Neutral Citation No: [2019] NIQB 84 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **MAG10899** *Delivered:* **10/09/2019**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

QUEEN'S BENCH DIVISION

_____

2017 No. 47968

BETWEEN:

LUCY BUCHANAN

Plaintiff

-and-

JIM COURTNEY AND LINDA COURTNEY
T/AS NUTTS CORNER BOARDING KENNELS AND CATTERY

Defendant

_____

MAGUIRE J

Introduction

[1] The plaintiff in this case is Lucy Buchanan. She is currently aged 36 years and, by common consent, is an experienced horsewoman and rider. In particular, she has worked professionally as a showjumper.

[2] The defendants are Jim Courtney and Linda Courtney who trade under the name "Nutts Corner Boarding Kennels and Cattery". In short, their business encompasses the taking care of in the region of 30 horses and they have seven full or part-time staff employed by them. It is common case that Linda Courtney, herself, is an experienced rider and horsewoman.

[3] During a period of some 18 months prior to March 2015 the plaintiff was in the employment of the defendant.

[4] These proceedings are concerned with an unfortunate accident which befell the plaintiff while she was, on 21 March 2015, at work at the defendant's premises. On that day she was riding an eight year horse called "Kate". At the time of the

accident Kate was travelling at a "slow trot", when, according to the plaintiff, it was spooked by a piece of plastic, said to be a piece of bale wrapping, which had been lodged in a hedge bordering a concrete laneway on which the horse and rider had been travelling. The plastic fluttered in the wind and caused a startled type reaction on the part of the horse. In turn, this resulted in it going out of control and ultimately falling, with the plaintiff still seated on her. When the horse went down on its side one of the plaintiff's legs got caught underneath the animal, thereby causing serious fractures to the plaintiff's tibia and fibula, which later required operative treatment, causing pain and suffering to the plaintiff. In these proceedings the plaintiff seeks damages on the basis that the accident described above was caused or occasioned by the negligence and/or breach of statutory duty of the defendant, as the plaintiff's employer.

The hearing

[5] At the hearing the plaintiff was represented by Mr O'Donoghue QC and Mr Boyle BL and the defendant was represented by Mr Timothy Warnock BL. The court is grateful to counsel for the economical way in which the case was conducted and for the very helpful oral and written submissions provided to the court.

[6] The court heard evidence from the plaintiff, and from a Mr Smiley, an expert witness in respect of equestrian matters. It also heard evidence from a lady called Veronica Sheehy, who was called by the defendant and is a long time employee of the defendant, and from a Mr Lane, who was called as the defendant's expert witness in relation to equestrian matters.

[7] While there were areas of disagreement in the evidence the court heard, it is right to say that there were also substantial areas of agreement.

Areas of agreement

[8] As already noted, the plaintiff was recognised by all concerned to be an experienced and talented rider. The same, moreover, could be said of Linda Courtney with whose name the defendant's business was connected. Likewise, Veronica Sheehy it is claimed had worked extensively with horses, and had been in the defendant's employ for a period of some 18 years at the time of the accident.

[9] All acknowledged that an inherent hazard for riders is the fact that horses when being ridden can, without warning, become spooked by a wide range of often small stimuli. This may occur if another animal appears; if there is a sudden movement in the horse's line of vision; if there is an unexpected disturbance in a nearby hedge; and in countless other similar situations. The witnesses all accepted that an established risk factor could be the fluttering in the wind of a piece or pieces of plastic caught in a hedge.

[10] The two experts who gave evidence, in addition to accepting the above, were *ad idem* in accepting that once a horse is spooked the horse's reaction will be variable and not wholly predictable. Most spooking incidents involve a short lived reaction on the part of the horse – a loss of balance or a change in direction or something of that sort – and in most cases the horse will settle down and quickly return to normal. But this does not apply in all cases. Sometimes the spooked horse may react more violently and this can result in the horse veering off course; losing its footing; or going down or falling. In such cases, the rider may be able to jump off the horse and escape injury. Even where the horse does fall, there are occasions where the rider, still remaining on it, sustains no substantial injury. Unfortunately, there also are occasions when the rider can sustain a serious injury. One of these situations is where the rider goes down with the horse and the horse's weight bears down on a part of the rider's anatomy. In such a situation a serious injury may be sustained, as seems to have occurred in this case.

