



**In the High Court of South Africa
(Western Cape Division, Cape Town)**

Case No: 16561/20

In the matter between:

MAXINE WILLIAMS

Plaintiff

and

BEYERSKLOOF WINE BAR (PTY) LTD

Defendant

Matter Heard: 27 March 2025

Judgment Delivered: 29 May 2025

JUDGMENT

MANTAME, J

Introduction

[1] The plaintiff claims delictual damages against the defendant pursuant to harm suffered on 3 October 2020, when she ingested a needle – like foreign object while dining at the defendant's restaurant. The action was defended and served before this Court only on merits.

[2] Both parties are *ad idem* that the five elements of delict must be established for liability to exist. Those elements are (a) an act or omission; (b) wrongfulness, (c) fault (negligence), (d) causation and (e) harm.

Pleadings

[3] In her particulars of claim, the plaintiff alleged that the defendant owed the public and the plaintiff in particular a duty of care to ensure that the restaurant was in a safe condition; it did not constitute a source of danger; served food that was safe for human consumption; the plaintiff was informed of the presence of such dangers, and the defendant should have taken all the necessary precautions to protect the plaintiff from danger.

[4] Due to the defendant's negligence and wrongful conduct it failed to ensure the safety of the food. It failed to prevent the plaintiff from consuming hazardous and unsafe consumables and/or food prepared, served, and sold by the defendant from being consumed by the plaintiff. The defendant failed to caution the plaintiff regarding the potential risk of the consumables and/or food that was prepared, served or sold by the defendant and that such was dangerous and unsafe for consumption. The defendant should have foreseen the reasonable possibility that the plaintiff could suffer severe bodily injury as a result of the defendant's failure to take reasonable precautions to prevent the incident.

[5] In its plea, the defendant disputed that it was the cause of any danger. The object that was allegedly ingested by the plaintiff did not come from consumables sold and/or prepared by the defendant. Alternatively, in the event the Court find that the object swallowed by the plaintiff comes from food prepared by the defendant, the defendant denies liability for any alleged damages for the following reasons:

5.1 the defendant purchased its raw products for preparation of the food from reputable sources that provide raw food products free from any potentially harmful objects that can cause damages;

- 5.2 the object allegedly swallowed by the plaintiff is not an object ordinarily present in food products purchased by the defendant;
- 5.3 the defendant when preparing food, use generally accepted methods for preparation of its food;
- 5.4 the object that was allegedly swallowed by the plaintiff is not an object used for purposes of preparation of defendant's food and is not an object that can be found either in defendant's kitchen or tables where food is served; and
- 5.5 the presence of the type of object allegedly swallowed by the plaintiff is not foreseeable by the defendant in the process of preparing and serving food.

Evidence

[6] The defendant ran the Beyerskloof Wine Bar, a restaurant in Stellenbosch, according to the facts that gave rise to this claim. On the evening of 3 October 2020, the plaintiff and her husband, Jeremy Derick Williams (*Mr. Williams*), visited the defendant's restaurant, their favourite in the area, and which they frequented as guests for dinner. The plaintiff testified that she ordered a bottle of wine, some water, and a hamburger with sides for each of them.

[7] The food was served, and they both continued to indulge. Halfway through her meal, she experienced a sensation of discomfort, as though something was lodged in her throat. She immediately tried to get it down but struggled profusely. The plaintiff decided to go to the restroom as she started to cough and in a state of panic. As she continued coughing, she attempted to insert her finger into her throat to dislodge the object quicker. However, upon noticing some blood in the bathroom basin, she began to cry. This all happened during the COVID 19 period, and people started looking at her in a strange manner.

[8] After some time, she returned to her husband at the table and informed him that she was unable to discharge the object from her throat. At that point, she was overwhelmed with stress and anxiety. At this juncture she was crying and had been to the bathroom on two separate occasions and failed to discharge the object from

her throat. She informed her husband that they should leave immediately, as she had wet herself. This situation to her was extremely humiliating and embarrassing. The plaintiff informed her husband that she needs to consult a doctor. Her husband settled the bill, and they proceeded to Emergency Rooms at Stellenbosch Mediclinic.

[9] The plaintiff was immediately admitted and x- rays were taken on instruction of Dr De Villiers, the ENT specialist. The x- rays revealed that a needle - like object was stuck in her throat. The ENT specialist attempted to remove or extract this object manually but could not succeed. She could not be operated either that evening as she ate food and drank wine. However, she was kept in hospital overnight for a constant monitoring. The plaintiff underwent an operation after 7 hours which was unsuccessful.

