

**APPROVED**

**[2022] IEHC 134**

THE HIGH COURT

2020 No. 4464 P

BETWEEN

ANNA KOLTON

PLAINTIFF

AND

PARMONT LTD  
TRADING AS ESPLANADE HOTEL

DEFENDANT

**JUDGMENT of Mr. Justice Garrett Simons delivered on 8 April 2022**

**INTRODUCTION**

1. This judgment is delivered in respect of a personal injuries action. The Plaintiff had been a guest in a hotel owned and occupied by the Defendant. The Plaintiff alleges that she suffered a significant burn or scald injury as the result of an electric kettle in her hotel bedroom “*exploding*” during use and spraying her with boiling water.

**CIRCUMSTANCES OF THE ACCIDENT**

2. The Plaintiff and her then boyfriend had checked-in to the Esplanade Hotel on 22 July 2019 for a one-night stay. Some members of the Plaintiff’s family, who were visiting from Poland, had checked-in to a separate room in the hotel.

NO REDACTION REQUIRED

3. The layout of the hotel room is such that the entrance door opens into a short, narrow corridor, with a bathroom on the righthand side. The corridor then widens into the bedroom area. There is a shelving unit located in the corridor, upon which an electric kettle, tea cups, and milk and sugar had been provided. On the opposite wall of the corridor there is a mirror mounted on the wall. The distance between the end of the shelving unit and the mirror has been measured at approximately 1.4 metres.
4. The Plaintiff gave evidence that she and her boyfriend had first entered the hotel room between 2.30 pm and 3.00 pm. Thereafter, at approximately 5.00 pm, the Plaintiff had used the electric kettle in the hotel room to prepare a hot drink. The Plaintiff confirmed that, on that occasion, she had no issues or problems using the electric kettle.
5. The Plaintiff, her boyfriend and visiting family members left the hotel for the evening to socialise in a local public house. The Plaintiff and her boyfriend returned to their hotel room shortly before midnight.
6. The Plaintiff has explained that she decided to use the electric kettle to make a hot drink for herself. The Plaintiff's evidence is that she half-filled the kettle with water from the bathroom tap; closed the lid of the kettle; placed the kettle on its electric base; and switched it on.
7. While waiting for the electric kettle to boil, the Plaintiff had been trying on a skirt which she had, seemingly, purchased earlier in the day. The Plaintiff had been standing in front of the mirror for this purpose, with her back to the shelving unit which housed the electric kettle. The Plaintiff estimates that she had been standing approximately 1.5 metres from the mirror. The Plaintiff's boyfriend had been sitting up on the left-hand side of the double bed, watching the Plaintiff

trying on the new skirt. His evidence is that both the Plaintiff and the electric kettle were in his "*field of vision*".

8. The Plaintiff avers that there was then a sudden loud noise, which she likened to an "*explosion*" or "*gunshot*", and that she felt a burning sensation, mainly on her upper and middle back and her neck. The Plaintiff says that she had asked her boyfriend "*What happened?*".
9. The Plaintiff's boyfriend has described the incident as follows. There was a "*loud*" and "*frightening*" noise and an "*explosion*". The lid of the electric kettle opened fully, and water burst out like a "*geyser*". The witness described the lid of the electric kettle as having flipped right back, turning 180 degrees. The witness also demonstrated this angle by using his hands. There was water on the wall, ceiling and the entirety of the shelving unit. The witness estimated that eighty per cent of a notional rectangle the width of the shelving unit and the height of the wall above was covered in water. There were drops of water dripping from the ceiling for more than thirty minutes after the incident. The floor was not, however, very wet.
10. The witness confirmed that the electric kettle had not been boiling for very long before the supposed "*explosion*". As the witness put it, it was the "*standard time*" and there was nothing "*suspicious*" or "*concerning*" about the length of time for which the kettle had been operational.
11. The witness also produced a number of photographs taken on his mobile telephone device. These indicate that the injuries to the Plaintiff's back were confined to an area running from her left shoulder to above her waistline. The width of the affected area is no more than one-third of the breadth of her back.

As discussed presently, this is of relevance in analysing the possible mechanics of the accident.

