

THE HIGH COURT

[2021] IEHC 704

[Record No. 2018/9370 P]

BETWEEN

SHAKUR AHMED

PLAINTIFF

AND

**CASTLEGRANGE MANAGEMENT COMPANY LIMITED BY GUARANTEE AND
CASTLEGRANGE SQUARE MANAGEMENT COMPANY LIMITED BY GUARANTEE**

DEFENDANTS

JUDGMENT of Ms. Justice Bronagh O’Hanlon delivered on the 9th day of November, 2021

1. The plaintiff is a bus driver and resides at Apartment 74, Castlegrange Square, Clondalkin, Dublin 22. The first named defendant has its registered office at Block 36/41, Dunboyne Business Park, County Meath. The second named defendant has its registered office at Smith Property Management Services Ltd, Block A, 37/41 Dunboyne Business Park, Dunboyne, County Meath.
2. The plaintiff’s claim is that the defendants and each of them or one or other of them, their respective servants or agents were at all material times responsible for the maintenance, repair, upkeep and safety of the common areas of the block of apartments at Castlegrange Square, Clondalkin, Dublin 22 and, in particular, the tiled surface leading from the plaintiff’s apartment as aforesaid to the stairway thereof.
3. There was no argument put forward indicating a need to sever the liability of Castlegrange Management Company Limited by Guarantee and Castlegrange Square Management Company Limited from one another, and the two companies were represented by one legal team. In the final analysis they are found to have been jointly and severally liable.
4. The plaintiff’s claim is that, on or about the 21st November, 2016, he left his apartment, being Apartment 74, at the aforesaid address, and was traversing the common area from his apartment towards the nearby stairs when, suddenly and without warning, the plaintiff was caused or permitted to lose his footing by reason of the surface underfoot being wet, slippery and icy. In consequence whereof the plaintiff fell down the entire flight of steps and suffered serious personal injuries, loss and damage.
5. The plaintiff claims that the aforesaid personal injuries, loss and damage were caused by reason of the negligence and breach of duty and breach of statutory duty and breach of contract and nuisance on the part of the defendants, its servants or agents, in or about the maintenance, upkeep and repair of the said *locus* and also for failing to warn the plaintiff of the dangers of the tiled floor by way of signs, guards or otherwise. Particulars of the aforesaid are pleaded extensively in the pleadings. The court was told that the plaintiff was 48 years of age at the date of the accident and his date of birth is the 19th July, 1968. The locus was described as 74 Castlegrange Square, Clondalkin in the County of the City of Dublin.

6. The court was told that, on or about the 21st November, 2016, the plaintiff left his home, being a first floor apartment which he owns, and the court was shown a photograph 2 which showed Apartment 74 as a door to the right-hand side on that photograph. Photograph 3 shows two sets of stairs. Photograph 4 shows his front door with a small mat and a light above the door and this was described as a photosensitive light. The plaintiff confirmed the above in his evidence and said that that he had been a bus driver since 2008 and that, in 2002, he bought this apartment for himself, his wife and his children. He describes his bus driving shifts as varying from very early or afternoon or, alternatively, an evening shift.
7. On the occasion of this accident, he described leaving his apartment at 5:30am approximately. On the 21st November, 2016, he was due to begin work at 6:15am and he had to drive 8 kilometres away to the bus depot.
8. The plaintiff described rain coming in on the light above his door and that that light had fused on a few occasions and that water tended to drip from the light. He said there were flagstones and that between the wall and the iron balcony there was a small gap above it where the water dripped down from that. In his evidence the plaintiff stated that the light had fused due to the rainwater around a week before the accident occurred.
9. The plaintiff said that, on his way out, he moved a distance of 3 feet when he slipped and he said he could not grip anything. He described the *locus* as a first floor apartment where there was another family living downstairs and that there was balcony above his balcony. He said that he fell down two flights of stairs and that, when he slipped, both feet slipped out in front of him and he fell on his elbow first and that there was no railing to hand and that, at the edge of the stairs, the nosing was aluminium. He said that those three initial steps had no nosing on the night of the accident. He said that an anti-slip device was inserted one year post-accident. His evidence to this Court was that the nosing would have been of assistance in stopping his fall.
10. Reference was made to the shoes he was wearing on the occasion by way of photographs shown to the court and showed the condition of the shoes two years post-accident. This witness describes severe pain in his left elbow which was sudden on on-set and shock failed him. He said that as he went on to drive to the Ringsend depot while bleeding and he noted that his arm was getting bigger and bigger as he made that journey. He said that he did not know that there was blood pouring down onto the floor and that when he arrived an ambulance was called by his colleagues and he was taken to St. Vincent's Hospital where he was told to go home and rest until the following morning and to come back. His uncle came and drove him the following morning to St. Vincent's Hospital. There was a puncture wound over his left elbow and x-rays demonstrated a displaced comminuted fracture of the left olecranon. The wound was dressed with an iodine dressing and prophylactic intravenous antibiotics were commenced and the elbow was immobilised in an above-elbow plaster back slab. These details are expanded upon in the first report of Mr. Paul Curtin, trauma and orthopaedic consultant surgeon, St. Vincent's