[10] To monitor the location of the foreign object, the plaintiff was hospitalised and the x – rays were performed twice daily i.e. morning and evening to track the location of the foreign object. Additionally, the plaintiff was administered medication to facilitate its elimination from her body. The plaintiff was hospitalised for five (5) days and released or discharged on the fifth day when the foreign object was no longer visible on the x – rays.

[11] The plaintiff testified on the extent of pain, discomfort, anxiety and panic she experienced during this incident. It was exacerbated in her psyche when she realised that it had not been successfully removed. She recounted her humiliation and embarrassment when she wet herself and her recollection of a family friend who passed away after swallowing a fish bone that punctured his intestines. In reality, she was apprehensive about the possibility of experiencing a comparable circumstance.

[12] She was adamant in her testimony, that there is absolutely no possibility that a foreign object came from her clothing, as she did not wear hair clips or pins and so on. She also maintained that the object did not originate from her husband. The only way the needle – like foreign object could have entered her body was through the food that was served at the restaurant.

[13] During cross-examination, the plaintiff asserted that she was unaware of the foreign object on the food prior to ingesting it. The Court should accept that it was hidden inside the food. Despite the fact that she was served a hamburger and chips on her plate, she was certain that the foreign object was on the hamburger, because that is what she consumed at that time. She was uncertain as to whether it was on the bun, patty, or garnish, or how it had been introduced to the hamburger.

[14] Mr. Williams, the husband of the plaintiff corroborated the evidence of the plaintiff, and the plaintiff closed her case.

[15] The defendant only called Mr Jacques Barnard Van Straaten (*Mr Van Straaten*) in its defence. Mr. Van Straaten stated that he co – founded the defendant and held a position of General Manager. The business of the defendant opened on 1 February 2019 and temporarily closed on 26 March 2020 due to the COVID-19 pandemic. It re-opened in mid-August 2020. In April 2024, it ultimately ceased operations.

[16] He testified that the defendant had never experienced an incident of this nature, either before or after the 3 October 2020 incident. The defendant was responsible for the procurement of ingredients for food that was sold at the restaurant. The defendant procured all the ingredients from third party suppliers. The patties were sourced from Eikeboom Butchery and has been in business approximately since 1960. The buns were sourced from Espresso Bakery in Paarden Eiland and the relish from Alex Fruit and Veg, Stellenbosch and they supplied the hotels and restaurants in the area. For instance, the Red Leaf Bistro on the farm highly recommended Eikenboom for texture and flavour in their patties. At no stage did the defendant make its own patties. During the period 3 October 2020 the defendant ordered its patties from Eikenboom Butchery. The patties were normally delivered to the restaurant, but on some occasions, he would collect the order from the butchery. On the night in question, there were no signs that the plaintiff would swallow a needle - like foreign object on her food.

[17] During cross – examination he confirmed that he was not on duty during the time of the incident. However, he had two managers, that is a kitchen manager who supervised food preparation and a front manager. Nevertheless, he was responsible

for overseeing the operations of the business. The administration of the kitchen was his responsibility after the kitchen manager departed during the COVID-19 outbreak and did not return. He ensured that the staff was trained in health and safety protocols to guarantee food safety. The kitchen's configuration was delineated by Mr. Straaten. For instance, there were two food stations where food is prepared. Working in these stations were four (4) staff members, i.e. one individual in the scullery, two individuals were employed on the grill and one person on the chips and pizza station. They provided assistance to each other at different stations based on their workload.

[18] Mr. Straaten was informed by his staff that the night of the incident was quite busy. The hamburgers were the defendant's speciality. The spicing of the patties was done by the butchery. During the preparation the patties are basted with a plastic brush on the grill. The grill can be stubborn dirty at times. However, no hazardous tool was used to clean the grill. He assisted with cleaning the kitchen if the kitchen staff are late. He could not give account on the state of the kitchen that evening because he was not present. However, he agreed that there were some appliances, implements and utensils in the kitchen. In order for these items to operate, they needed maintenance.

[19] He continued to explain that the "pass", which is where food is delivered to the waitstaff is situated above one of these stations. Above the "pass" there is a fan, the magnetic rails where the order slips are kept and the printer for printing orders. These would not have caused any hazard. To ensure food safety, Mr. Straaten's testimony was that he would get deliveries of ordered items from his suppliers and would check the stock to ensure that the correct quantity was delivered and the food was of the highest standard.

