

CUMBERLAND HOTEL FOUND NOT LIABLE FOR GUEST INJURY

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Does a hotel owe a duty of care to guests to take reasonable care to protect them against injury caused by the criminal acts of third parties? Yes said the High Court in the recent case of Al-Najar & Others v The Cumberland Hotel (London) Ltd [2019] EWHC 1593. However, having reviewed the evidence on the facts of this case the court did not consider that the hotel was in breach of that duty.

Facts of the case

The claimants were all family members. They were staying at the Cumberland Hotel in London in April 2014. At 01.13 am on Sunday, 6 April 2014 the family were sleeping in their two connecting hotel rooms when a Philip Spence (as shown on CCTV cameras) walked in the hotel. He was smartly dressed and it was common ground that there was nothing in particular as regards his appearance to distinguish him from any other guest who may have entered the hotel.

He took a lift to the 5th floor and then walked via the fire escape stairs to level seven. On reaching the 7th floor he noticed that the door to one of the family's two rooms had been left open with the deadlock preventing it from locking. Mr Spence entered the room and using one of the family's suitcases proceeded to steal money, jewellery and other items from both rooms.

Whilst he was in the process of doing so, one of the claimants, Khaloud woke up. Mr Spence attacked her by hitting her on the head with a hammer which he had concealed in his jacket pocket. Woken by Khaloud's screaming, Fatima attempted to come to her aid but Mr Spence also hit her over the head with the hammer. At some point during the theft, Mr Spence also hit another member of the family, Ohoud. All three members of the family suffered very serious injuries.

After the attack, Mr Spence left the room with the suitcase of loot. He put the hammer on one of the fire escape staircases and took the lift down to the lobby. On exiting the hotel he met with Thomas Efremi. Mr Efremi had supplied Mr Spence with the hammer. Latterly, he also used the family's credit cards stolen by Mr Spence to withdraw £5,000 in cash.

In subsequent criminal proceedings, Mr Spence was convicted of three counts of attempted murder. He was also convicted, along with Mr Efremi, of conspiracy to commit aggravated burglary. Mr Spence was sentenced to life imprisonment with (on review) a minimum term of 27 years. Mr Efremi was sentenced to 14 years imprisonment. The family brought a claim against the hotel for damages. As a preliminary issue the court had to decide the question of liability and contributory negligence.

The issues

The family contended that the hotel breached a duty “to take such care as in all the circumstances of the case was reasonable to see that their person and property were kept reasonably safe whilst they were staying at the hotel” and that the breach created the circumstances which allowed Mr Spence to attack them and cause the injuries that they had suffered.

The hotel admitted that it owed a duty to its guests but contended that the duty did not include a responsibility to protect guests from the criminal acts of a third party. It denied that the attack by Mr Spence was reasonably foreseeable, that it acted in any breach of any duty and that any breach caused the injuries suffered by the family.

Did the hotel owe a duty of care?

The court's starting point was to consider the circumstances in which a party might owe a duty to protect another person from the criminal activities of a third party. In doing so, it undertook a detailed review of recent case law including the case of *Robinson v Chief Constable of West Yorkshire* [2018] where the Supreme Court found that the police were liable for the actions of the person that they were about to arrest for knocking over a passer-by. In addition, the court

had to consider the provisions of the Hotel Proprietors Act 1956 (“the Act”). Under the Act there is a strict liability on hoteliers for the goods of a guest.

Having done so, the judge concluded that the hotel had a duty of care to “take reasonable care to protect guests at the hotel against injury caused by the criminal acts of third parties”. In reaching his decision the judge stated that the duty of care arose in respect of the hotel’s omission to take steps to prevent the attack as a responsibility – the hotel invited guests to come and stay at the hotel and thereby assumed a duty to take reasonable care to protect guests. In assessing the likely outcome it is not necessary to establish the precise means by which a loss occurred but it is necessary to establish the particular risk – in this case that means the likely outcome has to be an attack on guests in their rooms but it is not necessary to show that a hammer was likely to be used.

Causation

Having established that the hotel did owe the family a duty of care, the court then went on to consider two other aspects. Firstly, the question of causation and secondly, whether the loss was reasonably foreseeable.

So far as causation was concerned, the judge held that the criminal act by Mr Spence did not amount to a new intervening act and thus the chain of causation was not broken. The judge stated this was because the duty was to take reasonable care to protect guests against injury caused by the criminal acts of others.

Was the loss reasonably foreseeable?

The evidence given by the witnesses at trial had demonstrated a pattern of past events of thefts by non-guests who had been allowed to wander round the hotel and further that the hotel’s own training had identified the possibility of non-guests coming in to the hotel to attack guests. As a result of that evidence, the judge considered that it was reasonably foreseeable to the hotel that a third party might gain entry to the hotel and might injure guests whether as part of an armed robbery or a sexual or physical assault. However, he also concluded that the likelihood of such

an attack occurring was extremely low which is relevant to what steps the hotel ought reasonably to have taken to prevent such an attack.

Was there a breach of the duty of care?

The witness evidence had demonstrated that after 11.00 pm the hotel had a single point of entry (other doors having been closed at this point) and that a lobby officer was on duty to greet guests upon arrival. The reception desk was also manned on a 24 hour basis with three receptionists as well as a concierge. The judge noted that in an ideal world an additional lobby officer would be of benefit but the test was whether the hotel had taken all reasonable care to protect the family against Mr Spence's attack and in his view the single entrance, appointment of the lobby officer and other staff as well as fitting of CCTV, security patrols and guidance by staff if they found a door left open showed that the hotel had taken reasonable care to protect against this attack.

Taking the evidence (including expert evidence) as a whole the judge found that it showed a hotel which took security seriously and did take reasonable care to protect the family against the injuries caused by Mr Spence. The duty was not an absolute duty to prevent an attack. The reality of the situation was such, said the judge, that, given the unpredictability of criminal behaviour, the attack could just have easily been carried out by another guest or a person accompanying a guest into the hotel.

Conclusion

Having regard to the above the court held that whilst the hotel did have a duty to take reasonable care to protect guests against injury caused by the criminal acts of third parties, the attack by Mr Spence was not a new intervening act sufficient to break the chain of causation and although the attack was reasonably foreseeable, the likelihood of such an attack occurring

was extremely low. Accordingly, the court found that the hotel did not act in breach of any duty of care to the family and there was thus no liability on the part of the hotel for damages in relation to the injuries suffered.

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