Area of disagreement

[11] The areas of disagreement in this case mostly relate to conflicts of evidence between the account of the accident given by the plaintiff as against the account of it given by Veronica Sheehy.

[12] Both agree that on the morning of the accident the plaintiff had exercised a number of horses before the accident. Kate was perhaps the third or fourth horse the plaintiff had exercised that morning. Kate, it was also agreed, was a horse well-known to the plaintiff and the plaintiff had ridden her on many occasions before, including in the general area where the accident occurred. A notable feature of Kate was that she had a placid temperament and she had not had any previous history of being accident prone or of being easily spooked.

[13] A feature of the exercise regime that morning, at the time when the plaintiff was riding Kate, was that Kate was travelling ahead of another horse, a young horse, called "Ken". This was, in fact, the first time Ken had been ridden outside due to his young age. Because of his age, a great deal of care had to be taken with him. Both the person riding him, William Hickey, who did not give evidence before the court, and the plaintiff would have been aware of the special need for vigilance in respect of Ken. It was for this reason that the plaintiff and Kate were situated a short distance in front of Ken.

[14] In addition to the above precaution, both of the witnesses acknowledged that there was a further precaution in place in respect of Ken and that was that a person – a member of staff – followed along behind Ken – just a short distance behind. The identity of that person was, however, in dispute. According to the plaintiff, the person following on foot behind Ken was a young man called Mr Roney. In contrast, Ms Sheehy said that she was the person walking behind, a fact which the plaintiff denied.

[15] A secondary dispute relates to what happened immediately after the accident. Everyone agreed that it was a bright, dry morning. The accident occurred out of the blue. According to the plaintiff, what caused Kate to spook was a piece of bale wrap which had been lodged in the hedge which bordered the laneway. It fluttered up in the air due to the wind and this caused Kate to go out of control. The horse fell and the plaintiff's leg was caught under the horse as already described. The plaintiff said that she realised straightaway that she was injured and initially could not get up. The horse did get up and the plaintiff said that William Hickey got off Ken and got hold of Kate. Then Mr Roney arrived and took Kate from William Hickey. The plaintiff said she was on the ground for several minutes. She said she saw and heard William Hickey telephone Veronica Sheehy on his mobile. William said to her, according to the plaintiff, that Kate had spooked on bale wrap at the fence and had fallen on the plaintiff's leg. As a result, Veronica Sheehy came to the scene of the accident after a few minutes. When Veronica arrived she asked what had happened and the plaintiff told her that the accident had happened due to the bale wrap spooking the horse. According to the plaintiff, Veronica seemed surprised at this. This surprised the plaintiff because she had heard William Hickey tell her on the phone what had occurred. The plaintiff said that she herself had not told Mr Hickey what had caused the horse to fall so that he must himself have seen what happened. Mr Roney, like Mr Hickey, did not give evidence in court.

[16] Ms Sheehy when she gave her evidence said she had been walking a short distance behind Ken, the young horse. She did not see the accident happen. She did however receive a phone call from Mr Hickey after the accident. He told her to come quick. She said she hung up and started to run towards the place where the accident had occurred. She said she had not been told by Mr Hickey what had caused the accident. It took a couple of seconds to get to the place of the accident. When she did so she said she saw William holding two horses and the plaintiff sitting upright on the lane. She said she asked what had happened and whether the plaintiff was okay. The plaintiff, according to Veronica Sheehy, said she did not know what happened as the horse had slipped. Ms Sheehy was adamant that she was not told about what caused the slip. She said she did not see anything relevant to a slip. After a period, an ambulance arrived. Ms Sheehy said she did not see anything which made her think the horse had spooked. Her understanding of the accident was no more than that the mare had fallen.

[17] Two other aspects of Ms Sheehy's evidence engendered controversy.

[18] First of all, she told the court that on the morning of the accident she had walked the route which the young horse, Ken, was going to take. She said that at around 10.00 am she had gone round the area and walked the lane. In particular, she checked the lane to look for obstructions or anything that might spook or upset Ken. She said she did not notice anything. In particular, she did not see any plastic bale wrap in the area or at any of the fences. She said that if she had seen such bale wrap she would have lifted it and disposed of it immediately because she was

conscious that it might spook a horse. She said that the management wanted the place kept clean. There was no note made of Ms Sheehy's inspection of the area.

