

High Court considers discovery application - disclosure of CCTV footage

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The High Court¹ recently examined a discovery request involving the disclosure of CCTV footage. The matter came before the High Court by way of appeal, following a refusal by the Circuit Court to direct the disclosure of the footage at issue.

By way of background, the Circuit Court case concerned a claim in respect of personal injuries following an alleged fall in the Defendant's restaurant. The Plaintiff pleaded that she sat on a defective chair which broke causing her to fall to the ground and suffer injury. The Defendant filed a Defence in which proof was not required that the chair had broken as alleged. However, it was not admitted that the Plaintiff fell to the ground as a consequence of the break or that she suffered injuries.

Discovery was sought by the Plaintiff including CCTV footage of the accident locus. The County Registrar ordered that all categories sought should be provided. The Defendant objected to producing the footage and appealed the ruling to the Circuit Court. The Circuit Court judge refused to direct that the Defendant disclose the CCTV footage and the Plaintiff appealed this ruling to the High Court.

Counsel for the Plaintiff argued that the footage was relevant and necessary. It was submitted that the footage probably amounted to the best evidence as to what had occurred on the day in question. It was argued that the footage was essential to afford the Plaintiff fair opportunity to present her case at trial particularly in circumstances where the chair in question had not been retained by the Defendant.

Counsel for the Defendant submitted that the failure to preserve the chair was a 'red herring' as it had been accepted that the chair had broken and was defective. It was submitted that one of the central issues in the case that would require to be determined would be whether the Plaintiff had in fact fallen onto the ground, as she had pleaded. This plea was strongly disputed by the Defendant. It was submitted by the Defendant's legal team that the Plaintiff was looking for the footage so as to be in a position to 'mend her hand' in advance of giving evidence at trial, in the event that the footage revealed that she had not fallen to the ground as alleged. The decision of the Supreme Court in *Stafford v Revenue Commissioners*² was referenced in which the court referred to a passage from *Matthews and Malek* on discovery - "*Discovery*³ *will not be ordered of material which would be used solely for cross examination of a witness as to credit, since it would be oppressive if the party was obliged to disclose any document which might provide material for cross examination as to his credibility as a witness*".

Mr Justice Barr noted that while not explicitly pleaded, counsel for the Defendant had stated in the course of argument that the chair was defective. The issue of liability was therefore no longer live. He agreed that the fact that the chair was no longer available was irrelevant in these circumstances. He opined that the only reason that the Plaintiff might want access to the footage would be to enable her to ascertain whether her assertion that she fell to the ground was accurate in advance of trial. He was satisfied that it was not appropriate to order discovery of material which goes solely to the credit of a party, or witness.

Mr Justice Barr affirmed the decision of the Circuit Court and refused the Plaintiff's application for an order compelling the Defendant to disclose the CCTV footage.

This decision is helpful from a Defendant's perspective as it provides some protection against Plaintiffs who might seek to use the discovery process to change their account and mend their hand where liability is not in issue. However, it is anticipated that Plaintiffs may seek to circumvent this decision by submitting a data access request to Defendants for any such CCTV. It is noted that ISME have expressed concerns about data access rights where the data is held by an entity which is being sued⁴. Given the competing balance of interests, it is likely that this topic will be the subject of further litigation in the Courts.

¹2020 IEHC 600

²Unreported, Supreme Court, 27 March 1996

³P100

⁴<https://www.irishtimes.com/news/crime-and-law/insurance-reform-goes-cheers-cctv-ruling-in-personal-injury-case-1.4422940>

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