

SUPREME COURT OF QUEENSLAND

CITATION: *Garrett v. North Rockhampton Sports & Recreation Club Inc & Anor* [2002] QSC 044

PARTIES: **MAVIS GARRETT**
(Plaintiff)
v
NORTH ROCKHAMPTON SPORTS AND RECREATION CLUB INC.
(Defendant)
and
ANGUS GOODA
(Third Party)

FILE NO: S405/2000

DIVISION: Trial Division

DELIVERED ON: 20 February 2002

DELIVERED AT: Rockhampton

HEARING DATE: 11th and 12th December 2001

JUDGE: Dutney J

ORDERS: **The Plaintiff's action is dismissed. The plaintiff is to pay the defendant's costs (excluding any costs associated with the third party proceedings) to be assessed on the standard basis. The defendant is to pay the costs of the third party to be assessed on the standard basis.**

CATCHWORDS: NEGLIGENCE – PERSONAL INJURIES - CAUSATION – Wh causal connection between fall on dance floor and breach of duty by def in not having adequate cleaning system in place – Wh evidence slip caused by foreign substance on dance floor.

Griffin v Coles Myer Ltd [1992] 2 Qd R 478 - FAA.

COUNSEL: G F Crow for the Plaintiff
J McDougall for the Defendant
T Arnold for the Third Party

SOLICITORS: Kenny & Partners for the Plaintiff

Quinlan Miller & Treston for the Defendant
Swanwick Murray Roche for the Third Party

- [1] **Dutney J:** On 29 May 1999, the plaintiff, Mavis Garrett, was injured when she slipped and fell on a dance floor at the North Rockhampton Rugby League Football Club premises. She was attending a surprise 50th birthday party for Angus Gooda who finds himself in these proceedings as third party.
- [2] Briefly, Mrs Garrett's evidence was that she arrived at the party at about 6:30 pm. The party was held in a hall at the club premises. A sketch map (exhibit 12) shows a band area at one end of the hall adjacent to the kitchen. Coming down the hall, the dance floor was in front of the band and the tables in front of the kitchen. The bar was about a third of the way down the hall on the same side as the kitchen. The entrance was opposite the end of the bar nearest the kitchen. The half of the hall furthest away from the kitchen was partitioned in some way so that it remained open to the general public while the private party was held in the other half. The same bar area and bar staff served the public area and the private party.
- [3] Mrs Garrett remained in the public area until about 7:30 before going into the party area for a meal. The meal was served buffet style from a bain-marie on the dance floor near the edge furthest from the wall.
- [4] The meal finished about 9:00 pm and the band started. Mrs Garrett didn't recall the bain-marie being shifted from the dance floor before the band started playing but it was not there when she got up to dance. Mrs Garrett's first dance was in the second bracket. It is uncertain how long each bracket was but it seems to have been only a couple of songs. Mrs Garrett danced with a friend and long time dance partner, Angus Doyle. For the first dance the dance floor was relatively deserted. The first dance was uneventful. After about half an hour Mrs Garrett got up to dance with Mr Doyle again. The dance floor was still relatively deserted. This dance was also uneventful. Between about 10:00pm and 10:30pm Mrs Garrett got up for a third time intending to go home after this dance. This time the dance floor was more

crowded with about half a dozen other couples dancing. Mrs Garrett and Mr Doyle prefer older style dancing which involves them dancing in circles. The other couples on the floor were younger and dancing in a modern style. Mrs Garrett and Mr Doyle had to go around the other couples towards the outer edge of the floor. Mrs Garrett was doing a turn when she slipped and found herself falling onto her back. She was quickly helped to her feet and went home embarrassed shortly afterwards. Mrs Garrett recalled that the place where she fell was in the general vicinity of where the bain-marie had been an hour to an hour and a half earlier.

- [5] Mrs Garrett had not slipped on a dance floor before. This was the reason for her embarrassment. She did not see anything which might have caused her to slip but when she arrived home and undressed she noticed a stain on the back of her stocking in the area of the calf which had not been there when she had put the stockings on.
- [6] The plaintiff's case as presented was that something had fallen from the bain-marie onto the dance floor which ultimately caused her to slip. It was negligent of the defendant, who admitted to being the occupier of the premises to have allowed the bain-marie to be placed on the dance floor in the first instance and not have in place any system to ensure spills were cleaned up.
- [7] Mrs Devine who organised the party was called. Her evidence in relation to the issue of whether Mrs Garrett fell as a result of something spilled from the bain-marie was limited to the fact that she saw no such spill and would have cleaned it up had she done so.
- [8] The only person called who had any recollection of anything on the floor in the vicinity of the bain-marie was a Mrs Salter. Her evidence was that she saw some liquid around one leg of the bain-marie as she was leaving the party. This was about the time the dancing started but before the bain-marie was removed from the dance floor. It would therefore have been about an hour to an hour and a half before Mrs Garrett fell.

