

Duties to guests

The Message:

Important judicial guidance is provided on the duties of a nightclub to its guests for third party actions.

The Case:

Everett and Harrison v Comojo (UK) Ltd [18 January 2011] considered the responsibility of a nightclub for injuries caused to two of its guests by another guest. The court's reasoning will be significant for the operators of nightclubs and equivalent premises open to the public.

Mr Everett and Mr Harrison visited a members' only bar as guests of a member. While at the bar, they were injured in a knife attack by another guest. Everett and Harrison sued Comojo (UK) Ltd, which managed the nightclub, for damages alleging that it had failed to take appropriate steps to protect its guests. They alleged that a waitress (for whom Comojo was responsible) had been negligent in reporting her concerns about the prospective attacker and a possible confrontation to the bar manager, rather than reporting the matter directly to a door supervisor. Everett and Harrison argued that if she had done the latter, the supervisor would have come into the bar immediately and would probably have prevented the violence, or, at least, controlled it. Instead, the waitress wasted valuable time speaking to the manager.

Comojo responded that, if any duty was owed, the waitress had not been negligent since she could not have anticipated that violence was imminent. It was reasonable for her to speak to the manager first and, in any event, the incident happened so quickly that, even if she had spoken to the supervisor, the incident would, probably, still have occurred.

At first instance, the county court found for Comojo, and Everett and Harrison appealed to the Court of Appeal, where they also lost.

The Court made some important comments on the responsibilities of a nightclub for its guests. The relationship between the management of a nightclub and its guests is sufficiently close to justify the existence of a duty of care, the management being in control of the premises and regulating who enters. The guest is entitled to expect that there will be no violence and the management wants guests to come to spend their money creating an economic relationship.

Comojo's own risk assessment recognised the risk that the consumption of alcohol could lead to the loss of control and violence. It could not seriously argue that the risk of one guest assaulting another was so low that it could be safely ignored.

It was fair, just and reasonable to impose a duty of care on the management in respect of injuries caused by a third party, provided that the scope of the duty was appropriately set. The relationship between the parties already carried with it an established duty under the Occupiers' Liability Act 1957 in relation to the premises' condition. It would be surprising if management could be liable to a guest who tripped over a carpet and yet escape liability for injuries inflicted by a fellow guest who was a foreseeable danger. The common duty of care can be applied to the static condition of the premises and to activities at the premises including the actions of third parties.

However, the scope of that duty must also be fair, just and reasonable. It is not possible to define the circumstances in which there will be liability, since they will vary so widely. However, it will be a rare nightclub that does not need some security arrangements, although the nature of the arrangements will vary depending on the nature of the club and whether violence has occurred in the past.

In the circumstances, the waitress was not in breach of her duty. Although she realised there was a possibility of a confrontation, there was no reason to think it was imminent. Speaking to her manager was, in the Court's view, a very sensible thing to do.