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TRAVEL AND TOURISM LAWYERS' ASSOCIATION

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If, like me, you spent 7 hours on a train without air conditioning on the hottest day of the year (see, "*Travel Chaos*" across all media), you will have had ample time to skim the decision (if properly so-called) of the Supreme Court in ***X v Kuoni*** [2019] UKSC 37 (published 24 July 2019). If you have not yet been able to catch up, then I can save you the trouble: "*we don't know the answer, we had better ask the CJEU*." We may return to this case law in later editions or we may, like the Supremes, wait for the CJEU to tell us the answer.

This Newsletter takes us back to that perennial favourite: the local safety standards defence. I recall that, some years ago, Alan Saggerson (late of this Parish) wrote an article on the same topic (following his successful defence at Trial of a number of *slipping-in-bathroom* cases). The Saggerson article was entitled, "*A Slip in the Shower can be Quite Continental, but Grab Rails are a Girl's Best Friend*." I hope that you enjoy Ella Davis' case note (below) and, if you are heading away this Summer, may all your journeys be on spacious, air-conditioned, well-staffed and on time trains and planes …

Where there's no blame, there's no claim

The Claimant in a recent case heard by HHJ Hampton at Leicester, suffered an accident on a holiday abroad. Despite satisfying the court of the facts of his claim, he failed to establish that the Defendant was liable.

Background

The judge accepted the Claimant's account that, on returning from a night-time walk in Mallorca, he and his partner went to the hotel bar and ordered a last drink. They took their drinks outside and sat down opposite another couple. They had been sat there chatting for 30-45 minutes when the other couple went to leave. The claimant stood up part way to shake hands and when he sat back down the chair collapsed under him, causing him to sustain a relatively modest whiplash type injury. The chair was made of a metal frame wrapped in a plastic wicker. The metal leg, which was not visible under the plastic wicker before the accident, had snapped.

The Claim

The claimant sued the UK tour operator under the Package Travel Regulations 1992. The Defendant argued first, that the Claimant's failure to adduce any evidence of local standards was fatal to the claim, and second, that in any event the chair broke as a result of a latent defect which was not reasonably discoverable.

The Evidence

On direct questioning from the judge, the Claimant confirmed that he saw no evidence of rust or discolouration. He could not see the metal frame. In the 30-45 minutes he was sat in the chair, he had no concerns about its stability. He had not seen any other damaged chairs during the course of his holiday. The court also heard evidence from the hotel manager who said that chairs of that type had been in use for 12 years at the time of the accident. There had sometimes been issues with the wicker on the arms breaking, but there had never been an incident of the metal frame breaking. There was no formal system of inspection of the chairs, but each day the waiters would put them back in place at the tables. If any member of staff noticed that a chair was broken, it would be removed. Indeed, it was agreed that the chair in question was removed shortly after the Claimant's accident as the Claimant had gone back to take photographs and found it already gone (the judge rejected any inference that this was improper given that there was no evidence that the Claimant asked to inspect the chair and no claim was intimated until some months later).

The Judgment

HHJ Hampton dismissed the claim.

The Claimant argued that there should have been evidence of health and safety inspections and that the system of inspection by the waiters was inadequate, but the judge rejected this argument as she had no evidence that such inspections were required by Spanish standards.

The judge noted that there was no evidence as to why the chair broke and no evidence as to its condition immediately before the accident. It might have been misused by another guest (it was not suggested, and the judge did not find, that there had been any misuse by the Claimant). It seemed unlikely that there was a manufacturing defect if the chair was 12 years old, although given the evidence as to some chairs having had problems with the wicker, the judge noted that the chair in question might not have been quite that old. The judge was left in a position of simply not knowing what caused the chair to break.

There was no allegation that the chair was of a type that was unfit for purpose. The judge had been provided with a data sheet relating to the chair. There was no evidence from this document that the chairs should be treated as having a limited shelf life or that there was a need to protect them from the weather.

The judge rejected any suggestion that this was a case where the fact of the accident put any evidential burden on the Defendant (as for example in *Ward v Tesco Stores Ltd [1976] 1 W.L.R. 810*). She held that fault must be proved by the Claimant. It must also, per *Lougheed v On the Beach Ltd [2014] EWCA Civ 1538*, be proved by reference to local standards. The judge held that what the Court of Appeal said in *Lougheed* about the need for evidence of local standards as to the inspection and maintenance of floors, could equally be applied to the inspection and maintenance of outdoor furniture. To expect a uniformity of approach as to the inspection of outdoor furniture is unrealistic.

Further, the judge found some support for her conclusion in the decision of HHJ Hill QC in the case of *McRae v Thomson Holidays Ltd [2001] C.L.Y. 4291*. That was a case in which the claimant alleged that he had suffered injury as a result of an accident when one of the legs on a plastic poolside sunbed upon which he was lying face down, bent, causing him to "jolt". That claim was dismissed in part as there had been no visible defect in the sunbed, so it was difficult to accept that any non-scientific inspection prior to the accident could have detected the fault. Therefore, it could not be said that the sunbed had been unsafe at that time or that enforcement of a reasonable system of inspection would have avoided the accident

Conclusion

This case is yet another warning that the claimant who chooses not to adduce local standards evidence "does so at his peril". However, it also serves as a reminder that some accidents are just that. The courts will not infer fault simply from the fact that a claimant sustains injury at a hotel; fault must be proved.

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