12. There are a number of photographs of the hotel room in the aftermath of the accident. These are of little assistance, however, in that they are of poor quality and it is difficult to make out any detail in same.
13. The Plaintiff's injuries were immediately treated with cold water and wet towels. The Plaintiff's boyfriend is qualified in first-aid and his prompt actions in attending to her greatly mitigated the injuries suffered. A burns gel was then obtained from a hotel porter and applied to the scalded area.
14. The Plaintiff and her boyfriend checked-out of the hotel, as scheduled, the following morning (23 July 2019). On the afternoon of the same day, the Plaintiff attended at her general practitioner's clinic in Carlow. Her injury was treated conservatively with burn shield gel and the Plaintiff had been advised to use Flamazine cream as a dressing for the following days. The Plaintiff explained in evidence that she had applied a dressing for two to three days after the incident.
15. The Plaintiff had been able to travel to Poland, some four days later, for a planned holiday. The Plaintiff did not have to take time off work on account of her injury. The Plaintiff explained that she returned to work two or three weeks later upon the conclusion of her scheduled annual leave.

### **CLAIM FOR DAMAGES**

16. The Plaintiff instituted these proceedings on 23 June 2020. The fact that the proceedings were instituted before the High Court, rather than the Circuit Court, implies that the Plaintiff considers that the monetary value of her claim is in

excess of €60,000. This claim is in respect of general damages: there is no claim for loss of earnings and there are no significant special damages.

17. A full defence has been delivered to the proceedings, which includes a plea of contributory negligence against the Plaintiff. The Defendant also issued a letter warning that a differential costs order would be sought if the Plaintiff was successful.
18. The following particulars of personal injury are pleaded in the personal injuries summons:

“The Plaintiff suffered a significant burn/scald injury to her left shoulder and left upper and middle back.

The Plaintiff attended her GP where her burns were treated. The Plaintiff had significant pain and discomfort over the affected area.

The Plaintiff has been left with a permanent, discoloured area measuring 200 mm by 60 mm, which represents a significant cosmetic deformity and which the Plaintiff is very self conscious of.

The prognosis remains guarded and the Plaintiff reserves the right to adduce further particulars.”

19. The Plaintiff subsequently delivered the following further and better particulars of personal injury on 28 February 2022, that is, a few days prior to the hearing of the personal injuries action:

“The Plaintiff has been left with a discoloured area on her left upper back, which represents a cosmetic deformity and which said area is itchy and drier than the surrounding skin.

In cold weather this skin contracts and feels tight. Further, if the Plaintiff is lifting heavy objects or stretching, this area of skin feels tighter.

The Plaintiff is concerned about sun exposure of this area and has to exercise care over this area.

The area of skin measures 10 cm in radius and is circular.

The Plaintiff is self-conscious about this area on her back.

The Plaintiff reserves the right to adduce further particulars of injury.”

20. At the hearing of these proceedings on 3 March and 4 March 2022, counsel on behalf of the Plaintiff requested that the court view what he described as “*the scar*”. Arrangements were made for me to view the injury in chambers, in the company of the solicitors for the parties and counsel for the Plaintiff.
21. There is no “*scar*” visible, at least not with the naked eye. Indeed, I was unable to make out any discolouration or other indication of the scalding incident.
22. My impression is consistent with the medical report prepared on behalf of the Defendant by a consultant plastic surgeon. This medical report of 6 December 2021 has been agreed by the Plaintiff. The report records that there is a small area of mild residual erythema (redness) on the Plaintiff’s left upper lateral scapular area. The area measures approximately 3 cm x 1.5 cm and is visible only on very close inspection. The report records that superficial and deep palpitation revealed no tenderness or sensitivity and no textural changes in the area. There are no functional issues as regards shoulder or neck movements.
23. The summary of the report states that the Plaintiff’s left shoulder and left upper scapular area is essentially normal. The residue area is classified as a “*very minor permanent cosmetic disfigurement*”. There are no functional sequelae with this and there will be no long-term adverse sequelae either.
24. In the circumstances, it is difficult to understand why the claim has been brought before the High Court, rather than the Circuit Court. The amount which is recoverable by way of general damages for minor injuries of the type suffered would fall within the lower half of the Circuit Court’s monetary jurisdiction, i.e. damages would be less than €30,000. The scald injuries had healed over a

period of three to four weeks; there have been no long term sequelae; and the cosmetic disfigurement caused is properly classified as “*very minor*”.

25. It is in the public interest that claims are, in principle, brought before the lowest court having jurisdiction to hear and determine the claim with a view to the proper and efficient administration of justice and for the purpose of minimising the cost of litigation generally, and, in particular, for the parties. There is, therefore, an onus on a plaintiff to bring the proceedings before the court having the appropriate jurisdiction (*O'Connor v Bus Átha Cliath* [2003] IESC 66; [2003] 4 I.R. 459). A plaintiff who fails to do so runs the risk of a differential order on costs being made in accordance with the principles in *McKeown v. Crosby* [2021] IECA 139. This would have the practical effect that the benefit of any award of damages would be reduced as the award is off-set against the costs which the plaintiff would have to pay to the defendant.

