Neutral Citation [2017] NIQB 5 | *Ref:* **STE10149**

Judgment: approved by the Court for handing down | *Delivered:* **16/01/17**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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LEANNE BROWN

Plaintiff:

-v-

ABERCORN ESTATES

Defendant:

_____

STEPHENS J

Introduction

[1] The plaintiff, Leanne Brown, then 30, now 33, (DOB 1 July 1983) sustained severe lacerations to her left groin, right medial thigh and right lower leg, together with a fracture of the anterior cortex of her right tibia, at approximately 11.30 pm on Saturday 16 November 2013 in the dining room at Belle Isle Castle, Lisbellaw, County Fermanagh, ("the Castle") which property is owned and occupied by the defendant. On the weekend of Friday 15 November to Sunday 17 November 2013 the Castle had been hired by the defendant to Emma McLaughlin and Stuart Gorman, the organisers of a 30th birthday party, which was to be attended by some 30 guests, who were to stay either in the Castle or in the adjoining self-catering cottages. This was a self-catering weekend so that the organisers and their guests were to be responsible for the provision of all food and drink. The plaintiff and her husband were amongst the friends who were to stay at the Castle and attend the masquerade ball in the dining room on Saturday 17 November 2013.

[2] In one of the bay windows in the dining room was a large decorative antique ceramic jardinière, which was in two parts, the lower of which was a stand, on top of which was placed a large ceramic urn. The plaintiff's injuries were sustained when the urn was dislodged from the stand and fell to the ground. At the same time the plaintiff fell onto the broken pieces of the urn, as a consequence of which she sustained her injuries, including deep lacerations. She lost copious quantities of blood. I consider that her life was saved by the intervention of one of the guests who applied a tourniquet.

[3] The plaintiff alleges that the defendant was guilty of negligence and breach of statutory duty in a number of respects including, in the context of a dining room accommodating some thirty people, many of whom would have consumed alcohol, failing to secure the urn to its stand with cable ties or in the alternative failing to increase the weight and stability of the urn by placing soil or other material in it. It is suggested that either of these precautions would have prevented the accidental dislodging of the urn from its stand. It is alleged on behalf of the plaintiff that it was foreseeable that the urn, in the context of this dining facility, was unstable and unsafe and that it should have been secured appropriately or else removed. Accordingly it is suggested, and I agree, that the first question is whether the defendant is liable on the basis that I have outlined. So even if it is established that the plaintiff was at fault, the first and primary question is and remains whether there is any negligence or breach of statutory duty on the part of the defendant or any of its servants or agents.

[4] Damages, subject to liability, have been agreed in the total amount of £100,000 plus the amount to be repaid to the Compensation Recovery Unit. The amount of £100,000 includes special damages of £8,000.

[5] By its defence and counterclaim served on 27 April 2016 the defendant, not only denied liability, but also sought to recover damages of £2,500 from the plaintiff, being the value of the urn, on the basis that she was negligent in causing it to fall and to break. The counterclaim was not pursued at trial. I assume that this was because of and out of consideration for, the serious nature of the injuries sustained by the plaintiff. The counterclaim was formally abandoned by e mail dated 05 January 2017. I enter judgment for the plaintiff against the defendant on the counterclaim. The only issue for my determination is the liability of the defendant to the plaintiff.

[6] I attach to this judgment photographs taken on 18 November 2016 by Mr Laurence Joseph McGill, consulting engineer, retained on behalf of the plaintiff. Mr McGill has a Bsc (Hons) in Civil Engineering, he is a Chartered Member of the Institute of Civil Engineers and he has a HEBOSH Diploma in Occupational Health & Safety. Photograph 1 shows the dining room at the Castle, though with a different table arrangement than on the night of this accident. Photograph 2 shows the bay window in which the jardinière was placed. Photograph 3 shows the radiator set out from the wall, below the window, which results in the reach to the window handle being slightly greater. Photograph 4 shows the window handle. Photographs 5 to 10 show the stand to and the damaged urn of, the jardinière. The recess in the stand, to accommodate the urn, can be seen in photograph 7. The three drainage holes in the urn and the decorative holes in the top of the stand can be seen in photographs 8 and 10 respectively.

[7] Mr Ronan Lavery QC appeared on behalf of the plaintiff. Mr McCollum QC and Mr Warnock appeared on behalf of the defendant.

Factual background

[8] The Castle was acquired by the defendant in 1991 and was opened to the public in 1995. The jardinière was a Victorian piece of circa 1850-1875. It was considered to be in keeping with the decoration and furnishing of the Castle. It had been in the Castle for a considerable period of time without any previous accident, which is to be seen in the context of the many guests who had used the premises. It was considered to be a sturdy, heavy urn and it was not considered by the defendant to create a risk of being dislodged.