Hospital discussed in more detail below alongside the other two reports submitted to the court.

11. The plaintiff told the court that he spent the following two months at home in his house and he said he could not sleep on his left side and that, for the first two weeks, he had very bad shooting pain, especially for the first two weeks. The plaintiff was advised medically to avoid active contraction of his triceps for a further four weeks on the 1st December, 2016 and was permitted at that stage to engage in full active assisted range of motion. In early February the following year, he returned to his work as a driver of double-decker buses. He found the work extremely hard driving and that taking left and right turns was very difficult for at least three to four months. He said manually it was extremely hard to steer.
12. The plaintiff described having five or six pieces of metalwork inserted and that one of these plates was left in his elbow and he was advised it would be there for the rest of his life and, because of that, his elbow might stiffen up and he described his left elbow as being numb on occasion. He also indicated that he had difficulty still in fully extending his arm.
13. He said it was particularly hard to carry weights up the 26 steps to his apartment and that, prior to this accident, it was his habit to carry 20 kilogrammes on his shoulder but that he could not do that post-accident. He said for a significant time thereafter his daughter, who is a toddler, wanted to come into his lap and he said that he just was not in a position to hold her at that time and he found all of that extremely hard.
14. Sometimes when driving, he finds the site of the accident causing soreness to him and he says it is weaker than his right side. He said his arm is a little bit bent with a slight reduction in its flexibility. He said he does have a fear of suffering as a result of this accident later in life. Under cross-examination, this plaintiff said that he never has to take painkillers at this stage but he said he cannot carry more than 15 kilogrammes in his left hand. He said he was not within his house when the engineer involved in the case came to visit his house. He said he showed him the *locus* and told him it was icy at that time and he told him it was wet and he came out and then he slipped and it was a very cold night overnight. He said that it was particularly cold weather at the time and that the weather conditions were the same as the day before. He said that had the light been working, he might have seen something on the surface and he said that the day before he did not slip. He said the black ice was on the ground and invisible to the ground and he said that the light's fusing had happened a few days before the water was not falling on it. With reference to the question of, given that it was his own property, who ought to have been fixing such a light, he said that he complained a couple of times to the management and he said that he thought he telephoned at least once to the management company. Under the cross examination of his evidence the plaintiff did state that he had not attended any of the Members Association meetings as he was working at the times that they were held..

