Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.1988/C204

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| BETWEEN | THOMAS CRANDALL | PLAINTIFF |
| A N D | JAMAICA FOLLY RESORTS | DEFENDANT |

Miss M. Palmer and Miss N. Lambert instructed by Myers, Fletcher and Gordon for Plaintiff.

Mr. Gordon Robinson instructed by Nunes, Scholefield, DeLeon and Company for Defendant.

HEARD: 1st, 2nd, 3rd December, 1997
and 25th June, 1998.

ELLIS, J.

The plaintiff claims damages in negligence, and/or for breach of The Occupiers Liability Act and/or breach of contract.

He alleges that on the 13th day of December, 1985 he was a guest at the Defendant's Hotel in Ocho Rios, Jamaica. He was seated on a wrought iron chair at the bar area of the hotel. He said the chair suddenly collapsed causing him to be violently thrown to the floor to the extent that he suffered injury and pecuniary loss. Those injury and pecuniary loss are set out in his amended Statement of Claim as further amended.

The defendant admits that the plaintiff was seated and did fall as he alleges. The circumstances of his fall are denied.

The defendant contends that the plaintiff solely caused or contributed to his fall by negligently tipping back the chair on its rear legs. He did so although, he was repeatedly warned against the dangers of doing so by the defendant's servants/agents.

The particulars of the defendant's negligence are set out in the Statement of Defence as follows:

(i) Tipping back the said chair on its rear legs whilst seated thereon;

(ii) Failing to heed the warnings of the Defendant's servants and/or agents not to tip back the said chair.

(iii) Using the said chair in a manner and for a purpose for which it was not intended to be used.

(iv) Failing to appreciate the danger of sitting in the chair as he did.

The defendant also pleads that his premises were safe for the plaintiff's use and that the said chair was safe.

A preliminary issue was tried and the ruling of the court was that depositions referrable to plaintiff's injuries taken in the defendant's absence were admissable in evidence as Exhibit 1.

The plaintiff evidenced his case by giving evidence, calling Gordon Krohn and putting in receipts and photographs as exhibits 2 and 3.

The plaintiff said that when his chair collapsed he grabbed the inner rail of the bar at which he was sitting. As he did so he felt something "popped" in his left arm and he let go and fell to the floor in excruciating pain.

He got no medical attention at the hotel and he was transported to St. Ann's Bay Hospital where he was given an injection to his arm.

On his return to the United States, he consulted an Orthopaedic Surgeon Dr. Robert L. Hausserman. This doctor's examination of the plaintiff's arm found that he had swelling and discolouration and tenderness along the front part of his elbow along the course where the biceps tendon would normally run. He had a distinct weakness with resisted supination which would be turning the palm up. Also weakness in forearm flexion. The biceps was entirely torn from the radius bone.

The injuries to the plaintiff's arm were remedied by surgery on the 18th December, 1985 and he was hospitalized for five days.

After this surgery and hospitalization there was further surgery on the 9th April, 1986 with hospitalization to the 18th April, 1986. This latter period of hospitalization was a consequence of a heart attack caused by the surgery.

The plaintiff was cross examined by Mr. Robinson in his usual careful and incisive manner.

The tenor of the cross examination was to suggest that the plaintiff:

(a) was an overweight man who;

(b) tipped back his chair on the back legs and placed his weight on those legs causing the leg of the chair to break and he;

(b) ignored the warnings against that action from the defendant's agents and was therefore the author of his injuries.

The plaintiff denied the suggestions.

Mr. Gordon Krohn gave evidence as to the events and that he took photograph (Exhibit 3).

He denied that Crandall was acting as if he was intoxicated. He said the photographs represent accurately the scene as he saw them.

In cross examination he admitted that one of the photographs was taken the morning after the incident.

That was the case for the plaintiff.

Mr. Anthony Hay for the defendant was the manager of the hotel in December, 1985. He said that on the 13th December, 1985 he was at the hotel at the Eastern side of the bar. He saw the plaintiff leaning backwards on the two back legs of his chair rocking back and forth.

He directed the bartender to speak to the plaintiff against his action. The plaintiff repeated his action and he again instructed the bartender to speak to him again. He left to his office and about two minutes after he was told something.

He went back to the bar area and saw the plaintiff and a broken chain. He admonished the plaintiff for tipping his chair back and forth on its back legs. According to Mr. Hay the plaintiff told him that he was alright and he appeared to be so to him.

He spoke to the plaintiff at no time after and did not see him again.

Mr. Hay said on cross examination that he saw the plaintiff engaged in dangerous conduct and that he thought he had some responsibility to protect him. He did so by delegating his bartender to warn him as to the danger of his conduct.

