Revill -v- TUI UK Ltd

The recent decision of Sheffield County Court in Revill v TUI UK Limited *is an unusual example of a case in which absence of warning signs was held to be causative of a slipping accident.* ***Sarah Prager***, who was counsel for the Claimant, reports.

The Facts

The Claimant and his family, comprising his wife, son, daughter in law and grandchildren, stayed at the Bodrum Imperial hotel, Akyarlar, in Turkey from 11th to 24th June 2012.

At approximately 6.30pm on 12th June 2012, effectively the first day of the holiday, Mr Revill was walking from the swimming pool at the hotel towards the beach. He crossed an area paved with blue non-slip matting, but as he walked from that area and onto a tiled area beyond it, he slipped and fell. He was carrying his infant grandson (who was then 20 months old) at the time of the accident.

Mr Revill was found by his son lying dazed on the ground. He had slipped and fallen as a result of the presence on the tiled area of a pool of water. When he returned to the hotel after being discharged from hospital Mr Revill, his wife and son noticed that the tiled area was often wet from people going from the pool to the beach. They were told by other hotel guests that others had fallen in the area, and these assertions were supported by numerous TripAdvisor reviews. It was submitted on Mr Revill's behalf that it was therefore foreseeable and likely that a person might slip in the area, and foreseeable and likely that if he or she did so, he or she might be seriously injured.

The Defendant's evidence

The Defendant's rep confirmed the family's assertion that the pool area could become slippery and that other guests had fallen in the area, but she blamed this on guests not taking care and said that TUI had asked the hotel to provide more matting, and that, 'if I remember correctly', this had duly been provided, although this was contradicted by the TripAdvisor reviews of the hotel.

The Defendant's welfare officer and the hotel's technical manager and cleaner all relied on to the presence of permanent warning signs, but it was established at trial that none of them could have been seen by Mr Revill from where he was walking. There was also reference to temporary warning signs which ought to have been deployed if the area was wet. The Revills were adamant that there were no such signs in place at the time of the accident, however.

The expert evidence

The parties jointly instructed a Turkish lawyer, who gave it as her opinion that:

- Under Turkish law, areas around swimming pools must be smooth and non-slip.
- There is no requirement for non-slip matting to be provided.
- Areas around the pool should be kept dry, however.
- Areas around the pool should be cleaned regularly.
- It is local custom and practice for warning signs to be deployed where there is a risk of slipping.

The jointly instructed architect gave it as her opinion that:

- Tiles around the swimming pool must be non-slip.
- The manufacturer which sells the tiles in place at the time of the accident sells them as being non-slip.
- The photographs of the tiles seem to suggest that they are non-slip.
- The slip test results indicate that the tiles were appropriately non-slip, although the tests were undertaken when the tiles were dry and wet, and not contaminated with sun oil and so forth.
- There is no specific requirement to have non-slip matting in the area, but it is common practice locally.

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4th November 2016

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The Facts

The Claimant and his family,...

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I stand here. I can do nothing else. God help me!

1st November 2016

In *R(Brooks) v Independent Adjudicator, Secretary of State for Justice Intervening* [2016] EWCA Civ 1033, handed down 28.10.16, McCombe LJ, with whom Jackson LJ agreed, found in favour of submissions by **Simon P G Murray**, counsel for the successful appellant, the Secretary of State. He allowed the...

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- Extending the non-slip matting to the pathway would have reduced the risk of falling.
- The hotel ought to have provided signage in the area.
- Only one sign was observed during the site inspection, and this had fallen over in the wind.

The Claimant's case

The Claimant's case was very straightforward; he said that the area where he fell was wet and slippery and that warning signs ought to have been deployed in order to notify him that he needed to take extra care as a result. He said that if a warning sign had been placed in the area he would have been more cautious as he walked across it, particularly given that he was carrying his infant grandson at the time. The Defendant contended that a warning sign would not have told him anything he did not already know; swimming pool surrounds are obviously slippery when wet, and there is no duty to warn of an obvious risk.

The judgment

The judge accepted the Claimant's case. He found that the area was wet and slippery at the time of the accident, and that there ought to have been warning signs in place to that effect. Such signage as was in place could not have been seen by Mr Revill and was inadequate. Had a sign been in place, he would have heeded it, particularly since he was carrying his precious grandson at the time. Interestingly, the judge went on to express the view that warning signs are not always otiose, observing that there is a reason why local regulatory regimes and custom and practice often require them. For, as he accepted, if warning signs tell us nothing we do not know already, what is the point of them? He firmly found for the Claimant on this issue, concluding that on the facts of the case a warning would 'almost certainly' have averted the accident.

Discussion

This is a rare example of a slipping case in which the Claimant succeeded solely on the grounds that he was not warned of the fact that the area was likely to be slippery; and it is the more remarkable in that the slip occurred in a swimming pool surround.

Part of the explanation for the Claimant's success undoubtedly lies in his credibility and that of his family; they were obviously telling the truth. Partly the claim succeeded because, in this rare case, the TripAdvisor reviews were relevant and damning. And partly the Defendant's own auditing process was to blame for their failure. The audits disclosed were often internally contradictory, with the hotel being awarded from three to five out of five, often following an audit conducted on the same day. The managing director of the auditor, Argent, was called and gave evidence that its audits were updated retrospectively, so that an hotel graded five out of five might originally have been graded two out of five, and the grading increased as defects were dealt with. This meant that the audits represented a snapshot, not of when the audit was conducted, but when the audit last accessed, often months or years later. It will be appreciated that this discovery carries implications for all cases in which Argent audits are relied upon by Defendant tour operators; the audits disclosed do not necessarily reflect the condition of the premises at the time of the audit, or indeed the accident in question.