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Judgment: approved by the Court for handing down | *Delivered:* **05/09/08**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

NOREEN HUNTER

Applicant;

AND

DEPARTMENT FOR REGIONAL DEVELOPMENT FOR NORTHERN IRELAND

Defendant.

STEPHENS J

[1] The plaintiff, Noreen Hunter, then 56, now 61 (dob 13 June 1947) sustained a fracture of the lower end of her right radius in an accident which occurred on 12 December 2003 at the Millbrook Lodge Hotel, Ballynahinch, County Down. The plaintiff, who has since retired, was then employed by the defendant as an administrative officer at its regional office in Downpatrick, undertaking clerical duties which predominantly involved inputing data onto a computer system. She was attending the Downpatrick office staff Christmas party which was a joint party with the members of staff from the defendant's Seaforde section office. The numbers of the defendant's members of staff attending this function were relatively modest with some 20 persons occupying approximately 3 tables in the Millbrook Lodge Hotel. The function facilities in the hotel were extensive and there were a considerable number of other tables occupied by members of the public comprising other party groups some of which included other office parties. The Downpatrick regional office staff party consisted of a dinner followed by dancing. Alcohol was available in the hotel and was consumed. The same structure applied to all the other groups at the other tables in the function facility. The plaintiff

having danced with Kieran Travers, another member of the defendant's staff, returned to her table accompanied by him. As she was about to sit down he pulled away her chair causing her to fall to the ground and to fracture her right wrist. This action on behalf of Mr Travers was described by Mr Ferris QC, in opening the plaintiff's case, as "some sort of a prank".

[2] This office Christmas party was an annual feature and it was part of the plaintiff's responsibility during the course of her working day to organise it. She was asked to organise the party by a Staff Officer. She contacted the other members of staff in the office seeking their views as to an appropriate date. She made enquiries of the Millbrook Lodge Hotel and she in conjunction with the rest of the staff choose that venue. Accordingly conversations took place involving as many people in the office as possible and as a result of those conversations a consensus arose as to when and where the office party was to take place. She informed the Staff Officer, not in the sense of seeking approval for the decisions that she in conjunction with others had made, but as a matter of information and courtesy. She then proceeded to book the three tables in the Millbrook Lodge Hotel in her own name and notified the members of staff by email. Attendance at the party was entirely voluntarily and not all members of staff accepted though somewhat more than half did. The party expanded to include members of staff from the defendant's section office near Seaforde. Only members of staff were invited the function being just for employees. Everyone attending paid their share of the cost. The plaintiff collected the money. There was no financial contribution from the defendant. The function was outside working hours and not on the defendant's premises nor was it in a private room in Millbrook Lodge Hotel.

[3] The defendants were aware that a number of office parties would take place during the Christmas and New Year period and accordingly David Sterling, a Principal Establishment Officer of the defendant, sent to all the various offices of the defendant a memorandum (16/03) dated 26 November 2003 in relation to the conduct of the defendant's staff during the Christmas and New Year period. The memorandum stated:-

> "During the period leading up to Christmas it is customary to issue guidance to staff on the standards of behaviour expected of them and to draw attention to the respective roles and responsibilities of managers and staff when social functions are *held on official premises*. With this in mind, I attach a Guidance Note, as issued by the Department of Finance and Personnel, which sets out the responsibilities of managers and organisers of such functions for the health, safety

> and conduct of everyone and the requirements of the licensing laws.
>
> It is, of course, vital that we strike the right balance between the wish of staff to celebrate the festive season and our responsibility to ensure, as far as is reasonably practicable, the health, safety and welfare of all of our employees. I would urge you to give this minute and the Guidance Note wide circulation to your staff.
>
> . . . In addition, staff are reminded that the proper standards of behaviour to be maintained throughout the festive season also apply to:
>
> 1. social events involving colleagues and staff which are *held outside official premises* (and *which, from a legal perspective, will be regarded as an extension of the workplace*); and . . ." (emphasis added)

[4] As can be seen a guidance note was attached to the memorandum. That guidance note was headed "Social Functions on Official Premises: Guidance to Managers". Relevant parts of that guidance note are as follows:-

> "Official Premises
>
> **Purpose**
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> 1. Departments and managers carry legal responsibilities and obligations when social functions are held in their offices. This note is intended to provide guidance to managers on the approval and supervision of social functions on *official premises*, particularly where alcohol is sold or consumed.
>
> **Introduction**
>
> 2. . . .
>
> 3. Although there is no intention to prohibit the holding of social functions on official premises, it is essential that managers and the organisers of such functions are aware of their responsibilities for the health, safety and conduct of everyone and the

requirements of the licensing laws. Managers should therefore consider carefully the implications of holding social functions on *official premises* in view of the legal responsibilities that these will place upon them.