[9] The dining room was also referred to in evidence as the "Great Hall." As is implied by that name and as can be seen from the photographs, it is a large room. There was no suggestion that it was overcrowded or that there was any crush of people or that there was any difficulty in moving around.

[10] The window bay in which the jardinière was placed, has seven windows in a semi-circle; three in the centre and two on either side. One of the three central windows is fixed, though it is possible to open two of them. The window handle is metal. The bottom of the handle is some six feet above the floor of the dining room. However, there is a radiator under the central three windows and this means that the total reach from the floor to the bottom of the handle, is some 6 feet 2 inches.

[11] The total width of the window bay is 3.3 metres and it is 1.5 metres from the front to the back. The central section, with the three central windows, is 1.64 metres wide. From the outside of the radiator to the recessed window pane is 1 feet 8 inches.

[12] In relation to the jardinière the overall diameter of the rim of the urn is 2 feet 8 inches. The base is 2 feet high. There is a 3 mm recess in the top surface of the base, in which the urn sits. That recess is just under an inch from the edge of the base. The urn weighed 38 kilograms or 84 lbs. The force to unbalance it by pushing down vertically on the rim would be a force of 34 kilograms or 75 lbs. The force involved in pushing it horizontally before it dislodges is 19 kilograms or 22 lbs.

[13] The plaintiff and her husband were the first guests to arrive at the Castle on the evening of Friday 15 November 2013. Mr Andrew Lamont, the manager of the Castle, having met them, went through with them safety aspects such as fire alarms, fire drills and emergency exits.

[14] Mr Lamont stated that prior to Friday 15 November 2013, the dining room had been set up with tables and chairs in the way requested by the organisers of the birthday party which was to take place on the Saturday evening. That is with a number of circular tables with approximately 8 chairs at each. The plaintiff could not say one way or the other whether that was correct. The plaintiff's husband considered that when they arrived on Friday 15 November 2013 the dining room was bare and that the tables were set up on the Saturday afternoon, when a few men

arrived. I prefer the evidence of Mr Lamont in relation to this issue given that the persons responsible for setting up the dining room would not have been available on the Saturday and there was no reason why it could not have been set up prior to Friday 15 November 2013.

[15] Mr Lamont gave evidence that the jardinière was always positioned by the defendant in the centre of the window bay, which meant that it was directly below the fixed window of the central three windows. The plaintiff did not pay any particular attention to the jardinière prior to the evening of the accident. She could not say where it was positioned on the Friday evening. She could not challenge Mr Lamont's evidence that it was left in the middle of the bay window so that if it was not in that position when the accident occurred, then it must have been moved by one or more of the guests. I find as a fact that it was positioned by the defendant in the centre of the window bay.

[16] The plaintiff and her husband were joined on Friday 15 November 2013 by some 15 to 16 other guests for a quiet evening, having a few drinks in the drawing room. The next morning they made breakfast and then the plaintiff and Emma McLaughlin went shopping for snacks and drinks for the evening.

[17] The rest of the guests arrived on Saturday 16 November 2013.

[18] The guests were mostly couples and all were approximately the same age.

[19] On the evening of Saturday 17 November 2013 the guests had a meal in the dining room commencing at about 8 pm.

[20] The plaintiff states that she had a few drinks during the evening, prior to the accident though she could not remember the exact number or type. She asserted that she did not have copious amounts of alcohol. The ambulance records confirm that she had alcohol taken but there is no medical record of any history or observation that she had consumed an excessive amount of alcohol. She denies having done so. I accept that part of her evidence.

[21] After the meal the tables were cleared by some of the guests into the kitchen. It was at this time that the plaintiff went to the drawing room with two friends, one of whom was Emma McLaughlin. After a period of time they all returned together to the dining room. As the plaintiff returned to the dining room there was a rectangular table against the wall on her left hand side, which was being used as a drinks table and around which were a number of male guests. There were at least four people in that group, though the plaintiff did not know any of them or their names. The table was close to the bay window containing the jardinière. The plaintiff stated that she went past the table and stood at the far end of it, at the front of the bay window. She stated that she did not know where the two friends (who had returned with her to the dining room) were at the time of the accident, though I consider that they must have been in close proximity when it occurred given the

plaintiff's description that they all entered the dining room at the same time and the inference, which I take from her description, that not much time passed between them doing so and the accident occurring.