15. He pointed to where he fell as being represented on the photograph with a set of keys at the exact point and he said he slipped down and his feet went "*bang bang*" straight down and that his left elbow hit the railings as he went down and that there were seven steps and that the stairs did not cover the full of his foot and it is his view that, had there been nosing on the first step, it would have saved him. He said he was walking in the middle and he said he was walking in a straight way forward but that, if he had been more to either side, he could have reached the railing, but from where he was, he could not. He said that the railing was far away from the point at which he fell.
16. This witness was of the view that it was up to the management company to grit and that he was paying the service charge for that.
17. Under re-examination, this witness said that he saw the water when he opened the door, he saw it wet and icy outside his door, that it was not flowing water, it was just wet. He said he confirmed that he had walked in a straight route forward, following the same route that he did every day, until he fell and that he could not reach the railings on either side. He said that there was a Polish man living in Apartment 75 underneath him and that that man helped him fix in a LED light post-accident. Reference was made to photograph 4 to clarify that there was not a light at the date of the accident, that the replacement light went in afterwards.

Medical Reports of Mr Paul Curtin:

18. The evidence handed into the court included three medical reports furnished by a doctor who had treated the plaintiff following his accident, Mr Paul Curtin MD FRCSI, a consultant orthopaedic surgeon at St. Vincent's University Hospital. He was the surgeon who treated the plaintiff on his initial visit to the hospital on 21 November 2016 and then for follow up visits for the purposes of writing three medical reports on the plaintiff on the effect of the injury and his recovery dated on the 10th March, 2017, 25th April, 2019 and 29th March 2021.
19. The first report is based on the visit the plaintiff made to the hospital on the 21st November, 2016 and the follow up reviews that took place on the 1st December, 2016, 5th of January, 2017 and the 2nd of February, 2017. The X-rays demonstrated a displaced comminuted fracture of the left olecranon and there was a puncture above the left elbow. The wound was treated and the plaintiff underwent an open reduction internal fixation of the fracture performed by Mr Curtin. Following this the plaintiff's arm was placed in a sling and he took prophylactic antibiotics for five days to avoid any development of infection. The follow up on the 1st December found no loss of fixation and a good level of healing.
20. The reviews in January and February also offered similar prognosis noting occasional pain in the elbow and recommending physiotherapy for the plaintiff. In the opinion section of the report Mr Curtin indicates that due to the nature of the injury including an articular surface comminution it would be unlikely that the plaintiff would ever recover the full range of motion particularly the full extension. The pain complained of is noted as being common in injuries of this type due to fixation devices being placed in a subcutaneous

bone. The device was scheduled to be removed in a routine procedure in June 2017. The removal of the fixation was performed on the 6th June, 2017.

21. The Plaintiff was examined again by Mr Curtin on the 25th April, 2019 and produced a report on that same day. The plaintiff was reported to state he had difficulty lifting weights over 15kg with his left arm and stated he required both arms to lift his 3 year old daughter. While he reports pain in his shoulder but there is a full range of motion. The report's prognosis is that the reduced range of flex in his left elbow would be permanent and there remains a possibility of developing arthritis in the future. Mr Curtin does not believe there is any likelihood that the plaintiff's shoulder pain is in anyway related to his accident.
22. The final examination by Mr. Curtin occurred on 29th March 2021 for the purpose of preparing a medicolegal report. The report included the previous complaints and the addition of the plaintiff complaining of pain in his left elbow in cold conditions. There appears to be no long lasting effect permanently hindering the plaintiff from living his life day to day and Mr Curtin did not think the plaintiff would require any further operations going forward and should make a full recovery

