

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Between:

STEPHEN JAMISON

Plaintiff;

-and-

RAYMOND MCSORLEY

Defendant;

-and-

THOMAS GRAY TRADING AS BUDGET TRAVEL CENTRE NI

Third-party.

MORGAN LCJ

[1] The plaintiff claims damages as a result of an incident at Playa de las Americas, Tenerife on 19 July 2001 when he fell down a set of steps at an apartment block as a result of contact with the defendant and sustained serious personal injuries including a tri-malleolar fracture and arthrodesis of the right ankle. Damages have been agreed between the plaintiff and defendant at £175,000. The defendant contends that he entered into an agreement with the third party at the time of the purchase of his holiday as a result of which the third party agreed to arrange insurance cover for him in respect of such a claim. The third party denies this.

[2] The defendant and his friend Andrea booked a holiday to Tenerife with the third party in June 2001. They went there in July 2001 and met the plaintiff whom they had not previously known. On the late afternoon of 19 July the three of them went to the apartment of another friend. In order to get

to the apartment they had to ascend a set of steps. The friend was not in his apartment and the three of them went to the top of the steps to make their way down. The plaintiff was in front with Andrea behind him. The defendant was slightly behind the plaintiff and to the plaintiff's right. As he started to descend the stairs the defendant lost his footing and fell. As he did so he came into contact with the plaintiff's right arm and grabbed the plaintiff's shirt. As a result both men fell down the steps and the plaintiff sustained the serious injuries indicated to his right ankle. When the defendant realised that the plaintiff had been seriously injured he helped him and called an ambulance. The defendant explained that he had slipped. The plaintiff accepted that the defendant had lost his balance in a split second.

[3] The defendant's account of the incident was broadly similar. He was wearing flip flops. He believes that he was putting his foot on to the second step down when his toe slipped through the flip-flop and connected with the concrete of the step causing him pain so that he lost his balance. He reached out to grab the plaintiff to save himself. It happened very quickly and there was no time to think. In cross examination he stated that he believed that the sole of the flip-flop bent backwards as a result of which there was contact between the toe and the step. The defendant explained that he had just left the pool and was wearing shorts and flip-flops. He had worn flip-flops all his life and had never fallen down steps before. There were handrails at the steps but he was not holding a hand rail as he descended and when he started to fall it was too late to grab one.

[4] The plaintiff essentially contended for two cases on which to establish the liability of the defendant. The first related to a failure to keep proper lookout when he was descending steps so as to prevent him losing his footing. It is common case that the defendant was walking in an entirely normal manner and that there was nothing defective about his foot wear. There was no evidence to suggest that there were any particular steps that a person wearing flip-flops would need to take as compared to a person wearing shoes. There was no evidence that the defendant had sustained any difficulty in negotiating the ascent or descent of steps before this. The steps were regular and there was nothing about them to put the defendant on notice that they gave rise to any danger. There was no evidence to suggest that the plaintiff's manner of descending the steps was in any way out of the ordinary and in my view no basis for the suggestion that he failed to keep a proper lookout. In the circumstances outlined he was not exposed to any reasonably foreseeable danger which required him to examine where his feet were put.

[5] The second essential particular related to the failure to use the available handrails. There is no doubt that there were handrails in place on the stairs. There was, however, no particular danger associated with the stairs and no suggestion that the footwear worn by the plaintiff in any way give rise

to difficulties to which he should have been alert. In the absence of any evidence suggesting that there was any particular difficulty about the plaintiff negotiating the stairs in the fashion in which he did I consider that there is no basis for concluding that his failure to hold the hand rail constituted any breach of his duty to take care of himself or others. It must follow, therefore, that the plaintiff's action fails.

[6] A considerable body of the evidence in this case was taken up with the circumstances in which the defendant purchased his holiday. The defendant described how he and his friend Andrea saw the third party travel agent advertising "Tenerife £500 free insurance". Although the defendant gave extensive evidence of his conversations with the third party he accepts that the paperwork in relation to the holiday was dealt with by his friend Andrea. She was diabetic and it is common case that as a result of this she would not have been able to avail of the free insurance without a letter from her doctor. The defendant contends, however, that the third party agreed in any event to provide insurance cover for him. His case is that Andrea indicated that she would get her own insurance and indeed did so at the Post Office although no documentary evidence of such insurance was ever produced on behalf of the defendant.

[7] There are in my view two reasons why I should not accept this version of events. First it is essential to the defendant's case that Andrea indicated at the time of booking that she would arrange for alternative insurance cover for herself. The booking form was completed by Jennifer Wilson who was employed by the third party. She has specifically recorded in writing on the booking details form "need letter from doctor". If, as the defendant says, Andrea indicated that she was not requesting insurance cover at the time at which the booking was made there is no reason why this entry should have appeared in the booking details. On the other hand the inclusion of this entry tends to suggest that Andrea was still at least leaving open the possibility of obtaining the benefit of the free insurance. Andrea was not called as a witness despite the fact that she was the one who dealt with the preparation of the paperwork on behalf of the defendant. I accept the third party's evidence that free insurance was available only to the entire party or to no members of the party and that the making of this apparently contemporaneous record is inconsistent with the defendant's case.

[8] The second substantial reason for not accepting the defendant's case is the fact that it is agreed between the parties that no insurance documents of any kind were in fact provided to the defendant. If it is the case that it was agreed that insurance cover was to be provided to the defendant such documentation should have been provided and the absence of it prior to departure noted. The only documentation relating to insurance in the possession of the defendant was documentation describing essentially the nature of insurance cover that might be available. Both the expert called on

behalf of the plaintiff and the defendant's witnesses confirmed that this was the position. The provision of such documentation is consistent with the third party's case that insurance cover had been discussed but not arranged. If insurance cover had been arranged the evidence indicated that there were insurance documents within the third party's business which would have been provided to the person insured.

[9] On behalf of the defendant the alternative case made was that even if I did not accept his evidence about the arrangement for Andrea I should still find that when he left the offices of the third party travel agent at the time of booking it had been represented to him that he had the benefit of insurance cover. I had the benefit of hearing from Jennifer Wilson who prepared the booking details. She worked for the third party for three years but had ceased employment with him approximately 4 years before giving her evidence. She gave evidence about her training and the operation of the free insurance scheme. She explained that when a booking was made the insurance cover for all members of the party was placed on one policy. I am entirely satisfied on the basis of her evidence that the defendant could not have been under any misapprehension about his insurance position and that Ms Wilson properly and adequately informed the defendant that he would not have insurance cover until a letter had been produced in respect of his friend Andrea demonstrating that she was fit to travel.

[10] In those circumstances I reject the defendant's claim that he had the benefit of an insurance policy organised by the third party on his behalf or that there was any representation to that effect made to him.