**Kandaurova v Circle K Energy Group Limited [2025] IECA 13**

Hello, my name is Siobhan Lane, a senior associate in the Litigation and Dispute Resolution Department in Dillon Eustace. Today I am going to discuss a recent Court of Appeal judgment - Kandaurova v Circle K Energy Group Limited. It concerned a trip and fall injury**,** which occurredon the forecourt of the defendant’s fuel station. The High Court found in the plaintiff’s favour and awarded damages. The defendant appealed against the judgment of the High Court on both liability and quantum grounds.

By way of background, the plaintiff was 5 months pregnant when - in 2016 - she parked in a designated parking space in a fuel station in Sandymount in Dublin. There were three marked parking bays perpendicular to the store on either side of the entrance. The plaintiff parked in the middle space on the right side facing the store. The space to her right was empty. The three spaces were “bookended” at the right by a raised pavement - described as a “nib pavement” - and bounded by standard concrete kerbstones. This nib pavement was joined by a footpath beside the store and immediately in front of where the plaintiff had parked her car. This footpath area had merchandise for sale on it. When the plaintiff left the store, she walked round the back of her car intending to go across the road to the strand with a coffee she had just purchased. The plaintiff’s accident was captured on CCTV and as she came to the nib pavement, she tripped over the kerb and fell forward onto the ground. As is evident from the video footage and the still photographs, the sun was very low in the sky and the plaintiff was facing into it, wearing sunglasses, as she walked. She clearly did not see the raised kerb immediately before she fell.

Turning to the evidence, The plaintiff accepted that she had been to this fuel station on previous occasions. She also accepted on questioning that she “must have” seen the nib pavement as she parked her car. In his report, the plaintiff’s engineer stated that he was of the opinion that she was presented with a trap situation; she had to walk across the forecourt and the nib pavement because the path in front of the store was blocked. He suggested that typically such kerbs are painted yellow or dished. He expressed the opinion that the defendant was in breach of its duty under s. 3 of the Occupiers Liability Act 1995, which deals with the duty owed to a visitor by the occupier of a premises. The expert described the nib pavement as an unnecessary and introduced hazard.

The Defendant’s engineer gave evidence that this type of pavement is common in car park design and its purpose was to demarcate one end of the particular parking bay. He agreed that on occasion, kerbs could be marked by paint and so forth but described this as rare and said most kerbs are not marked. The defendant argued that the nib pavement, insofar as it did constitute a hazard, was a “usual” danger in respect of which the plaintiff was required to take reasonable care for her own safety.

The High Court found that the plaintiff had no option but to go around the back of her car and across the nib pavement and it held that the continuous storage of bulky items for sale along the footpath, such as to render it impassible for most pedestrians but, in particular, for this pedestrian who was five months pregnant, was an act of negligence on the part of the defendant and, as a result of which, the plaintiff was forced out onto the forecourt. The High Court judge further found that on approach, the nib pavement was almost indistinguishable from the surrounding surface ground in the car park, and it could easily have been identified as a hazard by minor precautions being taken, such as the use of yellow paint or plastic wands. The High Court held that there was no contributory negligence on the part of the plaintiff and found the defendant 100% liable for the injuries caused to the plaintiff.

The High Court judgment was appealed by the Defendant. The main point of the appeal was that that there was no evidence before the High Court to suggest that the nib pavement was an unusual danger of a kind that attracted liability under the Occupiers Liability Act 1995 and the judge failed to have regard to the fact that it was undisputed that the nib pavement was a commonplace feature to be found not only in garage forecourts but in street and car park architecture generally.

The Court of Appeal held that the High Court erred in making a primary finding that the footpath was blocked and this primary finding of negligence failed to consider in any way whether the presence of the nib pavement constituted an unusual danger which amounted to a breach of the duty of care that was reasonable to ensure that the plaintiff was not injured by a danger on the defendant’s premises.

The Court of Appeal held that there was no true causal link between the obstruction of the footpath and the plaintiff’s accident as there are any number of reasons why the plaintiff might have decided to take the route she did. There was nothing to suggest that the defendant had a duty to the plaintiff to provide a footpath at all, and accordingly, whether it was blocked or not was irrelevant. There was a disconnect between the blockage of the path and the plaintiff’s fall over the kerb of the nib pavement.

The court considered the common law distinction between an unusual danger and a usual danger, affirming previous judgements which held it remains important in assessing whether a risk which exists on a premises will as matter of law constitute a danger for the purposes of the Occupiers Liability Act 1995. The court held that there was no evidence in this case that the nib pavement constituted an unusual danger. Instead, uncontradicted expert evidence was provided that such a kerb is ubiquitous. Unusual dangers attract liability for the very reason that they are unusual and consequently unanticipated. It cannot be said in the present case that the plaintiff did not anticipate, or could not have expected, the danger presented by the nib pavement.

The Court of Appeal noted that a court should use its own common sense and experience when it comes to everyday matters which are the subject of expert evidence, and this is one such case. The feature over which the plaintiff fell is to be found everywhere, and certainly commonly in fuel stations. It could not by any stretch of the imagination be described as “unusual” as a matter of law.

The fact that the plaintiff’s engineer offered the view that the kerb should have been painted or have some form of signage might well have made it more visible but that is not the test and the fact that any of these measures might have avoided the accident does not mean that the defendant is liable for failing to take them.

As such, the Court of Appeal held that the High Cout erred in finding a breach of section 3 of 1995 Act or any negligence on part of the defendant that lead to the plaintiff’s injury in this case and the court allowed the appeal and dismissed the plaintiff’s claim. This Court of Appeal judgment is a useful reminder that where the danger presented is considered a usual danger, it will generally follow that there is no breach of the common duty of care by a defendant.