

**THE HIGH COURT**

**[2023] IEHC 476**

**[2013/9386 P]**

**BETWEEN**

**BRENDAN BLAKE**

**PLAINTIFF**

**AND**

**THORN MOTORS LIMITED T/A MICHAEL TYNAN MOTORS**

**DEFENDANT**

**EX TEMPORE JUDGMENT of Ms. Justice Reynolds delivered on the 29<sup>th</sup> day of June, 2023**

**Introduction**

1. This judgment concerns the liability issue only in respect of the plaintiff's proceedings.
2. The plaintiff's claim is for damages arising consequent upon injuries sustained by him whilst carrying out renovation works in 2011 at the defendant's request. Undoubtedly, the plaintiff sustained severe personal injuries when he fell from a ladder which was caused to come away from the wall at the defendant's garage premises.
3. At the very outset, it was conceded that there was contributory negligence on the part of the plaintiff in failing to have any regard for his own safety on the occasion in question.

4. The only issue for the court to resolve is whether there was any negligence at all on the part of the defendant.

5. Having considered all the evidence, which was relatively brief and heard over a period of two days, I have concluded that the plaintiff was the author of his own misfortune for reasons set out below.

### **The parties**

6. The plaintiff is a self-employed tradesman having commenced business under the style of “Blake Homeworks” in 2006. Prior to that he had worked with SR Technics, a service provider for aircraft, engines and components along with engineering services and training. The plaintiff had been primarily engaged in the area of aircraft structural engineering.

7. In 2006, he took voluntary redundancy and decided to set up his own business, often working with the assistance of an apprentice or with his son.

8. The defendant operates a motor trade business out of its garage premises in Clondalkin, Dublin.

### **Relevant background**

9. Prior to the accident, the plaintiff had carried out works for Mark Tynan, son of the proprietor of the business, at his home. The plaintiff had been known to him since 2007 and in 2009 he engaged him to do some works at his private residence.

10. The works included roof repairs, guttering, ceiling repairs and repositioning of a heat controller. Mr. Tynan was satisfied with the quality of the works and discharged the plaintiff's fees.

11. In 2011, Mr. Tynan engaged the plaintiff to carry out works at the garage premises involving the relocation of a glass display cabinet, removal and repositioning of a block wall and fire door, and replacement of tiles in the work area.

12. It is common case that the plaintiff was engaged as an independent contractor by the defendant. During the course of carrying out the works, the plaintiff was assisted on occasion by his apprentice or so called ‘*helper*’.

13. Subsequent to the commencement of the works, and approximately two weeks prior to the accident, the plaintiff and Mr. Tynan were present in the workshop of the garage. Mr. Tynan advised the plaintiff that the tiles to be used during the renovation works were stored on the roof over the entrance to the workshop. They obtained a ladder in the premises and secured it in the jack area of the workshop floor. The plaintiff ascended the ladder to satisfy himself that there were sufficient tiles on the roof to complete the job and it was agreed that the tiling works would take place after the other renovation works were completed.

#### **The accident**

14. The accident occurred on a Saturday. The garage was on limited opening hours given the day of the week. However, both Mr. Tynan and a number of his employees were present.

15. The plaintiff attended alone with a view to completing the tiling works that day.

16. In his evidence, Mr. Blake stated that he retrieved a ladder from within the premises and brought it to the area where the tiles were stored. He stated he was not in a position to secure it in the area of the car jack as there was a car obscuring his access and therefore moved it to an alternative position. Thereafter, he proceeded to ascend and descend the ladder on a number of occasions. On the final occasion he realised that the ladder was sliding from the wall and before he got a chance to “*free his feet*” he fell to the floor. He stated he did not lose consciousness as he recalled leaving the workshop shortly afterwards to seek assistance.

17. He accepted he was “*in a hurry*” that day to get the works completed as he was anxious to finish the job. He stated that his trips up and down the ladder had taken less than ten minutes.

18. He accepted that Mr. Tynan and other employees on the premises were available to assist him in the event that he had sought such assistance. However, he stated that Mr. Tynan “*seemed busy*” and that he was under pressure to get the job done as his helper “*hadn’t turned up*”.

19. He accepted on cross examination that he had prior experience of using ladders in the course of his business.

20. Finally, he conceded that had he properly secured the ladder, whether by way of assistance or otherwise, the accident would not have happened.

### **Mr. Searson**

21. The plaintiff’s engineer attended to inspect the scene in 2013. The actual ladder that had been used on the day of the accident was not available for inspection.

22. Mr. Searson’s evidence was that the cause of the accident was BKO (Base Kick Out). Put simply, if the base of the ladder is not properly footed or secured the ladder will come away. He stated in evidence that a risk assessment ought to have been carried out before the works were commenced to identify potential hazards and to ensure the works were safely completed.