Health and Safety

4. . . .

5. In the normal working environment, managers may be wholly content that health and safety hazards can be addressed by suitable control measures. It is possible, however, that they will not have considered the heightened risk which may result from a combination of a relaxed social atmosphere and the influence of alcohol leading to the possibility of misconduct or careless behaviour during social events. Similarly, although they may not have classified some conditions as hazardous in the normal workplace environment, they should consider whether they might become hazardous in a party situation.

6. . . . there is the possibility of Departments and individuals being liable for negligence under common law. It is important, therefore, that managers should examine potential hazards and consider the risk factors before giving approval for social functions to proceed on *official premises*.

Practical Considerations

11. There are many practical issues which need to be addressed by managers when approving, organising or supervising social functions *on official premises.* Managers should:

. . .

(d) Ensure that staff are aware of the consequences of antisocial behaviour, such as causing damage to official premises, property or equipment. Make it clear that they may be

liable to pay for the cost of repair/replacement and compensating any person for injury or loss of property if found to be guilty of misconduct and that instances such as these will also be dealt with under disciplinary procedures.

(e) Be conscious of their own personal responsibility for the misconduct of those attending the function.

. . .

(k) Remind staff that sexual harassment or other unwelcome or improper behaviour will not be tolerated and may be a matter for disciplinary action."

[5] In considering the effect of the guidance note and memorandum I have borne in mind the distinction between social functions on official premises and those held outside official premises. Adapting office premises for a Christmas party brings risks which are different from a party held in the function room of a well known local hotel. Furthermore in respect of an event held in a public venue the employer has a significant interest in maintaining proper standards of behaviour amongst its staff and therefore its reputation.

[6] On 12 December 2008 the plaintiff made a report of the accident to the duty manager of the Millbrook Lodge Hotel a Ms Louise Kearney. There followed an investigation by the defendant. On 18 December 2003 there was a fact finding interview with Mr Kieran Travers conducted by Stephen Foster and James Ramsey. The purposes of the meeting was to ascertain the facts relating to the incident "where another member of staff had been injured at a staff event . . .". Kieran Travers decided to provide a written statement instead of answering questions. The next step in the defendant's procedure is recorded in a memorandum as follows:-

"As a result of the information that had been obtained"

and

"Due to the fact that a staff party is considered an extension of the work place"

Kieran Travers was issued with a verbal warning at a disciplinary follow up interview on 4 March 2004.

[7] I do not consider that the reference to an extension of the work place in the memorandum dated 26 November 2003 nor the disciplinary action taken in respect of Kieran Travers is determinative of the question as to whether the defendant is vicariously liable for the wrongful act of Kieran Travers. An employee in the work place would be subject to disciplinary proceedings for a prank committed in the work place. An employer would not necessarily be vicariously liable for that prank.

The issue

[8] The amount of general damages was agreed at £27,500.00. The plaintiff was absent from work and special damages were agreed at £11,166.00.

[9] No definition was brought on behalf of the plaintiff to the tort committed by Kieran Travers. I conclude that he was guilty of negligence see *McCready v. Securicor Limited* [1991] NI 229. The issue between the parties is whether the defendant is vicariously liable for the negligence of Kieran Travers.

Legal principles

[10] The classic statement of the concept of vicarious liability can be traced from the First Edition of Salmond on Tort in 1907:-

> "A master is not responsible for a wrongful act done by his servant unless it is done in the course of his employment. It is deemed to be so done if it is either (1) a wrongful act authorised by the master, or (2) a wrongful and unauthorised mode of doing some act authorised by the master."

As regards the second of these two cases the text continues:

> "But a master, as opposed to the employer of an independent contractor, is liable even for acts which he has not authorised, provided they are so connected with acts which he has authorised that they may rightly be regarded as modes—although improper modes—of doing them."

Salmond also stated:-

> "On the other hand, if the unauthorised and wrongful act of the servant is not so connected with the authorised act as to be a mode of doing it, but is an independent act, the master is not responsible."

