

**29<sup>th</sup> July 2009**

**Plaintiff's false evidence sees Judge dismiss Compensation Claim**

Very serious changes have been brought into Irish law by the provisions of the Civil Liability Act 2004. Since 20<sup>th</sup> September 2004, under Section 25 and 26 of the Civil Liability Act 2004:-

- (1) If a person gives or dishonestly causes to be given, or adduces or dishonestly causes to be adduced, evidence in a personal injuries action — and / or
- (2) If, a person gives, or dishonestly causes to be given, an instruction or information, in relation to a personal injuries action, to a solicitor, or person acting on behalf of a solicitor, or an expert,

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- (a) is false or misleading in any material respect, and
  - (b) which he or she knows to be false or misleading,
- he or she shall be guilty of an offence.
- (3) any such act is defined as having been done dishonestly by a person if he or she does the act with the intention of misleading the court.

The Criminal consequences of such conduct which result from being convicted of such an offence are set out in Section 29 of the Civil Liability Act 2004:-

- (1) upon conviction on indictment in the Circuit Court, you can receive a fine not exceeding €100,000, or imprisonment for a term not exceeding 10 years, or to both; or
- (2) upon summary conviction in the District Court, you can receive a fine not exceeding €3,000, or imprisonment for a term not exceeding 12 months, or to both.

The extremely damaging Civil consequences of such conduct upon a Plaintiff's personal injuries action are set out in Section 26 of the Civil Liability Act 2004:-

- (1) If a plaintiff in a personal injuries action gives or adduces, or dishonestly causes to be given or adduced, evidence that—
  - (a) is false or misleading, in any material respect, and

(b) which he or she knows to be false or misleading,

the court shall dismiss the plaintiff's action unless, for reasons that the court shall state in its decision, the dismissal of the action would result in injustice being done.

(2) The court in a personal injuries action shall, if satisfied that a person has sworn an Affidavit of Verification under *section 14* of the Civil Liability Act 2004 that— (31<sup>st</sup> March 2005)

(a) is false or misleading in any material respect, and

(b) that he or she knew to be false or misleading when swearing the affidavit,

dismiss the plaintiff's action unless, for reasons that the court shall state in its decision, the dismissal of the action would result in injustice being done.

(3) an act is done dishonestly by a person if he or she does the act with the intention of misleading the court.

In addition to the Plaintiff's action being permanently dismissed, such dismissal will normally see the Plaintiff being left liable to pay, not only all of his own costs fees and expenses in relation to the legal action, but also all costs, fees and expenses of all parties to the case against whom the Plaintiff's action was dismissed, which is a further very severe sanction.

A Plaintiff therefore, in advance of considering issuing legal Proceedings to pursue a Claim for Compensation needs to seriously consider his position where his own reckless conduct or actions may have led to the accident or incident in question. This issue was highlighted in a report by the Irish Times on the 29<sup>th</sup> July where it was reported that a man was assaulted at a wake in a pub should not receive any damages for injuries suffered because he gave false and exaggerated evidence.

Mr. Justice Michael Hanna of the High Court said he was dismissing Mr. Gammell's claim entirely because of his "fanciful and self-serving" evidence.

The judge said that he was entitled to reject the claim under the Civil Liability and Courts Act 2004, which allows a court to dismiss false or misleading claims.

The judge also found the pub had no liability as there was nothing it could have done to prevent the assault.

He noted Mr. Gammell's claim against the pub had been settled previously.

Mr. Gamell, a labourer from Cederwood Crescent, Kilcoole, Wicklow, had sued David White, The Crescent, Greystones, Wicklow, and Lees pub, Kilcoole, arising out of the incident in the pub on St. Stephen's night, 2005.

Mr. White, his wife and a number of other people were in the pub during a wake over the death just before Christmas of a young local man from sudden adult death syndrome.

Mr. Gammell, known locally as "Maggot", was barred from Lees and other bars, but arrived at Lees claiming he wanted to see one of his daughters who was working there that night.

During the hearing, Mr. Gammell told Mr. White's Counsel, Mel Christle SC, he did not know why his daughter had not been called to give evidence on his behalf.

The court heard it was tradition among local pubs, when someone died to admit even barred persons to offer condolences to the deceased's family.

Mr. White bought Mr. Gammell a pint in an attempt to be friendly given the tragic circumstances the court was told.

It was claimed that Mr. Gammell, who had been drinking earlier that day, started making offensive sexual remarks to Mr. White and his wife which they tried to "laugh off".

When Mr. Gammell started describing the family of the deceased as "knackers" and alcoholics, Mr. White demanded he leave, the court was told.

When he refused, he was struck in the face by Mr. White. Mr. Gammell denied he made any remarks and also denied that he became aggressive or faced up to Mr. White before the assault in the pub.

Mr. White admitted striking Mr. Gammell, causing an injury to his cheekbone, and later pleaded guilty at Wicklow Circuit Court which imposed a 2 ½ year suspended jail sentence.

Mr. Justice Hanna said he had to find Mr. Gammell was injured as a result of the assault.

He assessed damages at €15,000 for suffering to date and €25,000 into the future but said, because of Mr. Gammell's behaviour on the night, that award should be reduced by 50 per cent.

The judge added, as he did not accept the version of events given by Mr. Gammell and preferred the evidence Mr and Mrs White, he was ruling Mr. Gammell had given false and exaggerated evidence under the 2004 Act, amounting to an abuse of the court process.

The judge ruled Mr. Gammell's claim came within the terms of the Act and, in those circumstances, he dismissed the entire case against Mr. White and awarded costs against Mr. Gammell.