23. He accepted in cross examination that the plaintiff as a tradesman was likely to have experience of using ladders but did not accept that the plaintiff knew of or ought to have known of the dangers of using a ladder without ensuring that it was properly secured.

### **Mr. Tynan**

24. Mr. Tynan confirmed that he first met the plaintiff in 2007 and that he first engaged him to carry out works at his home in 2009.

25. He recalled meeting with Mr. Blake approximately two weeks prior to the accident at the garage to discuss the ongoing renovation works. His evidence was that he recalled being

present but could not recollect whether it was himself or Mr. Blake who footed the ladder on that occasion.

26. He stated that there were four people present in the garage, including himself, on the day of the accident. His evidence was that he did not give any instruction to Mr. Blake as he was there to lay tiles and knew where they were stored.

27. He accepted that no risk assessment had been done in circumstances where he had engaged a contractor to carry out the necessary works.

### **Legal submissions**

28. Counsel for the plaintiff conceded that Mr. Blake was partly to blame for the accident but placed emphasis on the duties of the defendant in the context of s. 12 of the Safety, Health and Welfare at Work Act, 2005, which provides:

*“Every employer shall manage and conduct his or her undertaking in such a way as to ensure, so far as is reasonably practicable, that in the course of the work being carried on, individuals at the place of work (not being his or her employees) are not exposed to risks to their safety, health or welfare.”*

29. Furthermore, counsel submitted that the defendant was in breach of regulation 6 and 12 of the Safety, Health and Welfare at Work (Construction) Regulations, 2006, firstly in failing to appoint a project supervisor and further for failing to have in place a written safety and health plan that would have identified the risks inherent in the work and in particular, the risk of falling from a height.

30. In support of this proposition, counsel relied on the decision of Sanfey J. in *Curley v. Summerhill Construction Company Ltd* [2023] IEHC 104 where the court held that the defendant, as project supervisor, had failed in his duties under the 2005 Act and the 2013 Regulations (the latter of which have no relevance in the instant case as they had not come into effect).

31. Counsel on behalf of the defendant submitted that the works involved were small renovation works carried out by the plaintiff as a self-employed tradesman who worked on his own, save and except for some assistance provided by his son or apprentice. On that basis, it was contended that the construction regulations did not apply as this was not a construction site.

32. Furthermore, it was emphasised that the plaintiff, as an independent contractor, had retained control over the manner in which the works were to be carried out and, when necessary, had sought assistance from his son or apprentice. In any event, it was submitted that there was ample assistance available to him on the day had he sought it, either from Mr. Tynan or his employees.

33. Counsel relied on the decision in *Fagan v. Dunnes Stores* [2017] IEHC 430 in emphasising the limits to an employer's duty of care and the necessity to establish a causal link between a breach of statutory duty and the injury sustained.

34. Counsel also highlighted the earlier decision of Peart J. in *McLoughlin v. Carr T/A Herloes Bar* [2005] IEHC 358 where it was held that "*the fact that the employer is in breach of a specific duty, ..... is not the end of the matter*" and again emphasised that there must be a link between the breach and the injury suffered.

### **Findings**

35. The facts of this case are very straightforward. Mr. Blake was an experienced tradesman who was engaged as an independent contractor to carry out renovation works at the defendant's premises. Given the nature of his business, and indeed based on his own evidence, he had experience of using ladders during the course of his employment prior to the day of the accident. Only two weeks earlier he had used the ladder which had been properly secured before he mounted it.

36. I accept his evidence that on the day in question it was not possible to secure the ladder in the same fashion as had been previously deployed. However, it was open to him to either use a heavy object to secure it or to seek assistance, such assistance being readily available to him.

37. The danger of using a ladder without assistance or indeed without properly footing it, were or at least ought to have been obvious to him and the consequences of failing to do so were, in my view, reasonably foreseeable in all the circumstances. Mr. Blake accepted in his evidence that he was in a hurry on the day and that his helper had failed to turn up. I can only surmise that whilst working in such haste, he failed to avert to the obvious and inherent danger in using a ladder without properly securing it or seeking the necessary assistance to ensure it was properly secured.

38. I simply cannot accept counsel's arguments that this was a job which required the defendant to engage a project supervisor. The works involved were relatively straightforward, the plaintiff had assistance available to him had he sought it and the danger was undoubtedly obvious. He had been employed as an independent contractor to carry out the works and had years of experience in this field.

39. This was not a construction site as in the *Curley* case, it was a small renovation project and must be distinguished on the facts from that case.

### **Conclusion**

40. In all the circumstances I am satisfied that the plaintiff was wholly negligent on the occasion in question and must therefore dismiss his claim.