got up in pain, made it to her car and sat in the car for some time, crying and in shock. She made a mobile phone call to her then teenage daughters to tell them what had happened and that she would be late coming home. She also noticed muck on her tights that she considered was (and it is) consistent with Ms Farrell's sense that she had slipped on leaves. Falling and fallen leaves are a familiar autumn feature and the court does not accept the contention by the first named defendant that one or more leaves could not have blown to this part of the car park: leaves can be blown by the wind from pretty much anywhere to pretty much everywhere.

3. In any event, Ms Farrell managed to drive home and the next day took a day's annual leave (in truth she would seem to have been entitled to sick leave) to stay home and recuperate. It subsequently turned out that Ms Farrell had in fact fractured the lateral malleolus of her left ankle. It was initially treated by affixing a below knee plaster cast and issuing crutches to Ms Farrell. As a result of this treatment she was unable to drive or to attend work. The cast was removed on 11 November 2015 and Ms Farrell was then treated through being provided with a walking boot immobiliser splint and crutches. She had difficulty in getting about and in managing stairs. Moreover, even after the boot was removed she was unable to resume walking for pleasure until May 2016 and, though long habituated to doing long distance walks, she finds that this is no longer possible: after a

few kilometres she finds that her ankle acts up and hurts her too much to continue. A keen dancer, she has not returned to her dancing as she is afraid that she will land wrongly on her ankle occasioning pain to herself. Historically, she had difficulty sleeping because of the pain from her ankle and she has received physiotherapy. Overall, therefore, she would seem to have suffered a significant and continuing loss of amenity of life in the ways just described.

4. There were three medical reports before the court, each of which has been considered by the court. In deference to Ms Farrell's right to privacy the court does not consider them in detail herein beyond noting that the reports of Mr Leonard and Dr Gherlea point to a full recovery, though Dr Gherlea observes that such psychological injuries as *"may have been sustained still go largely unnoticed or ignored".*

5. In the within proceedings, Ms Farrell claims that the defendants, their servants or agents were guilty of negligence and breach of duty (including statutory duty).

6. At the hearing, the engineers called for both sides were agreed that the car park is in physically pristine condition. A senior operations employee from the second-named defendant indicated that the lights had been working on the Friday before the day on which the injury to Ms Farrell occurred. The court struggles to see the relevance of this. Of greater relevance is that the undisputed evidence before the court shows that there had been a noted difficulty with the lighting in the course of October 2015. The operations employee also indicated that if there was a major outage of the type described by Ms Farrell this would have triggered various alarms. However, there was no evidence before the court that directly controverted Ms Farrell's evidence that it was pitch black when she left work on the night of her injury, and the fact that alarms might be expected to have triggered if a lighting failure of the type described by Ms Farrell in fact occurred does not mean that the events as described by her did not in fact occur simply because that anticipated triggering of alarms did not also occur.

7. Ms Farrell was asked at the hearing why she did not return inside the office premises instead of making her way to her car in the darkness. Ms Farrell indicated that she knew that there was a security man on duty but she did not know where he was in the building as he has to walk around the building in the evening-time doing his allocated tasks. She indicated that the best she might have done was to return to her desk, power up her computer and send an email looking for assistance. However, a single mother of two girls then in their teenage years, she was keen to be off home. Ms Farrell was also questioned as to why she did not use her mobile phone to light her way from the office premises to the car park. Ms Farrell indicated that in 2015 she had a very primitive mobile phone with a weak screen light that would have been useless to her in this regard.

8. It seems to the court that the following observations might usefully be made arising from the foregoing:

(1) Ms Farrell's unchallenged evidence is that the outside area and car park were completely unlighted when she exited her place of work on the night of the incident in issue.

(2) the first-named defendant appeared to be of the view at the hearing that because there is a contract of indemnity between itself and the second-named defendant, it follows that any liability presenting must be ascribed to the second-named defendant. That, with respect, is not so, the court recalling in this regard the following observations of O'Flaherty J. for the Supreme Court in *Connolly v. Dundalk UDC* (Unreported, 19th November 1992), at 2-3:

> *"In the High Court it was argued on behalf of the Urban Council that, having engaged expert independent contractors in relation to special installations at their waterworks, they should be acquitted of any negligence. This is as regards the substantive action by the plaintiff against the Urban Council as his employer. This submission was rejected by the High Court judge and I would endorse his finding which it was not sought to disturb at the hearing of the appeal. The common law duties to take reasonable steps to provide safe plant and a safe place of work – I speak of the place of work as being part of the employer's property, which is the instant case – are such that they cannot be delegated to independent contractors so as to avoid the primary liability that devolves on employers to make sure that these duties are carried out. These are responsibilities which cannot be put to one side; they must remain with the employer. They are owed to each individual employee. That is not to say, of course, but that an employer on occasion is entitled to and very often should get the best expert help that he can from an independent contractor to perform these duties. If he does so and the contractor is negligent causing injury to an employee, the employer retains a primary liability for the damage suffered though if he is not himself negligent he may obtain from the contractor a contribution to the damages and costs which he has to pay which will amount to an indemnity."*

(In fact the first and second-named defendants in the within proceedings concluded an *a priori* general indemnification arrangement that appears to extend to the type of circumstances herein presenting).