[22] The plaintiff gave evidence that she was wearing a dress which was low at the back and she stated that she felt a chill as the window was open. She turned round in order to close the window. She saw the jardinière which she stated appeared to her be one complete blue ornament. She stated that she was unaware at the time that it had two parts, a stand and an urn.

[23] The exact position of the jardinière can be discerned from a photograph which was taken by the plaintiff's husband some 30 to 45 minutes before the accident occurred. That photograph shows that the centre of the jardinière was directly under the upright separating the three central windows from the two windows on the left-hand side. The photograph also shows that the right-hand edge of the urn was some half-way across the first of the central windows, which is the window which the plaintiff states that she was attempting to close. I find as a fact that during the evening it had been moved to the left from the centre of the window bay. I also find as a fact that this was done by those attending this function.

[24] The position of the jardinière as shown in the plaintiff's husband's photograph meant that the right-hand side of the window was not obstructed by the jardinière. That is the right hand side of the window which the plaintiff states that she was going to close. It also means that there was a clear way to gain access to the window handle, leaving the jardinière on the plaintiff's left-hand side. If the plaintiff had approached leaving the jardinière to her left-hand side, she would have been able to put her left hand on the top of the radiator or on the bottom of the window and have reached up to the window handle without having to reach over, lean over or touch any part of the jardinière. There was no obstruction in her way and it would have been a simple task to have closed the window in that manner. The plaintiff accepted that this was correct and that in such circumstances she would not have had to touch the jardinière at all. Rather than approaching the window in this manner, the plaintiff stated that she approached the jardinière so that it was on her right-hand side. The plaintiff attempted to give a number of explanations for going to the other side of the jardinière, including that was the side from which she was approaching. I do not accept that there is any substance in any of those explanations. It was a simple task of deciding which way to approach the window. The obvious and natural way was to approach leaving the jardinière on her left-hand side. It was obviously going to create substantial difficulties if she left the jardinière on her right-hand side. That would require her to stretch and to reach over it putting her weight on it, in order to balance herself.

[25] The photograph taken some 30 to 45 minutes before the accident occurred also shows an item of clothing left on the radiator and also what appears to be an item of clothing draped over the right-hand side of the rim of the urn.

[26] The plaintiff stated that in order to close the window she placed her right hand on the rim at the top of the jardinière and reached up with her left hand. She stated that she felt that there was enough room for her go between the jardinière and the window in order to close it. The plaintiff states that she was on her toes, stretching for the window, putting a lot of her body weight on the urn. She accepts that she was putting a lot of force on the side of the urn. She stated that, as she stretched up, the top of the jardinière gave way and slid underneath her hand. She stated that she was stretching over to the window and stretched too far and lost her balance as the urn part of the jardinière slid off the top of the stand. As a consequence of losing her balance she went over with it towards the window. The plaintiff states that the urn fell between the stand and the window. She does not remember the urn breaking but rather after the accident looking down and seeing the exposed bone in her leg. She recollects trying to get up and realising that she had been seriously hurt.

[27] The plaintiff did not think that her husband was in the dining room when the accident occurred and she did not think that he saw the accident occurring. Accordingly, as far as the plaintiff was concerned, if her husband was to give an account of what had occurred that could only have been on the basis of what he had been told by someone else. The plaintiff's husband accepted that he did not see the accident and that any account that he gave must have been based on what he had been told by other people.

[28] The plaintiff was taken to hospital by ambulance. She was accompanied in the ambulance by her husband and by Emma McLaughlin. Her husband stayed the night in the hospital and returned to the Castle on the morning of Sunday 18 November 2013. He stated that upon his return to the Castle he entered the dining room and the manager was mopping the plaintiff's blood out of the carpet. He was then invited by Mr Lamont to go to the estate office where a conversation took place. Mr Lamont made a note of that conversation which included the following:

> "At approx. 11.45 pm on Saturday 16th November 2013 Leanne Brown (DOB) 01/07/83 had gone to speak with another house guest who was stood in the Grand Hall behind the Minton Jardinière. Whilst taking to the other guest Leanne Brown lent against the jardinière and knock it over and subsequently fell on top of the broken pieces. Leanne was badly cut on both thighs and her right ankle. The cuts were right 'to the bone' and Leanne lost a great deal of blood."

The plaintiff's husband is then noted as being very apologetic and offering to pay for the damage.

Discussion

[29] There were a number of aspects of the evidence of Mr Lamont which caused a degree of concern. He did not carry out any accident investigation apart from taking an account from the plaintiff's husband. He did not obtain or record the names of, or any account from, any of the witnesses. The accident book entry was the only entry in what could best be described as "an exercise book." He was not aware of and did not give any consideration to reporting the incident under the *Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (Northern Ireland) 1997*. However despite these reservations I consider that in relation to the evidence which he did give, he was an accurate and reliable witness. I base this not only on his demeanour, but also, for instance on the small details of his evidence. An instance of detail was his account that the dining room had been set up on the Thursday prior to any of the guests arriving.