- [9] A Mrs Lea was called. She was the plaintiff's sister. She saw nothing of relevance other than that her sister fell while they were both on the dance floor and it was in the vicinity of where the bain-marie had been some time before.
- [10] There are many authorities in this area of the law. None are materially different from *Griffin v Coles Myer Ltd* [1992] 2 Qd R 478. This requires that the plaintiff prove that there is causal connection between the foreign matter on which the plaintiff slips and some breach of duty of the defendant in failing to have in place an adequate system to protect against foreseeable risks. As to the latter, I am satisfied that there was no system in place at all. The placement of a bain-marie on a dance floor seems to me to lead inevitably to a risk of spillage onto an already slippery surface and a real risk of injury.
- [11] In this case, however, the evidence does not permit of a finding that Mrs Garrett fell because of something spilled on the dance floor. The only evidence of a spillage comes from Mrs Salter and is in relation to a period of one to one and a half hours before the fall. The dance floor was relatively crowded by the time Mrs Garrett had got up for the final time. The area where the spillage was said to have been must have been traversed by many people. No dancer appears to have seen it. There is no evidence of any other actual or threatened mishap. If the spillage had in fact been present earlier there is no evidence that there was any trace of it left on the dance floor at the relevant time. If some other spillage had occurred during the dancing I am not persuaded any reasonable system would necessarily have picked it up or allowed it to be removed. It would depend to some extent on when it occurred and how crowded the dance floor was at the time. These issues were not addressed in the evidence.
- [12] The stain on Mrs Garrett's stocking is unidentified. It was as likely to have come from one of the seats on which she sat during the evening as from something on the floor. She moved at one stage from a seat near the kitchen to one nearer the dance floor.

[13] The reality is that people sometimes slip on dance floors. I am not able to find in this case that any foreign substance contributed and accordingly I must dismiss the plaintiff's claim.

[14] The third party proceedings must also be dismissed. Even had the result in the main action been different the third party claim would have failed. The third party was the subject of the party but its existence was withheld from him until the time of his arrival at the venue. He played no conscious part in the organisation of the party. It was not ultimately submitted by counsel for the defendant that he could have ever been a co-occupier. There was no evidence which could have ever justified the institution of the third party proceedings.

[15] Mrs Garrett suffered very severe injuries in the fall. She was born on 4 July 1941 which made her 57 at the time and 60 at trial. She suffered a broken wrist which required an operation to insert two k-wires and intensive occupational and physiotherapy treatment. She can't make a fist with her right arm. She has lost rotation in the forearm and appreciable loss of movement in her right shoulder. She is unable to reach behind her back, comb her hair, iron properly or to nurse a grandchild or put on a seatbelt satisfactorily. Her disability has been assessed at between 30 and 35% of the whole person and will be permanent. She is unemployable.

[16] Mrs Garrett was not in paid employment at the time of her injury and had not been in such employment for some years. She expressed a desire to go back to work as a cleaner from which she had the potential to earn about \$300.00 net per week. She was active and spent time caring for her grandchildren. She is no longer active and is unable to care for the grandchildren.

[17] Had I reached a different view on the issue of liability I would have assessed her damages as follows:

Pain and Suffering	65,000.00
Interest on \$35,000 @ 2% for 2.5 years	1,750.00

Past and Future Economic Loss	16,000.00 ¹
Loss of superannuation benefits @ 9%	1,440.00
Past Care (agreed)	15,000.00
Interest @ 5% for 2.5 years	1,875.00
Future Care	87,808.00 ²
Special Damages	562.96
Interest on \$537.96 @ 5% for 2.5 years	67.00
Future medical expenses	<u>7,000.00</u>
 TOTAL	 <u>\$189,502.96</u>

[18] In view of the findings set out above I dismiss the plaintiff's action and order the plaintiff to pay the defendant's costs (excluding any costs associated with the third party proceedings) to be assessed on the standard basis. I order the defendant to pay the costs of the third party to be assessed on the standard basis.

¹ Approximately one full year as a cleaner on \$300.00 net per week.

² 8 hours per week for 20 years @ 3% (784)