In *Lister v. Hesley Hall Limited* [2001] 2 All ER 769 emphasis was placed on the relative closeness of the connection between the nature of the employment of the employee committing the wrongful act and the particular tort. Vicarious liability arising if it would be fair and just to so hold. The question as to whether the wrongful act can be seen as a way of carrying out the work which the employer had authorised being a practical test serving as a dividing line between cases where it is or is not just to impose vicarious liability.

[11] In assessing the closeness of the connection between the nature of the employment of the employee committing the wrongful act and the particular tort one is enjoined to take a broad approach to the nature of the servants employment. In *Rose v. Plenty* [1976] 1 All ER 1997 Scarman LJ quoted with approval a judgment of Diplock LJ in *Ilkier v. Samuels* [1963] 2 All ER 879 at 889. The passage is as follows:-

> "As each of these nouns implies [he is referring to the nouns used to describe course of employment, sphere, scope and so forth] the matter must be looked at broadly, not dissecting the servant's task into its component activities—such as driving, loading, sheeting and the like—by asking: What was the job on which he was engaged for his employer? and answering that question as a jury would."

[12] In *Dubai Aluminium Company Limited v Salaam and others* [2003] 1 All ER 97 Lord Nicholls of Birkenhead stated that:-

> "**[25]** This 'close connection' test focuses attention in the right direction. But it affords no guidance on the type or degree of connection which will normally be regarded as sufficiently close to prompt the legal conclusion that the risk of the wrongful act occurring, and any loss flowing from the wrongful act, should fall on the firm or employer rather than the third party who was wronged. It provides no clear assistance on when, to use Professor Fleming's phraseology, an incident is to be regarded as sufficiently work-related, as distinct from personal (see Fleming *The Law of Torts* (9th edn, 1998) p 427). Again, the well-known dictum of Lord Dunedin in *Plumb v Cobden Flour Mills Co Ltd* [1914] AC 62 at 67, draws a distinction between prohibitions which limit the sphere of employment and those which only deal

> with conduct within the sphere of employment. This leaves open how to recognise the one from the other.
>
> **[26]** This lack of precision is inevitable, given the infinite range of circumstances where the issue arises. The crucial feature or features, either producing or negativing vicarious liability, vary widely from one case or type of case to the next. Essentially the court makes an evaluative judgment in each case, having regard to all the circumstances and, importantly, having regard also to the assistance provided by previous court decisions. In this field the latter form of assistance is particularly valuable."

[13] Assistance from previous court decisions in Northern Ireland is to be found in *McCready v. Securicor Limited* [1991] NI 229. That case concerned a plaintiff and a fellow employee who were fooling about together playing on trolleys used at their work place when the plaintiff's hand was crushed. The Court of Appeal applying the test stated in Salmond on Torts held that the wrongful act on the plaintiff's fellow employee was an independent act for which the employer was not vicariously liable.

Conclusion

[14] This was a prank perpetrated by Kieran Travers. I am required and will restrict my consideration to the circumstances of this particular case as opposed to a prank perpetrated by an employee during working hours on the employer's premises. In this particular case Kieran Travers employment was as a road surfaces foreman and the particular act which he committed was to pull a chair away from underneath the plaintiff at an office Christmas party being held in a hotel. I consider that the act of Kieran Travers was an independent act and was not so closely connected to his employment as to make it fair and just to hold the defendant vicariously liable. In considering the relative closeness of the connection between the nature of the employment of Kieran Travers and the particular tort I take into account the degree of connection of the party to Kieran Travers employment. The tort committed by Kieran Travers took place at a party that did have connections to his employment and to the employment of all the other members of staff attending, but in assessing the degree of connection in respect of the party at which the tort was committed I take into account all the circumstances of this case including that –

(a) attendance at the party was entirely voluntarily,

(b) it was held outside working hours,

(c) in a hotel which was open to the public,

(d) with the employer making no financial contribution towards it, and

(e) it was organised principally as an opportunity for work friends to enjoy a night out together.

The party undoubtedly had a benefit to the employer insofar as it encouraged good working relationships and boosted office morale but I find as a fact that those benefits, though important, were incidental to the main motivation behind the organisation and holding of this party. In the circumstances of this case where at such a function Kieran Travers perpetrated this prank on the plaintiff I do not consider that there is such a connection between his wrongful act and his employment that it would be fair and just to impose liability on the defendant. His actions were independent. I reject the contention that the defendant is vicariously liable for his wrongful acts.

[15] I dismiss the plaintiff's claim.