[19] When Ms Sheehy's evidence was put to the plaintiff to comment on, the plaintiff said that she did not believe that Ms Sheehy had walked the route as she claimed. If she had done so, the plaintiff said she thought the bale wrap would have been seen. When the plaintiff was asked whether she had ever seen Ms Sheehy inspecting the laneway before, the plaintiff said she had not.

[20] Secondly, Ms Sheehy also gave evidence about how bale wrap was handled at the premises. In respect of this topic, she said that the bale wrap was stored outside. It consists of a number of layers of plastic within which fodder is wrapped. The bales are stacked up one on top of the other and she said they were stored at different places at different times. When needed, the bales were taken into the stalls and unwrapped using a Stanley knife or a similar knife. The knife was used both to the top of the bale and to its sides. The bale wrap which comes off she said was put into a barrel at the place where the bales were opened and later transferred to a skip. The skip she said had a plywood cover over it.

[21] The plaintiff said that she did not at any time observe a barrel which was used to collect used bale wrap for disposal. Her recollection was that bale wrap was often left loose in small bins and later transferred to an open skip around the back of the stable yard.

Other evidence of note

(a) Medical records

[22] In the course of his cross-examination, a distinct theme in Mr Warnock's questioning of the plaintiff was the suggestion that the plaintiff had not disclosed the case which she later was to make involving the account that the horse had been spooked because of bale wrap. It was alleged this was only disclosed very late in the day. An aspect of this was the suggestion that there was no support for what she claimed had occurred in the contemporaneous medical records from the Royal Victoria Hospital, which is the hospital to which she had been taken. When it was suggested to the plaintiff that she had said nothing to support her account of why the accident had occurred at the hospital, the plaintiff's reply was that she was concerned about her leg and she may not have said anything about the cause. This was said against the background that, in her account, she had disclosed the cause of the accident at the scene of it.

[23] In fact it is clear that there is a relevant note in the hospital records in respect of the day after the accident. In its material part, the records show that the plaintiff told medical staff that the injury had been sustained "while working with a horse yesterday … the horse got spooked and fell on top of her right leg".

[24] In fairness to Mr Warnock, it was he who drew the court's attention to this note on the second day of trial. He wished to correct what he had alleged the day before. While the note does not refer to a piece of bale wrap being responsible for the accident, it seems clear from the note that the plaintiff believed that the horse had been spooked and that this account was provided close to the time of the accident.

[25] Interestingly, but not surprisingly, the plaintiff's letter of claim dated 19 November 2015 makes no reference to the horse spooking or to bale wrap as the cause of the accident. But the court is satisfied that the likelihood is that the solicitor followed a course of keeping the letter general, rather than particular, in terms of content and that no detrimental inference against the plaintiff should be drawn from this.

[26] In any event, on 16 December 2015 the plaintiff's solicitor wrote an e-mail to the defendant's insurers which does plainly refer to the cause of the accident being the spooking of the horse caused by bale wrap.

Assessment of witnesses

[27] The findings of fact in this case turn significantly on the court's view of the credibility of the principal witness for either side: the plaintiff and Ms Sheehy. In this regard, the court has carefully observed the way in which each gave their evidence and has had regard to the probability or improbability of their accounts. An important element within this has been whether either version of events is supported by contemporaneous records. Other factors relate to the manner in which each gave evidence; their demeanour when giving evidence; and the court has kept in mind that it should be alert to what a witness stands to gain or lose from the evidence which he or she gives.

[28] In the court's judgment the evidence of the plaintiff was impressive but the court was less impressed with Ms Sheehy's evidence.

[29] Notably the plaintiff gave her evidence in a straight-forward way. She responded to questions in an open way with little hesitation. Moreover she did not exaggerate. When pressed as to why she had not told hospital staff about what had happened to her she replied that she might have forgotten to do so. She said this without fuss and in a matter of fact way even though it in fact turned out that the premise of the question put to her – that she had not told hospital staff of what happened – turned out to be wrong, as in fact the medical records show that she did mention to the staff at the hospital that her horse had spooked so causing the accident. In the court's judgment, the medical record in question puts beyond significant doubt that the cause of the accident was, to the plaintiff's knowledge at that time, that Kate had spooked. The court can think of no good reason why she would have invented this account if it was not true.