#### **EVIDENCE OF JOINT INSPECTION OF KETTLE**

26. The electric kettle, the subject of the claim, had been subject to a joint inspection on 30 September 2020 by the forensic engineers engaged by the Plaintiff and Defendant, respectively. Each engineer subsequently prepared his own individual report and gave evidence to the court.
27. As part of this joint inspection, the operation of the kettle had been examined under different conditions as follows. First, the kettle was filled with 600 ml of cold water and turned on. The kettle operated normally. It took approximately 3 minutes and 45 seconds to come to the boil. The kettle turned off within approximately 10 seconds thereafter. This indicates that the thermostat (bimetallic thermal strip) was operating properly.

28. Secondly, the kettle was turned on with the lid slightly ajar. This was achieved using the tip of a biro. This test was to determine whether the lid would pop open. Again, the kettle operated normally, and the lid remained closed.
29. Thirdly, the kettle was deliberately overfilled beyond the internal fill line or mark, so that there was water in the spout. This resulted in what both engineers described as minor spitting or splashing of water from the spout as the kettle reached boiling point.
30. Fourthly, the lid of the kettle was left open and the power button was deliberately held down so as to override the thermostat. Again, there was only minor spitting of water out of the top.
31. The Defendant's forensic engineer has summarised the outcome of the tests as follows:

“On each of the tests we performed, the kettle automatically switched off when it reached the desired temperature. Therefore, in our view, the function of the kettle is not causative in this incident. At no point did the kettle perform in any way other than it should and in all tests, there was no bursting nor was there a large escape of water from this kettle.”

32. This summary of the outcome of the tests has not been refuted.

### **DISCUSSION AND DECISION ON LIABILITY**

33. The fact that someone has suffered personal injuries does not mean that they are automatically entitled to damages. The law recognises that accidents can happen without any fault of a third party. To succeed in her claim, the Plaintiff must establish negligence on the part of the Defendant and a causal link between such negligence and the injuries suffered.



34. The claim advanced by the Plaintiff is that the owner of the hotel failed to put in place a system to ensure that the electric kettles in the hotel rooms were properly checked and maintained. It is said that—as a result of this omission—a build-up of limescale on the filter of the kettle in her room had gone undetected. It should be explained that, as with most brands, it is a design feature of the electric kettle concerned that there is a filter between the spout and the chamber of the kettle. This filter is a triangular shaped piece of plastic consisting of a frame, clips and fine mesh. The filter is detachable, and can be removed for the purpose of cleaning and then “*clipped*” back into position adjacent to the spout. The filter is designed to ensure that limescale or other debris is not poured out of the kettle.
35. The “*Use & Care Manual*” produced by the manufacturer of the kettle states as follows:

“THE FILTER

1. The filter is designed to stop scale particles entering drinks after water has been boiled in the kettle. It is paramount that the filter is kept clean.
  2. Clean the filter whenever there are noticeable deposits left on it.
  3. When cleaning the filter, do not touch the filter mesh and ensure your hands are clean and free of soap or chemicals.
  4. Rinse the kettle out to remove any other scale particles.
  5. Warning: Do not use the kettle without the filter as pouring may become dangerous.”
36. The Plaintiff’s case is that a build-up of limescale on the filter had resulted in the unsafe operation of the kettle. More specifically, it is said that steam generated as the water is being boiled was unable to escape through the spout, and that this ultimately resulted in an explosion of water from the kettle.

37. It is an essential ingredient of the Plaintiff's case that the filter had become blocked. However, by the time the parties came to carry out their joint inspection of the kettle on 30 September 2020, there was no filter in position. The Defendant's side has been unable to explain what happened to the filter. In particular, they are unable to say whether or not the filter had been in position as of the date of the incident and only removed subsequently.
38. Counsel on behalf of the Plaintiff has been highly critical of the absence of any explanation as to what became of the filter, and of what he characterises as the "failure" of the Defendant to call witnesses who might have accounted for the "chain of custody" in respect of the kettle. In particular, attention is drawn to the fact that the hotel porter who had removed the kettle from the hotel room on the night of the accident was not called as a witness by the Defendant.
39. Counsel on behalf of the Plaintiff insists that there has been a culpable failure on the part of the Defendant to maintain a crucial piece of evidence. It is said that the consequence of this is that the court should draw an inference unfavourable to the Defendant, i.e. the court should presume, first, that the filter had been in place on the date of the accident, and, secondly, that the filter had been clogged or blocked. This is said to follow from the application of the principle *omnia praesumuntur contra spoliatorem*, i.e. everything is presumed against a wrongdoer who destroys evidence. This principle is sometimes referred to simply as "spoliation".
40. Counsel for the Plaintiff relies in this regard on the judgment of the Supreme Court in *O'Mahony v. Tyndale* [2001] IESC 62; [2002] 4 I.R. 101. Keane C.J. summarised the principle as follows (at page 107 of the reported judgment):

