PACKAGE PROBLEMS

Aliyah Akram reports on a recent appeal case brought under the Package Travel regulations

The recent case of *Lougheed v On The Beach Limited* [2014] EWCA Civ 1538 provides a useful reminder of the standards that British tour operators will be held to when accidents occur abroad.

Mrs Lougheed brought a claim after she slipped and fell while walking down a flight of steps in her hotel. As a result of the accident, she fractured her ankle and shoulder, and sustained bruising to her lower back and bottom.

Mrs Lougheed brought her claim under The Package Travel, Package Holidays and Package Tour Regulations 1992/3288. These provide a route for British holiday makers to sue UK tour operators at home. The claim was against the organisers of Mrs Lougheed's holiday and was brought under Regulation 15. Regulation 15(1) provides as follows:

'(1) The other party to the contract is liable to the consumer for the proper performance of the obligations under the contract, irrespective of whether such obligations are to be performed by that other party or by other suppliers of services but this shall not affect any remedy or right of action which that other party may have against those other suppliers of services.'

At trial

The trial judge found that Mrs Lougheed had slipped on a patch of water on the steps and that the water had probably come from a user of the nearby pool. He noted that the hotel manager, who had considerable experience working in hotels, accepted that hotel staff have a responsibility to clean spillages once they are identified.

In finding for the claimant, the judge held that the presence of the water was indicative of the fact that the hotel had not exercised reasonable skill and care.

The judge placed significant reliance on what he termed 'the *Tesco* principle'. In *Ward v Tesco Stores Ltd* [1976] 1 WLR 810, a supermarket had been found liable for failing to clear up spilt yoghurt. The judge found that the principle required the defendant to adduce evidence of the steps the hotel had taken to address the danger posed by wet floors, or to ensure that floors were not left wet. The defendant's failure to do so, and the absence of any explanation from the hotel as to how the water might be present without negligence, meant that the claimant had made out her case that the water that caused her to slip was present as a result of a failure on the part of the hotel.

At appeal

Various issues were considered on appeal.

The Evidential Burden

The appeal court considered that the trial judge was not entitled to find that the defendant bore an evidential burden of proof. The court found that *Tesco v Ward* hinged on the fact that the supermarket knew that there was a likelihood of spillages, which posed a danger to customers. In this case, there was no evidence that the presence of water was likely in the area in which the claimant slipped, and so the hotel could not be required to implement a system to remove it - and no inference could be made that the presence of the water was due to the hotel's failure.

Local Standards

The Court swiftly dismissed counsel for the claimant's submission that local standards were not determinative of the case, and that the court might conclude that despite compliance with local standards, there had been a failure to exercise reasonable skill and care.

In giving his reasons, Tomlinson LJ pointed out that, 'an Englishman does not travel abroad in a cocoon.' He noted that he was bound by the key case of *Wilson v Best Travel Limited* [1993] 1 All ER 353, which concerned the Supply of Goods and Services Act 1982. There, it had been found that there had been no failure on the part of the tour operator where a hotel had complied with local safety regulations in using ordinary glass rather than the safety glass that would have been required by British regulations. The court confirmed that a similar approach applies where no regulations would govern the frequency with which a hotel floor is cleaned or inspected for the presence of spillages. Safety standards will vary, and liability will not arise where local standards of care have been complied with - even when, by the standards of England and Wales, there had been a lack of compliance.

Expert Evidence

The Court of Appeal rejected the assertion that the hotel manager's evidence could be relied on as evidence of local standards. Tomlinson LJ explained that an enquiry into general practice is needed. This will not necessarily require expert evidence, though the court gave a strong recommendation that claimants should obtain such evidence.

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