[30] Equally when the plaintiff was asked in detail about which member of staff walked behind Ken (she said Mr Roney); what the arrangements were for dealing with bale wrap (no real system); and how Ms Sheehy came to the scene (summoned by telephone by Mr Hickey); and what passed between her and Ms Sheehy, she appeared to answer without hesitation or apparent doubt. When the suggestion was put to her that Ms Sheehy had inspected the area on the morning of the accident she was forthright in responding that she did not believe that this occurred and that she had not witnessed such an inspection during her time employed in the establishment.

[31] On the other hand, the court found Ms Sheehy's evidence to be difficult to accept. None of it was supported by any documentary evidence. There was no such evidence adduced in respect of how bale wrap was dealt with within the business, even though there was acceptance that stray pieces of it could create a spooking risk for horses. There was no record made of the alleged inspection that morning and there was no evidence of any system for inspection of the premises for anything which might spook a horse.

[32] Ms Sheehy's account of her being summoned to the scene was also questionable. It was clear that, despite her saying that she was walking behind Ken so as to be on hand to deal with any emergency, at the time of the plaintiff's accident the distance she had fallen behind the two horses was not insubstantial. This can be evidenced by the fact that she placed herself at some distance from the scene of the accident and did not see it happen. Additionally, it appears that the person riding Ken was at the scene of the accident quickly yet Ms Sheehy had to be summoned. Moreover, it will be recalled that the person riding Ken used a phone to contact Ms Sheehy, even though (on her account) she was close by. Finally, it was a feature of Ms Sheehy's evidence that she had to run to get to the scene of the accident.

[33] Additionally, her knowledge of how the accident had occurred appears odd. She claimed she went to the scene without having been told what had happened. She said she simply assumed that there was an issue with Ken. But this, to the court's mind, lacks the ring of truth. She says that she asked the plaintiff when she got to the scene of the accident what had happened but was told by her that she had slipped. Notably she does not appear to have explored this further. Ms Sheehy was, when she arrived, the most senior employee of the defendant there. It was her business to know how the accident had occurred and why it had occurred. The absence of any substantial inquiry as to these matters is troubling and points in the direction of the probability that she did know what was alleged to have occurred *i.e.* Kate spooking and falling down with her rider still on board, as the plaintiff claims. The court accepts that it was likely that that information was provided to her on the phone by Mr Hickey, again, as the plaintiff claims.

[34] The court, moreover, did not find her evidence about the system for dealing with bale wrap or her evidence about her inspection of the area in which Ken was to be ridden that morning convincing. As regards the former, her evidence was

generalised and unsupported by any type of formal instruction. As regards the latter, her account, lacked any form of corroboration.

[35] All of the above leads the court to the question of whose evidence it can rely on? The court acknowledges that the plaintiff stands to obtain damages if the court accepts her account whereas the same cannot be said of Ms Sheehy. Ms Sheehy, however, may feel an element of loyalty to her employers as well as a desire to demonstrate that the instruction and training of horses within the business was being conducted efficiently.

Liability

[36] The court is satisfied that the following has been proved to the civil standard of proof in this case:

(a) That the plaintiff on Kate was leading Ken, ridden by Mr Hickey at the time of the accident.

(b) That those working in the establishment, the plaintiff, Mr Hickey, Ms Sheehy and Mr Roney, as well as Ms Courtney, would all have been aware of the risk that horses can become spooked and that one cause of same can be fluttering of plastic in the hedgerow or on the ground which derived from bale wrap.

(c) That equally those working in the establishment as aforesaid would all have been aware that once a horse has become spooked there is a risk of it going out of control and falling and that if this occurs the horse may fall with the rider still seated unless the rider is able to get off in time.

(d) Once it falls, if the rider is still seated on the horse, there is a plain risk that the horse's weight may come down on a trapped rider's leg and thereby cause a substantial injury.

(e) This is what occurred in the present case. The horse was spooked; it went out of control; it fell with the plaintiff still on it; as a result her leg was trapped beneath its considerable weight as it came down, causing the plaintiff's injuries.

(f) In the court's opinion, the state of the concrete laneway played no part in this accident and it was not in itself a significant risk factor.

(g) In other words, the cause of the accident was the horse spooking.