"The maxim is intended to ensure that no party to litigation, be they plaintiff or defendant, is subjected to a disadvantage

in the presentation of his or her case because his or her opponent had acted wrongly by destroying or suppressing evidence. Its application will, accordingly, as the two authorities cited demonstrate, depend entirely on the circumstances of the particular case in which it is invoked. Not surprisingly, there is no authority for the proposition that it could be invoked so as to produce a clear injustice, i.e. an obligation on a court of trial to disregard the weight of the evidence which it has heard because some of the documents, although of no significance in the outcome of the case, have been, for no sinister reason, mislaid or destroyed or because some documents never existed in the first place.”

41. It must be doubtful whether the principle of spoliation is properly applicable in the present case in the absence of any indication that evidence has been deliberately destroyed. There is nothing to suggest that the absence of the filter has been caused by any improper conduct—or even carelessness—on the part of the Defendant. The Defendant had taken steps to preserve the kettle the subject-matter of the claim, notwithstanding that there had not been any application on behalf of the Plaintiff for it to do so. The most probable explanation for the missing filter is an innocent one: a filter is designed to be detachable (for cleaning purposes) and as such is liable to be dislodged accidentally.
42. It is not, however, necessary to determine whether the principle of spoliation applies in the absence of the culpable destruction of evidence. This is because even if it were engaged the presumption would be rebutted in the present case. As explained in *O'Mahony v. Tyndale*, a court is not obliged to disregard the weight of the evidence. Here, any presumption that the filter had been clogged would be entirely inconsistent with the established facts. Had the filter been clogged to the extent that it would prevent the escape of steam through the spout, the blockage would also have affected the flow of water from the kettle. If the kettle had, indeed, become airtight then this would have affected the flow of water from the spout. The Plaintiff's own forensic engineer accepted that the

flow of water from the spout would have been “*sluggish*” had the filter been clogged. Crucially, however, the Plaintiff herself confirmed in evidence that she had no issues or problems using the kettle earlier in the evening. This indicates that there was no blockage.

43. Moreover, if there had been a sufficient build-up of limescale to block the filter, then there would also have been a build-up on the surface of the kettle itself.

Both forensic engineers confirmed that no such build-up is apparent in the kettle.

44. I am satisfied, therefore, on the balance of probabilities that the filter was not clogged up (and possibly may have been missing already). The principle of spoliation does not require the court to suspend disbelief and ignore objective evidence.

45. For completeness, it should be recorded that the expert evidence establishes that even if the filter had been clogged up, this would not have resulted in an “*explosion*” of the type described by the Plaintiff and her boyfriend. As noted earlier, the kettle had been subject to a joint inspection by the engineers engaged by the Plaintiff and Defendant, respectively. As part of this joint inspection, the operation of the kettle had been examined under different conditions. None of these scenarios produced an outcome even remotely similar to that alleged to have occurred.

46. The reason for this is that, as explained by the Defendant’s forensic engineer, the kettle is not an airtight unit. There are a number of routes through which steam can escape and thus a build-up of pressure of the type necessary to create an explosion cannot occur. The engineer pointed out that the kettle’s lid does not even have a continuous diameter. The lid is made of hard plastic and there is no rubber O-ring which would compress against the internal diameter and

provide a gas seal. The filter itself is not flush with the spout and thus even if the mesh of the filter had been clogged up with limescale, there would still be a gap or hole through which steam could escape.

47. Separately, even if the filter had been clogged up this would not affect the operation of the thermostat. The thermostat is located in the handle of the kettle and is activated when steam is forced into the handle where the bimetallic thermal switch is located. There is a small inlet hole or opening in the handle which facilitates this. The thermostat is reported as having operated properly in all of the experiments conducted as part of the joint inspection. This was so even when the lid had been deliberately left open. The Plaintiff's own engineer was very careful to emphasise that *both* the spout filter and this inlet hole in the handle would have to be blocked in order for there to be a build-up of pressure within the kettle. If the filter alone were blocked, the kettle would still switch off after 10 seconds of boiling point being reached. If the inlet hole to the handle alone were blocked, excess steam would still be able to escape via the spout. The Plaintiff's engineer also conceded that it followed from the fact that the kettle had operated normally earlier on the evening of the accident that the inlet hole had not been blocked then.
48. There are three further aspects of the Plaintiff's case which are contradicted by the expert evidence. The first relates to the impact of the alleged explosion on the lid of the kettle. The Plaintiff's boyfriend's evidence had been that the force of the explosion had been so powerful as to produce a 180 degree rotation of the lid. In fact, as a simple experiment conducted in the witness box by the Plaintiff's engineer demonstrated, had this occurred then the hinge mechanism of the lid would have snapped. The lid would have become separated from the

body of the kettle. In fact, the lid is still attached to the body of the kettle. Whereas the lid is damaged, this damage is not consistent with the events as described by the Plaintiff's boyfriend and is instead consistent with the kettle having fallen.