Evidence of David Browne, Engineer of J Desmond Kirwan Browne Engineers

23. By agreement, the report was handed in to the court. He described an exterior sensor light at the date of the accident and that the light was not operational and he said on the plaintiff's instruction to him the surface was icy. He referred to the temperature at Dublin Airport on the 20th November, 2016 at 11:30pm until 12:30am as being very cold with the highest temperature at 1-degree Celsius rising to 2 degrees Celsius at 12:30am. At 6:00am on the 21st November, 2016, it was 2 degrees Celsius and it was sufficiently cold for there to be ice. He referred to the flagstones as referred to by the plaintiff and said that in terms of surface they do have grip but, if covered in ice, they would be very slippery with little or no slip resistance. He said that with regard to the plaintiff having been already sliding as it were, he said that a high grip strip was added to the nosing of the steps. He referred to the goings and thread and edge into the corner and he said they tended to be shorter and that there were no fresh grips on the nosings.
24. With reference to photograph 13, the local children had removed the nosings and new ones were added after the accident. He said the short goings issue was rectified by the defendants since the accident. In his view, the plaintiff's foot skidded on the landing and the skidding foot would have encountered nosings which would have stopped or almost stopped his skidding foot. It certainly would have slowed his momentum and he may have had a chance to mitigate his injury. He said if there were gritting was on the common areas of the estate and he said that a change was obvious after the accident, that they acted on their responsibilities and that there are generally responsible for the safety of people in the area. He made the distinction between the management company and the residents and he said the management company is a separate company with insurance. When asked what caused him to fall, he said the plaintiff had asked for services and he said the ice which was black caused him to fall and that ice was not visible on his landing and he said the plaintiff did not mention rain or water to him and did not say that it was a

combination. He denied that the plaintiff had told him that the plaintiff's feet did not leave the ground and he said that the plaintiff had skidded and there was a suggestion that one foot was in contact with the ground. He clarified that the plaintiff did not say that his feet went out from under him and said that he skidded and was unable to stop himself.

25. With reference to photograph 5, he said it was 1.1 metre to the edge of the landing with 800 millimetres where he lost his grip and he said that the skidding was less than one second motion and he would have arrested the skidding foot and that it would have slowed his momentum, it would not have prevented the fall but it would have slowed him enough at the edge of the landing to grab a handrail and he did not specifically tell the engineer that he tried to grab the rail on the landing and that he said he started sliding past but that black ice tends to be translucent. Short goings were noted with regard to the steps and he said while the goings were not directly responsible, he said it was the steps themselves and that the plaintiff slipped prior to reaching the steps. He said that the goings were short in themselves and that the steps were not defective, that the safety guidelines at time of construction obliged them to be 220 to 240 millimetres but that it is optimal to have 250 millimetres and 220 millimetres is the minimum accepted. He said that they would not be acceptable by today's standards. Some are short goings and they are less than optimal and the optimal would be 250 millimetres although 220 millimetres is the minimum accepted. So while they are less than the optimal, they are more than the minimum requirements.
26. The evidence then was that the tiles had good slip resistant quality both when dry and when wet, anything less than 130 millimetres is considered low risk and this witness felt that the issue here was ice. Regardless of the quality of grip that the tiles provided the presence of ice would mean that the grip quality would be that of the ice. That gritting would have prevented the ice from forming and would have prevented the accident from happening. He also felt that if the plaintiff had just thought that the surface was wet he would not have expected it to have been slippery as well. The nosings and steps in front of the landing are less sheltered and it was possible that they had been affected by icy conditions if it is accepted that the conditions would be icy.
27. He accepted the plaintiff's evidence about the lights not working on the occasion. He also indicated that it would have been a greater level of safety if the light had instead been a sensor activated one in place of one controlled by a switch. This would have increased the level of safety available to the residents.

Evidence of Mr. Bernard Walsh, Engineer

28. Evidence was heard from Mr. Bernard Walsh, engineer, who worked as a facility manager for the property through his company who had been hired as agents. He referred to the fact that the members accept or reject the budget in terms of how the money will be spent by the management company each year and that the agency's services cover one-hour litter collection, they make 35 visits a year for the purposes of landscaping maintenance. This witness said that there was public liability insurance both for streetlights and general repairs and that it was a three-year contract. His argument was that the directors and members decide what works will be done and he referred to the

next door neighbour to Apartment 74 having an external and waterproof lighting which works if fitted correctly and he also argued that there had been no complaints regarding existing lighting.