[20] On the night in question, the defendant was managed by the head waitress. The plaintiff's experience was not put to issue. Since the defendant's staff was trained in quality control, if the needle - like object was seen by any of them, they would have removed it. There is a possibility that the staff did not foresee the circumstances happening that evening. None of the staff members was called to testify during trial.

Discussion

[21] The defendant did not dispute the experience of the plaintiff at the defendant's restaurant. Nevertheless, the defendant submitted that whether one applies the *res ipsa loquitur* doctrine, the evidence led cannot be used to establish a conclusion other than that the defendant did not act negligently regarding the manner in which the foreign object was introduced to the food.

[22] The plaintiff contended that this assertion is incredulous as the defendant was unable to explain the origins of the foreign object. Mr. Straaten merely speculated that "there must have been unforeseen circumstances for this to happen".

[23] The thrust of the defendant's submission was that the test for negligence is trite.¹ The inquiry is two –fold. It was contended that (i) negligence is not established by demonstrating that the occurrence occurred or, after it occurred, by demonstrating how it can be prevented.², and (ii) the greater the possibility that damage will occur, the easier it will be for a court to find that damage was reasonably foreseeable, while the smaller the possibility of damage, the more difficult it will be a court to find that damage was reasonably foreseeable.³ The following principles were argued to be applicable with respect to the question of preventability:

23.1 The mere fact that foreseeable damage materialised does not necessarily mean that steps actually taken by a defendant were unreasonable.⁴

23.2 Relevant to the enquiry in this matter is the fourth of the four basic considerations or factors taken into account on the preventability question, namely, the burden of eliminating the risk or harm⁵, and

23.3 The costs and difficulty of taking precautionary measures play a crucial part in

¹ Kruger v Coetzee 1966 (2) SA 428 (A) at pg. 430

² Minister of Safety and Security v Carmichele 2004 (3) SA 305 (SCA) at 326

³ McCarthy Ltd v Sunset Beach Trading 300 CC 2012 (6) SA 551 (GNP) at 567; Oliphant v RAF [2008] 4 All SA 239 (SCA) at 243

⁴ Shabalala v Metrorail 2008 (3) SA 142 (SCA) at 145

⁵ Herschel v Mrupe 1954 (3) SA 464 A at 477

the inquiry. The principle is that, where the costs and difficulty of taking precautionary measures are greater than the gravity of the risk involved, a reasonable person would not take such steps to minimise or reduce the risk.⁶

[24] In countering the defendant's submission, the plaintiff asserted that the two-stage inquiry was unnecessary in establishing negligence in this instance, as the facts are self-evident. It was argued that although *res ipsa loquitur* is not a legal principle however, it is employed to describe the proof of fact which are sufficient to support an inference that a defendant was negligent and thereby to establish a *prima facie* case against the defendant; it is a form of inferential reasoning which is invoked where the occurrence or the incident itself is the only known fact from which a conclusion of negligence can be drawn and the incident does not ordinarily occur in the absence of negligent conduct; the conclusion is self – evident from the facts, and the maxim is only invoked if the facts suggest that the defendant may have been negligent.⁷

[25] As the plaintiff has stated, the defendant has not provided an explanation of the origins of the foreign object on the food, it merely stated that it had safety and health protocols in place to ensure food safety. Such protocols were not deconstructed to demonstrate what they entailed. The Court was unaware of the restaurant's layout and, more significantly, the kitchen's layout on the day in question, as Mr. Straaten was not present that evening and only received a briefing from his staff that the evening was bustling. Mr. Straaten could not tell in his examination who and / or how many staff members were working that evening, what health and safety protocols were put in place. What was the process undertaken by which staff member to prepare the plaintiff's hamburger. Given the fact that it was quite busy that evening, how big was the space that was utilized to create the plaintiff's hamburger; how often was it cleaned; what type of clothing was put on by the kitchen staff and waitresses? For example, did it require to be secured by pins and needles? Were the staff wearing headgears, tops and so on that were secured

⁶ Khupa v SA Transport Services 1990 (2) SA 627 (W); Ngubane v South African Transport Services 1991 (1) SA 756 (A) at 778

⁷ Goliath v MEC for Health, Eastern Cape 2015 (2) SA 97 (SCA) para 10

by pins and/or needles. Did Mr. Van Straaten interview the staff that worked that evening to ascertain if one of them did not put the needle - like object carelessly with food as it was busy? As stated above, the comment by Mr Straaten that “there must have been unforeseen circumstances for this to happen” remains speculative.