[30] In contrast to Mr Lamont I consider that there were aspects of the plaintiff's evidence which were vague and hard to follow and that she was not prepared to frankly admit that the method she adopted to close the window was plainly one fraught with difficulties when there was a perfectly simple method of doing so. In addition the plaintiff states that the urn fell between the stand and the window. I just do not accept that is possible, as the plaintiff's right hand would have been pushing the jardinière away from her and not towards the window. I also do not accept it on the basis of the plaintiff's husband's evidence that when he came into the dining room, after the accident, he found the plaintiff lying on the floor just at the entrance to the bay window. Furthermore I reject her evidence that there was an appreciable gap between the jardinière and the window that allowed her to reach the window handle without reaching over the urn. The lack of any appreciable gap is another reason for rejecting her evidence that the urn fell between the stand and the window. Finally I do not accept that the plaintiff was exerting a force approaching 75 lbs on the rim of the urn which would have been needed to dislodge it. I say approaching 75 lbs because the force would not all have been vertically on the rim but it would be far closer to vertical than horizontal.

[31] In addition the reliability or veracity of the plaintiff's account was called into question by the defendant.

[32] Various medical notes and records were put to the plaintiff. The medical note made at 1.50 am on 17 November 2013 records a history that the plaintiff "… fell on china flower pot which broke." The ambulance note records a history that "leaned up against a large freestanding vase on a stand which patient fell on as it smashed" and also that "fell against large porcelain vase." Those accounts given within a short time of the accident do not contain any reference to closing a window and would support the proposition that she fell against the urn which then fell on to the ground where it broke and then that she fell on to the broken pieces. However, some ten days after the accident and in the hospital discharge letter to the plaintiff's general practitioner a history is recorded that "she was reaching over a ceramic vase to close

a window, the vase fell and she fell on top of it." I would not come to any adverse conclusion based solely on the medical notes and records.

[33] The plaintiff in her evidence, some three years after the accident, stated that she felt a chill so that she attempted to *close* the window *to prevent air from entering the dining room* through it. However, in the plaintiff's solicitor's letter of claim, written within five months of the accident, it was stated that "our client went to *open* a window …" and that as "she *reached over this urn* in order to *open* the window *to let in some air* …." (emphasis added). The plaintiff asserted that the letter of claim was wrong and that she was not opening the window nor was she letting in some air nor was her arm reaching over the urn.

[34] Those inconsistencies are to be seen in the context of the account given by the plaintiff's husband to Mr Lamont together with the apology and the offer to pay for the damage. In reply to the question as to how her husband had obtained an account of the accident, the plaintiff stated that he had spoken to her and to Emma McLaughlin, who had accompanied the plaintiff and her husband in the ambulance. Initially the plaintiff accepted that she had told her husband what had happened so that the inference would have been that the account that he gave to Mr Lamont was based on that account. Subsequently she stated that she did not *remember* having done so and that she did not recall speaking to her husband *in great detail*. I do not accept those qualifications to her initial reply.

[35] The plaintiff's husband stated that the account that he received was from Emma McLaughlin, who informed him that she had not seen the accident and she was very vague. She knew roughly where the plaintiff had been and then was involved in the aftermath. The plaintiff's husband stated that he was with the plaintiff all night in the hospital and he got to see her for 10 to 15 minutes. He stated that he did not have the opportunity to put his wife over the events which had happened and she was in no fit state to give an account. In relation to the conversation with Mr Lamont he did not recall a lot of what was said though he did recall going to an office with Mr Lamont. He did not recall apologising on behalf of his wife, though he may have said that there was "no one more sorry than me that the events of the night before happened." He did not recall giving the account as recorded by Mr Lamont and the only version of the accident that he knew at that stage was that the plaintiff had gone into the window area and fallen through the vase.

[36] I have given careful consideration to the emotional strain which the plaintiff's husband must have been under when he spoke to Mr Lamont on Sunday 17 November 2013. I have also taken into account that whatever was said, was said without any opportunity for reflection and detailed analysis. However, I consider that the plaintiff's husband resorted to a lack of recollection when dealing with the account that he gave of his conversation with Mr Lamont. Furthermore, if the account given by the plaintiff's husband did not emanate from the plaintiff, then, having seen the plaintiff's husband in the witness box, I would have expected him to

have said as much to Mr Lamont. I would also have expected him, after having given his account to Mr Lamont, to have spoken to the plaintiff and to have asked her to say whether it was correct. If he had been told that it was incorrect then on the basis of my assessment of him I would expect him to have gone back to Mr Lamont to inform him that the account was incorrect. That did not occur

[37] I prefer the evidence of Mr Lamont and Mr Stewart to the evidence of the plaintiff and the plaintiff's husband so that in relation to any conflict of evidence I resolve that conflict in favour of the defendant.