29. This witness did accept, however, that post this accident there were three or four sets of steps repaired and that repairs were made to tiles which were fitted with anti-strips at the time. He described the ambit of their work as covering 98 institutions in the greater Leinster region.
30. Under cross-examination, this witness indicated that there was no audit and it was put to him that every location ought to have an audit as to what they should be or would be doing. He was also asked whether there was a health and safety inspection and he agreed that there was no paper trail in that regard. This witness further agreed that he did not tell the defendants that they needed nosings and he did agree that the director had seen this on another development but that he thought that the view was that, in this case, it was not necessary because the tiles were slip resistant. He agreed that the goings were narrow and his company did not advise in that regard.
31. Regarding lighting, it was put to this witness as to why the company had not used halogen lighting and he said that the management company was responsible for street lighting and that he had repaired one nine or ten days before. He agreed that his company was an agent for 98 properties in this estate and that they had never considered icy conditions as an issue in the property nor had they advised on lighting or nosings or gritting save for the streets and communal areas. He agreed that while gritting could be offered it was not standard and would only been done on request. He indicated that only 10 out of the 98 managed properties had been gritted and he argued that salt gritting has no bearing when added to a wet surface nor can the salt melt ice.
32. It was put to this witness that the local authority salt roads and why would they do that if it made no difference and he responded that they did not offer it as it was not budgeted for.

Evidence of Dr. Lorcán O'Flannery Consultant Engineer of Rowan Engineering Consultants Ltd

33. This witness first inspected the premises, on his evidence, on the 20th February, 2019 and he carried out an inspection with Mr. Browne on the 15th June, 2020. He described the light referred to as having been controlled from the inside of the building and he said he was aware that there were winter conditions on the occasion of this accident and he said that when he was leaving, he could see that the area was wet. He stated that he had no reason to doubt the plaintiff's claim that there was black ice present when the accident occurred. With regard to the tiling, he said that his company had performed the same test for slip resistant tiles and he said that he investigated the weather reports from Casement Aerodrome which was closer to Clondalkin and that he based his assessment on that.
34. He said that the *locus* was one with a gritty surface texture of the tiled surface and it provided excellent grip and he said that, having tested the tile surface, he found that it had a low risk of slip when dry or wet as expected. He said that gritting and salting or salt

placed on a dry road means that ice does not form at all but on a wet surface, it dilutes very soon and that where it rains and then dries, the surface can freeze.

35. He said if it was glassy black ice, the difference gritting would make would be it would give it a nice rough texture but he said that local authorities seldom grit footpaths, that it is up to home owners who own part of the property, they may do so outside of their own property. It was put to this witness that here the area was controlled by the management company and they knew it was going to be icy but they decided not to provide gritting.
36. He stated that there was a duty of reasonable care that everyone has in icy conditions. He drew specific attention to the fact that the plaintiff should have been familiar with the condition of the steps. He points out that the plaintiff having been a resident for a long period of time he would be aware of the conditions of the stairs in icy and cold conditions specifically referencing the cold freezes of the winters of 2009/2010 and 2010/2011.

Submissions on the Book of Quantum:

37. Both Parties made brief submissions on the issue of the Plaintiff's injuries in reference to the book of quantum based on the judgment of Noonan J. in *McKeown v Crosby* [2020] IECA 242 and the requirement of the court to have regard to the Book of Quantum per s.22 of the Civil Liability and Courts 2004.
38. The relevant section of the book of quantum is agreed to be on page 42 of the book with the only difference between the two counsel being as to whether the injury would fall under the ambit of moderate or moderately severe. Counsel for the Plaintiff leaned more towards the injury being moderately severe based on the facts of the medical reports and the possibility included in some of the development of Arthritis going forward. Counsel for the defendants indicated that they believed the injuries would not reach this threshold based on the facts that there had not been multiple fractures and the plaintiff was not required to remain on painkillers would mean the case would not breach the threshold of moderately severe.

