ITLJ October 2003

SINGH v LIBRA HOLIDAYS

Queen's Bench Division
3rd. 4th. 5th. and 24th. February 2003
Holland J.

[2003] EWHK 276 (QB)

Background

On 18 July 1998 the Claimant sustained compete tetraplaegia as a result of diving from the shallow end of a swimming pool at his package holiday hotel in Ayia Napa, Cyprus. The hotel catered for a young and boisterous clientele interested in sampling the "clubbing" atmosphere of Ayia Napa, as a result of which they would often be intoxicated. The Hotel itself catered for its guests and others on their return from the local nightlife often as late as 3.00 or 4.00 in the morning by maintaining an all-night bar which was adjacent to the hotel's swimming pool and at its shallow end. So it was that after a night on the town the Claimant and a group of his friends returned to the hotel and sat around the bar drinking vodka and beer. The guests using the bar overnight routinely used the pool to swim and soak in without apparent let or hindrance. So it was that at about 8.30am on the penultimate night of the holiday the intoxicated Claimant dived into the shallow end of the pool [1 metre deep] - something he had done countless times before during his week's holiday without difficulty. On this occasion his hands slipped apart on the bottom of the pool he hit his head and suffered catastrophic injuries.

Legal Framework

In its standard booking conditions the Defendant accepted liability for the negligence of its suppliers and for deficiencies in the facilities it was contractually bound to provide. The Claimant sued for damages for breach of these express contractual terms and pursuant to regulation 15 of the Package Travel [Etc.] Regulations 1992, which for all practical purposes in this case, imposed liability on the Defendant to similar effect. It was common ground between the parties that in assessing whether the hotel had been "negligent" or the facilities deficient, the hotel had to be judged by the standards of swimming pool management prevailing in Cyprus in 1998.

The Claimant's case was as follows.

(1) Cypriot local standards in the form of *The Public Swimming Pools Regulations 1996* in demanded in mandatory form that:

    (a) There be a supervisor on continuous duty at the pool during all of its hours of operation.

(b) Signs (e.g. “No Diving” signs) for the safety of pool users should be posted up at points which were clearly visible near the pool.

(2) In breach of these regulations there was neither constant supervision whilst the pool was in operation (it being in operation more or less continuously) nor was there adequate or adequately positioned “No Diving” signage.

(3) The breaches of duty complained of caused the accident because:

(a) Constant supervision throughout the Claimant’s stay at the hotel and generally would have prevented the development of a culture of high-jinx and horseplay around the pool which routinely led to guests diving into the pool at the shallow end. Had the high-jinx been stopped or guests warned after foolish behaviour in the pool it is likely that further such behaviour would have been eradicated.

(b) Supervision would have moderated the Claimant and his group’s behaviour through the night and on the morning of the accident.

(c) Clear and conspicuous signs would have alerted or reminded intoxicated guests of the risk they faced when diving into shallow water.

(4) The Claimant also relied on the fact that the tour operator had done nothing to see that local regulations were enforced – the tour operator did not know the local regulations existed until the case was pleaded against them, and poll safety recommendation of the Federation of Tour Operators.

(5) Given that both hotel and tour operator admitted that they were aware of the fact that hotel guests dived into shallow water oblivious to the risks and that such risks carried the prospect of catastrophic injury the standard of care tourists were entitled to expect was a high one.

The Defendant denied liability on the following grounds.

(1) Whilst the Cypriot pool regulations applied to this hotel, the pool itself was not in operation at the time of the accident. There was clear signage stating that the pool was not be used after 10.00pm. Supervision was not, therefore, required.

(2) The general level of supervision during the hours of operation comprising patrols by the hotel manager and the bar and other staff was reasonable given that any misbehaviour (including diving into the pool at the shallow end) was met with a reprimand when witnessed.

(3) To the extent that it was shown by the Claimant that there were technical breaches of the Cypriot pool regulations, this did not matter because the hotel had been regularly inspected by the tour operator, the Cyprus Tourism Organisation and the local department of health, none of whom had ever raised any concern about supervision or signage. Thus, the real local standard was that enforced by the local regulatory authorities and as they were not concerned about the hotel's compliance there could not be said to have been a breach of local standards.

(4) The "No Diving" signs (of which there were 3) were clear and reasonably placed and the fact that there had been subsequent improvements did not alter that fact.

(5) In any event, any breaches of duty by the hotel were not causative of the accident because the Claimant was drunk, he knew (as was admitted) that the water was shallow and the hotel staff on duty on the morning of the accident had tried but failed to persuade him and his friends to go to their rooms. He would have taken no notice of any supervisory presence or better signs.

Mr. Justice Holland gave judgment for the Defendant.

(1) The potential for serious spinal injuries to the Claimant was "notorious" and what happened to him was typical.