The chair would have been over five years old at the time of

the incident. There was a daily maintenance programme and he did see one leg of a chair broken. The legs of the chairs are secured by nuts and bolts and washers. If a guest was injured at the hotel an ambulance would have been called to transport him to hospital. No call for an ambulance was made as the plaintiff said he was not injured. He was aware that the plaintiff had taken the broken chair leg.

Mr. Wendell Galloway said he was a musician at the hotel on the 13th December, 1985. He was in the process of packing up his instruments when he saw a man sitting at the bar.

He saw two front legs of the man's chair "kind of up off the floor." He then saw the same man on the floor. He got up and sat in another chair and was spoken to by the owner of the hotel.

Mr. Glen McDonnough is the manufacturer of the chair. He gave evidence as to the manufacturing process and that he sold the chairs to the defendant between 1978-1979. The legs of the chairs are attached by bolts and nuts and the chair parts are dovetailed together.

In all the years as a manufacturer of the patio chairs he has had complaints of chair legs breaking only two or three times.

In his opinion the chair leg:

(a) would not snap as the relevant one did or it would be highly unlikely to do so if a person sat normally on it;

(b) would be unlikely to snap or break if one pushed back the chair in order to get up;

(c) if rocked back and forth the chair leg could be broken.

In answer to questions by Miss Lambert, Mr. McDonnough said the nuts and bolts which secured the legs of the chairs were not susceptible to wear as they were stainless steel. Sea water would not have affected the bolts. But he had no knowledge as to the condition of the chairs in 1985.

Mr. Desmond Palmer and Mr. Dean Lowe also gave evidence for the defence. Their evidence however did not add to the evidence for the defendant.

LIABILITY

Mr. Robinson submitted that liability rests on one issue. That is, was the plaintiff rocking back and forth on his chair? If the court so finds that would be the end of the plaintiff's case.

He contended that plaintiff was not injured as he alleged, since he told Hay that he was fine soon after his fall.

The pictures taken by Krohn and the circumstances in which they were taken cast doubt as to the truth of the injury. He also drew attention to page 97 of Exhibit 1 where Dr. Hausserman, plaontiff's ohysician with reference to the plaintiff said "This patient caught himself with his left arm as he was falling in his backyard, sustaining injury to his left arm."

I cannot agree with the submissions of Mr. Robinson. I entertain no doubt that the plaintiff sustained his injury as a consequence of his fall at the hotel and in the circumstances he outlined.

In the nature of the plaintff's visit, the defendant owed him a duty of care against injury. That duty of care extended to the provision of fit and suitable chair for the seating of the plaintiff. The alleged obesity of the plaintiff does not relieve the defendant of his duty of care.

Did the defendant discharge the duty of care

The chair provided for the plaintiff broke. Mr. McDonnough who made the chair, in his evidence for the defendant, was of opinion that if one rocked back and forth on the chair it could cause a leg to break.

However, he did say, and I quote:

> "I was not involved in the maintenance of the chairs. I have no knowledge of the conditions of the chairs in 1985."

The defendant therefore advanced no evidence as to the condition of the chair at the relevant time. Moreover, there was no evidence of maintenance procedure.

The pleading of the defendnat of S.3(5) of The Occupiers Liability Act as to warnings does not avail.

I find that the warnings were not given and even if they were,

the circumstances were not enough to render the plaintiff safe.

I therefore find that the defendant is liable under the Occupiers Liability Act for the injuries of the plaintiff. One of the particulars of injury claimed by the plaintiff is a post surgery heart attack.

It was submitted that the injury is remote. I do not find any remoteness of that injury as under the principle laid down in **South v. Leech Brain** [1962] 2 Q.B. 405 the defendant must take the victim as he finds him.

Damages

The plaintiff will have Special Damages in an amount of J$95.00 plus the Jamaican dollar equivalent of U.S.$23,220.20 as of date with interest of 3% as of 13th December, 1985.

The injury to the plaintiff's arm attracted surgery twice. The arm has not improved by surgery. In November, 1996 Dr. Hausserman in Exhibit 1, stated that the plaintiff's inability to rotate his wrist continued. His elbow on being x-rayed showed signs of calcification. The conditions which are inhibitive of full user of the arm will continue for life. In addition to those conditions there is the serious incidence of the heart attack.

Mr. Robinson was of opinion that an award of $200,000 would be an adequate award of damages. Miss Palmer on the other hand, argued for an award of well over $2,000,000.

I have not been directed to any award of damages on all fours with this case. In the circumstances I would award an amount of $1,750,000 to cover pain and suffering and loss of amenities. This amount of $1,750,000 to bear interest of 3% as of 9th June, 1989.

Plaintiff is to have costs to be agreed or taxed.

There will be judgment for the plaintiff accordingly.