Discussion:

39. The liability is seen as strictly a question of fact by the plaintiff as his case is premised on the defendants being responsible for the maintenance and upkeep of the common area in which the slip occurred. According to him the accident was caused by the failure of the defendant to maintain the public area which it is not disputed as being a public area. The specific maintenance and care that the plaintiff believed to be required for the area was the fixing of the area above the light in order to avoid the water leaking in causing the fusing, the installation of nosing in order to stop the slippage as it occurred in this case and finally the proposition that they should have gritted the area in order to remove the threat of icing which occurred in this case.
40. The Plaintiff held out that as the area was a public area that was under the control of the management company then there would not be any duty on the part of the plaintiff to grit it himself as the defendants were the occupiers under the provisions of the Occupier's Liability Act 1996. In response to the need for reasonable care in the icy conditions they stated that the plaintiff did act reasonably considering the early hour of the accident

would mean that no one would be at the highest level of awareness at that hour of the morning and the presence of black ice would require extreme care to spot in dark conditions.

41. In response the counsel for the defendants disagreed that the above conditions were their responsibility and also that it had not been properly pleaded in the notice of motion. They stated that the reason for the accident as pleaded was that the conditions were wet, icy and slippery. If there had been black ice as the plaintiff states then the fixing of the light would have had no effect on the incident as black ice would be clear and invisible regardless of the lighting that was present over the landing. They also rely on the evidence of the engineers that the nosing would not have had much effect in avoiding the accident as the ice would likely have risen above the level of nosing added in.

Conclusion/Findings of Fact:

42. This Court finds as a fact that the incident involved black ice as the plaintiff contends. Thus any repairs carried out on the light itself would not have had a central effect of averting the accident rather than the water passing through the gap in the flagstone. The evidence given by the plaintiff was very credible and the evidence he gave is accepted on the balance of probabilities as having caused the injuries complained of and as being an accurate account of the conditions present of on the night of the accident.
43. However that the area was a public pathway that fell within the control of the defendants and the effect of gritting would have averted this accident. The court rejected that there would have been no beneficial effect to this surface. The presence of gritting would appear, on the balance of probabilities, to have averted the accident had it been carried out on the area of the accident. The defendants failed to grit the surface.
44. The goings although above acceptable minimum standards, nonetheless were not of sufficient size to hold the plaintiff's foot.
45. The issues concerning water dripping through the light fixture were a major contributor to the causing of ice to form on the surface as indicated, given prevailing weather conditions at the time. While the lack of nosings contributed to the accident as had they been in place and in proper condition they would have assisted the plaintiff in breaking his fall. To some degree they are a contributory factor to the Ice being allowed to form in the common area.
46. It was reasonably foreseeable that an accident such as that which occurred would so occur given the combination of causative factors as set out above, causing extensive pain and suffering to the plaintiff as described. The major factors included, failure to maintain in a safe manner the common areas well lit and free from excess water which formed the black ice in manner which would have ensured the plaintiffs' safety.
47. The injuries suffered fall within the range of moderately severe under the book of quantum's entry on page 42. The effect of the injury could not be said to be Severe and Permanent as the plaintiff is not expected to continue to suffer pain permanently and he

is not required to remain on painkillers following his treatments as per the Mr Curtin's reports. It is also not possible to hold the injury to only fall within the moderate range due to the requirement of surgery to fix the wound and damage to the elbow. Sufficient pain and suffering was endured and it led to the requirement of two medical procedures to be performed.

48. In reference to the indorsement of claim the particular actions which the court finds the defendant to have been responsible for (a),(c),(d),(e) and (j) (namely failing to take any reasonable steps or precautions for the safety of the plaintiff, failing to provide a safe premises and in particular the common areas thereof within its remit, creating, maintaining and adopting a nuisance and a hazard and a trap for the plaintiff in that the tiles surface was exposed to the elements and became wet and slippery as a result and failing to warn the Plaintiff that the tiled floor surface was dangerous and unsafe whether by way of signs, guard or otherwise)
49. In accordance with the range included in that section of the book of quantum the court finds it appropriate in consideration of the seriousness of the injury sustained to award the plaintiff damages in the sum of €56,500 and the agreed upon special damage of €3,701.27 for a full award of €60,201.27.