(2) With that assessment of the magnitude of the risk in mind he concluded that the "No Diving" signs were inadequate. Two were in the eaves of the roof of the poolside bar and could not easily be seen by users at the shallow end. The third was large, but distant from the pool adjacent to a an accommodation block door the Claimant never used. The Claimant was unaware of any of the signs. The hotel was in breach of its duty under the Cypriot regulations in respect of the sufficiency and location of its warning signs.

(3) The fact that local regulatory enforcers had not done anything about such deficiencies in signage was irrelevant and did not absolve the hotel or the Defendant. It was for the trial judge to assess whether regulations had been properly implemented and the fact that local regulators ignored them could not excuse the hotel. The pool regulations spoke in mandatory language and should be obeyed.

(4) The swimming pool *was* in operation at the time of the accident. Whilst it was supposedly closed after 10.00pm, and there were notices to this effect, there were no, or no obvious, signs telling guests when it opened and guests could be excused for thinking that it would be open at 8.30am on a

summer morning so as to give rise to the appropriate duty on the part of the hotel.

(5) Unfortunately for the Claimant, having always admitted that he knew perfectly well that the water was shallow, having used the pool on many previous occasions, and having admitted in cross-examination that he did not need anyone to tell him not to dive into shallow water, the absence of proper signs did not cause his accident.

(6) As to supervision, the judge was not in the event prepared to condemn it as substandard albeit low key and benign, but in addition and ironically, the presence of at least 2 members of staff at the pool bar (more supervision than normal) attempting to soothe boisterous behaviour by the Claimant and his party had failed to moderate their behaviour and thus it appeared that the Claimant would have taken his dive some what may.

The case, naturally, turns on its own facts as many do, but there are a number of points of interest over and above the particular factual matrix.

First, the Defendant attempted to dilute the applicable local standard as laid down in the Cypriot regulations by the submission that an English judge should *not* merely read, construe and apply those regulations, but take into account whether or not, and the extent to which, the local regulators applied them. The argument is that if the locals don't enforce their own regulations, then the local standard does not require compliance with them. This is an interesting, but doomed approach to local standards. The fact that a complacent hygiene inspector in London fails to enforce the Food Safety Act against a restaurant does not mean that the restaurant is not responsible for a subsequent food poisoning outbreak, neither does a missed building regulation prevent an occupier being liable to a visitor when a wall collapses and causes injury.

Secondly, it is a matter of some continuing concern that tour operators often seem oblivious to whether local regulations actually exist *at all*. Libra Holidays did not know the Cypriot regulations existed, and themselves assumed that the local regulators would enforce them if they did exist. This is a mistake. *Singh* is a classic case where the tour operator could potentially have been liable for breaches of regulations that the local tourist and health authorities did not properly enforce. There is an element of unfairness sin this as tour operators must strive to enforce local regulations about which the locals seem to care very little, but there it is. In the present case the tour operator served (but in the end did not use) evidence from its own managerial staff stating in terms that they did not attempt to comply with myriad local regulations because they always applied UK standards which were higher. No explanation of the alleged UK standards was given, and one is forced to wonder (as did the trial judge in passing) in what possible respects *anyone's* standards could be higher than the stringent

requirements demanded by the Cypriot regulations. Equally alarming was the *apparent* ignorance of the tour operator of the Federation of Tour Operators' own guidelines on swimming pool safety.

Finally, there is no escaping the dynamics of the *evidence* as it emerges in the court room. Causation will always be a problem in cases of this character when the Claimant candidly admits that he did not need anyone to tell him not to dive into 1 metre of water. Of course this admission was qualified by the observation that he had done it without reprimand repeatedly over the course of a week, as had many others, and accordingly, he considered it to be alright to do so. Many honest Claimants will make such admissions in the course of their evidence, but the point surely is this. Where the risk of catastrophic injury is manifest (as in these cases) the duty on the occupier of premises should be a high one, *not* because the danger is not obvious to any sober and reasonable adult thinking logically with the benefit of 20-20 hindsight, but because in any leisure context (not just holidays) those at risk are not likely to be sober or thinking logically about their own health and safety and many, whilst appreciating the risk of some injury) do not appreciate the risk of horrendous, total paralysis from a moments inattention.

Nonetheless, *Singh* must now be listed with *Ratcliffe* [1999] 1 WLR 670; *Darby* [2001] PIQR P372; *Bartrum* [1999] QBD Unreported, and *Donoghue* [2003] CA 26th. February – not yet reported – as another example of the courts resisting claims by those injured by diving into shallow water on the grounds that adults should know better. This growing list of failures will be joined in the summer when the Court of Appeal's generous decision in *Tomlinson v Congleton Borough Council* [2002] 4 March in favour of an injured Claimant is overturned in the House of Lords.

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