(h) In the court's assessment, what caused the horse to spook, on the balance of probability, was the presence in the hedgerow of plastic

debris in the form of bale wrap, as alleged by the plaintiff. This material, in turn, probably originated from bales of fodder which were opened to feed horses but in respect of which pieces of the wrapping had not been securely disposed of but rather had been allowed to escape into the open where they became entangled, *inter alia*, in hedgerows adjoining the laneway. In the court's opinion, there was no adequate or reasonable system in place to guard against the escape of such material and there was no general system in place to inspect the laneways and environs of the establishment, despite these being used to train and exercise horses.

(i) The court does not accept Ms Sheehy's account that she had inspected the relevant laneway at 10.00 am on the morning of the accident and found nothing of note. There is no serious suggestion that there was any system in place requiring such an inspection and there is no record that any such inspection was in fact carried out by Ms Sheehy. The only evidence in support of the claim that an inspection had taken place was the oral evidence of Ms Sheehy, but the court does not consider that her evidence on this point was convincing.

(j) Equally, the court doubts that Ms Sheehy was walking, as a safety measure, behind Ken, as she claimed. The court prefers the evidence of the plaintiff on this point. If Ms Sheehy had been walking behind Ken, as she claimed, she would have had to be nearby Ken as the object of the exercise would have been to be near the horse so that the person at the rear could react quickly if the rider of Ken was unable to keep the horse under control. In fact, Ms Sheehy placed herself at the time of the accident some distance away from the accident site and out of sight of the locus. She had, even on her own evidence, to be summoned by telephone to come to the scene of the accident, by the rider of Ken. None of this suggested that Ms Sheehy was, as she claimed, performing the role of rear guard backstop to assist should an emergency *vis a vis* Ken occur.

(k) The court is satisfied that the plaintiff's account is correct where she told the court that she overheard Mr Hickey explain how the accident had occurred on the telephone to Ms Sheehy. The court also accepts the plaintiff's account that Mr Hickey told Ms Sheehy that the cause of the accident was that the horse (Kate) had become spooked. It was because she had this knowledge that Ms Sheehy appears to have asked so little about what caused the accident when she later arrived at the scene.

(l) The court does not believe that the plaintiff said that what caused the accident was that Kate had slipped on the road surface without any reference to the horse spooking. The court is satisfied that, in fact, the

plaintiff knew immediately after the accident that Kate had become spooked and she mentioned this to the medical staff once taken to hospital (as the contemporaneous records show). The court can see no reason why, given this knowledge, she would not have mentioned it at the scene if asked.

(m) The plaintiff, was not responsible for the accident, in any shape or form.

Conclusion

[37] In view of the findings of fact the court has made, the court concludes that liability against the defendant has been established as:

(a) The defendant owed a duty of care to the plaintiff, as an employee, to take reasonable care in the circumstances. This point was conceded in the defendant's skeleton argument.

(b) That duty was breached as, in the court's view, there was a failure properly to put in place an effective system for dealing with the debris from opening bales of fodder, notwithstanding that it was well-known that pieces of the plastic wrapping, if not securely disposed of, would have a propensity to blow about the area within the defendant's business which, *inter alia*, was used to train/exercise horses. Such material, everyone knew, could have the effect of spooking horses and this risk was not, it appears to the court, dealt with in an effective way. In particular the court is satisfied that there was no proper system for inspecting the areas within the enterprise where the horses were being trained/exercised. The court rejects the evidence from Ms Sheehy that off her own bat she just happened to carry out an inspection of the area on the morning of the accident because she knew that Ken, a young unbroken horse, was to be ridden outside for the first time.

(c) The breaches of the defendant's duty of care, both in respect of the absence of a system for dealing with debris from opening bales of fodder and in relation to the inspection of the route to be taken by horses within the enterprise, in the court's estimate, on the balance of probability, caused the risk to transpire, with the result that the plaintiff sustained substantial personal injuries as a result of the accident.

(d) In these circumstances the plaintiff is entitled to recover damages and there is no support whatever for a finding of contributory negligence.

(e) In view of the court's clear findings and its expressed view on common law liability above, it is unnecessary for the court to analyse the issue

of strict liability based on the doctrine provided by the House of Lords in the case of *Mirvahedy v Henley and Another* [2003] UKHL 16, [2003] 2 AC 491.

[38] As far as damages are concerned, the parties were agreed that if the court found for the plaintiff on the liability issue, quantum in terms of the award should be set at £93,142.59. The court orders damages in that sum.