49. The second contradiction relates to the pattern of injury suffered by the Plaintiff. The photographs taken at the time of the accident indicate that the width of the affected area is no more than one-third of the breadth of the Plaintiff's back. The Plaintiff's engineer accepted that a more symmetrical pattern of injury would have been expected from an explosion of water and steam from the kettle.
50. The third contradiction relates to the time which would have to elapse before an explosion of the type alleged could occur. The expert evidence establishes that even if the kettle were airtight—and I have found that it was not—it would take a considerable period of time for a sufficient amount of water to boil off to steam to build the significant pressure required to pull the lid off. Yet both the Plaintiff and her former boyfriend were clear in their evidence that the kettle had not been operational for long before the alleged explosion occurred.

## **CONCLUSION**

51. There is a statutory obligation on a plaintiff in a personal injuries action to provide full particulars of each instance of negligence alleged against the defendant (Civil Liability and Courts Act 2004, s. 10). Here, the claim of negligence pursued at trial had been that the Defendant had failed to put in place a system to ensure that the electric kettles in the hotel rooms were properly checked and maintained. The claim had been that—as a result of this omission—a build-up of limescale on the filter of the kettle in the Plaintiff's hotel room had

gone undetected and this had caused the kettle to explode in the manner described by the Plaintiff and her former boyfriend.

52. Having regard to the expert evidence (as summarised over the last number of pages) I have concluded, on the balance of probabilities, that the negligence alleged against the Defendant has not been established. In particular, the Plaintiff has established neither that the filter in the electric kettle had been clogged nor that a clogged filter would have resulted in an explosion of the type alleged.
53. I found the Plaintiff's former boyfriend to be an unreliable witness, prone to exaggeration. His evidence was inconsistent with any plausible version of events. In particular, his description of the supposed explosion as "geyser" like; his description of the supposed aftermath of the accident with the ceilings and walls said to be saturated; and his allegation that the lid of the kettle had been turned 180 degrees, appear to have been exaggerated for effect. I prefer the expert evidence to that of this witness.
54. The Plaintiff herself had been unable to give much direct evidence in respect of the mechanics of the accident. This is because, as explained in her own evidence, she had been standing in front of the mirror with her back to the shelving unit housing the kettle. Indeed, her evidence is that she had to ask her boyfriend "*What happened?*". The most significant evidence given by the Plaintiff is that she had no issues or problems using the kettle earlier in the evening.
55. It is sufficient to dispose of these proceedings for the court to find that the negligence alleged by the Plaintiff has not been established on the balance of probabilities. It is not necessary for the court to go further and to make a definitive finding as to what the actual cause of the accident had been. It is not

necessary for the court to decide, for example, whether the Plaintiff may have caused the accident by overfilling the kettle or by inadvertently backing into the shelving unit and knocking over the kettle. The burden of proving, on a balance of probabilities, that the personal injuries were caused by the negligence of the Defendant lies with the Plaintiff. The Defendant is not obliged to put forward and prove an alternative explanation for the accident. Nor is it open to the court to substitute its own theory for that agitated for by a Plaintiff at the trial of the action (*McGeoghan v. Kelly* [2021] IECA 123).

56. In the absence of the negligence alleged having been established, the proceedings will be dismissed.
57. As to costs, the default position under Part 11 of the Legal Services Regulation Act 2015 is that the successful party is entitled to recover its measured costs against the unsuccessful party. If the default position were to obtain in the present case, then the Defendant would be entitled to an order for costs as against the Plaintiff. If the Plaintiff wishes to contend for a different form of costs order, then written submissions should be filed by 6 May 2022. The Defendant will have a further two weeks thereafter within which to respond (20 May 2022).
58. The proceedings will be listed before me, for final orders, on 27 May 2022 at 10.45 am.

#### *Appearances*

Barney Quirke, SC and Esther Earley for the Plaintiff instructed by O'Brien Murphy (Arran Quay)

Jonathan Kilfeather, SC and William Reidy for the Defendant instructed by Kennedys (Sir John Rogersons Quay)

Approved  
S. M. M. S.