(3) section 15(3) of the Safety, Health and Welfare at Work Act 2005 requires of the first named defendant *vis-à-vis* an employee such as Ms Farrell that it "*shall ensure, so far as is reasonably practicable, that the place of work, the means of access thereto, or egress therefrom, and any article or substance provided for use in the place of work, are safe and without risk to health*". Mindful of the above-quoted observations of O'Flaherty J., it seems to the court that the just-mentioned duty was not observed by the first-named defendant in the present case. The court does not see that the generally pristine physical nature of the car park in which Ms Farrell fell in any way meets the failure, on the night that the lights failed, to

provide Ms Farrell with a safe means of egress from her office premises that did not occasion risk to her health.

(4) the court was referred by counsel for the second named defendant to the decision of the Court of Appeal in *Byrne v. Ardenheath Company Ltd* [2017] IECA 293. However, a consideration of the facts of that case, as outlined at para. 5 of the judgment of the Court of Appeal and in the last sentence of para. 6, shows it to be a case that, factually, is radically different to, and entirely distinguishable from, the within proceedings.

(5) in the submissions for the defendants, there seemed to be what counsel for Ms Farrell described as "*a backhanded suggestion*" that the only evidence that the outside of the work premises was in darkness on the night of the fall was that of Ms Farrell. However, the court notes that there was no suggestion made to Ms Farrell in the course of her oral testimony that the path to the car park and the car park itself were not in fact in darkness on the night in question. Additionally, no witness was called by either defendant to demonstrate that on the evening in question the lighting was fine and/or that the path leading to the car park and the car park were otherwise well lit.

(6) the sole witness from the operations division of the second-named defendant was not present on the night in question and merely relied on the records of others who presumably could have been called to give evidence and were not.

(7) much was made by the defendants of the fact that Ms Farrell would have had the option of going back in and looking for the security man. Ms Farrell indicated that there was no point in doing this because the said security man could have been anywhere in what is a very large building and there has been no evidence from the said security man to say, *e.g.*, 'In fact I was in my office (or at the front desk) at the relevant time or was otherwise available'.

(8) the essence of the case is that Ms Farrell came out at about 7 p.m. on a late-October evening; there were perhaps ten employees left in what is a large building. There were no lights outside and she had a decision to make, *viz.*, whether to proceed to her car or to find a security man or perhaps to return to her desk, power up her computer and send an email seeking assistance. In fact, she was able to make her way to her car, following exactly the same route that she had followed for several years previously to where her car was parked and stumbled at about the 119th of 120 yards. She then fell because she could not see where she was going, slipping on something or other (Ms Farrell referred to the mud on her tights as indicating to her – and she has been completely consistent on this point – that to her mind she had likely slipped on one or more leaves). The court can and does, on the balance of probabilities, take the view that Ms Farrell's view that it was one or more leaves which caused her to slip is consistent with the time of year and that such an event was consistent with the mud that was on her tights afterwards.

9. Having regard to all of the foregoing, the court finds that there was a breach by the first named defendant of the duty arising for it (as employer) under s.15 of the Act of 2005 and also negligence on the part of the defendants.

10. The parties indicated at the hearing that if the court made a finding of liability, it should assess the liability in damages without hearing further from the parties, counsel for Ms Farrell pointing the court to the *Book of Quantum* (2016) in this regard. Having regard to the *Book of Quantum*, p.66, the court considers that the evidence before it points to Ms Farrell having suffered a moderately severe fracture that has resolved but with ongoing pain and suffering. She appears to have suffered a significant loss of amenity in terms of her dancing and, more particularly perhaps in terms of her long-term walking which has effectively ended, her left foot proving too painful after a period of walking to sustain any more walking. The court therefore considers that her injuries are at the higher end of moderately severe and merit an award in damages, consistent with the *Book of Quantum*, of €75,000.

11. Unless the parties wish to argue otherwise, the court proposes to order that costs should follow the event and that costs should therefore be awarded in favour of Ms Farrell. The parties might advise the court by email whether they wish to argue the issue of costs. Otherwise the court will order as indicated.