Conclusions

[38] In addition to the findings set out in the rest of this judgment I make a number of further factual findings or come to a number of further factual conclusions.

[39] The account given by the plaintiff's husband to Mr Lamont was based on information that had been provided to him by the plaintiff.

[40] I reject the evidence that the plaintiff was reaching to close a window. She has not persuaded me that anything else occurred other than that she leant heavily against the jardinière and then fell horizontally against it, causing the upper part of it to fall on to the ground, where it broke and then, that she fell on to the broken pieces.

[41] I find that the plaintiff was aware that jardinière was an ornamental piece which was clearly not meant to be leant upon.

[42] I find that there was no foreseeable danger, in the context of this dining facility, of the top of this heavy ceramic jardinière becoming detached from the stand and that there was no failure on the part of the defendant in not securing the urn to the base with cable ties or in not adding further weight to the urn.

[43] I dismiss the plaintiff's claim and enter judgment for the defendant. I will hear counsel in relation to the question of costs.

Photograph 1

Photograph 2

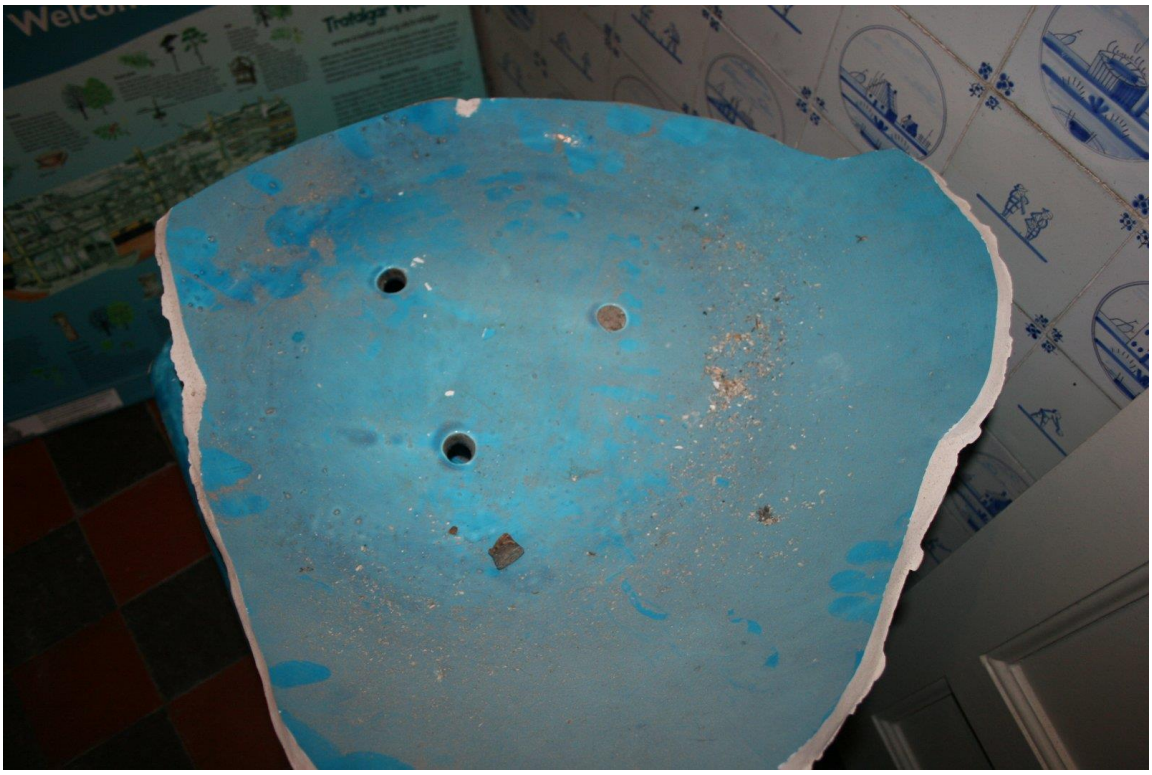
Photograph 3

Photograph 4

Photograph 5

Photograph 6

Photograph 7



Photograph 8

Photograph 9

Photograph 10