[26] In my analysis, Mr. Van Straaten is unaware of the origin of the needle – like object. In addition, he ruled out the possibility that the foreign object might have come from the suppliers. In his plea and testimony, it was stated that the defendant purchased raw products from reliable and/or reputable sources and upon delivery, they would inspect it for quality control. Also, it was not elaborated what that process of inspection entailed.

[27] The doctrine of *res ipsa loquitur* allows the Court to infer negligence from the circumstances of an accident when there is no direct evidence. Similarly, there is no direct evidence regarding the manner in which the foreign object was introduced to the plaintiff’s hamburger. She became aware that she had consumed a hazardous substance when the foreign object was unable to pass down her oesophagus after she had consumed a hamburger.

[28] For the Court to infer negligence based on *res ipsa loquitur*, the following should be established:

28.1 The nature of the incident – The plaintiff would not have swallowed a needle like foreign object if a specified or a required set of health and safety protocols in the kitchen staff and waiters was in place. The fact that Mr. Van Straaten testified during cross- examination that food quality is checked when it is delivered and they used plastic brushes and not metal brushes to baste and clean the grill gave credence to the fact that they had a duty of care towards the plaintiff. The defendant had a duty to ensure that patties are prepared on clean surfaces, *albeit* using plastic brushes. Even if this Court were to employ the two – stage inquiry on negligence, it follows that they foresaw harm happening for instance in the kitchen that may result into some food contamination should they clean the grill with metal brushes but refrained from doing

so. Instead, they prevented the harm from happening by using the plastic brushes. However, we do not know whether that indeed happened preceding this incident. Either way, the defendant is at fault for their failure to serve the plaintiff safe food.

28.2 Caused by an instrument in the defendant's control - The defendant at all times was in control of the preparations, service and sale of food. Meaning, as it sourced raw products, it was responsible for preparing (creating) the hamburger from its raw state until it was consumable. The defendant was in control of the appliances, instruments and/ or implements that prepared a hamburger that turned out to have a foreign object upon being swallowed.

28.3 No other explanation - The defendant proffered no plausible explanation for the accident that the plaintiff encountered at its establishment. This therefore shifts the burden of providing a reasonable explanation to the defendant. The defendants' submissions that the facts of the case do not suggest an element of negligence on its part is totally flawed. Be that as it may, it should be noted that the burden of reasonable explanation does not shift the *onus* or burden of proof to the defendant. The *onus* rests with the plaintiff.⁸

[29] In this instance, the inference is only permissible while the cause of the incident remains unknown. The Court will therefore, infer that such an unknown event occurred if a certain party was negligent. There is therefore, an obligation from the defendant to rebut the inference by proffering an explanation for the occurrence of the incident.

[30] In *Arthur v Bezuidenhout and Mieny*⁹, the Court held that 'once the plaintiff proves the occurrence giving rise to the inference of negligence on the part of the defendant, the latter must adduce evidence to the contrary. The term "must" imply that the defendant is obligated to provide the remaining portion of the narrative or risk being found guilty'.

⁸ *Sardi and Others v Standard and General Insurance Co Ltd*. 1977 (3) SA 776 (A)

⁹ 1962 (2) SA 566 (A) at 574E -H

[31] Undoubtedly, in this regard, the defendant was obligated to act positively to prevent the harm that was suffered by the plaintiff. The consequent failure by the defendant to take positive action was unlawful, as it is reasonable to anticipate that the defendant would have implemented positive measures to prevent the injury. In *Van Eeden v Minister of Safety and Security*¹⁰, the SCA acknowledged that:

‘Our common law employs the element of wrongfulness (in addition to the requirements of fault causation and harm) to determine liability for delictual damages caused by an omission. The appropriate test for determining wrongfulness has been settled in a long line of decisions of this Court. An omission is wrongful if the defendant is under legal duty to act positively to prevent the harm suffered by the plaintiff. The test is one of reasonableness. A defendant is under a legal duty to act positively to prevent harm to the plaintiff if it is reasonable to expect of the defendant to have taken positive measures to prevent the harm. The court determines whether it is reasonable to have expected of the defendant to have done so by making a value judgment based inter alia upon its perception of the legal convictions of the community and or considerations of policy.’

[32] Lastly, causation should be established for the Court to consider whether all aspects of delictual claim have been discharged. The two – stage inquiry has to be undertaken, i.e. factual causation and legal causation. The first inquiry would be whether the negligent act or omission caused or materially contributed to the harm giving rise to the claim.¹¹ If regard is had to the facts and the circumstances of this matter, has the plaintiff shown that the defendant’s negligent conduct was the direct cause of the plaintiff’s harm; but for the defendant’s conduct, the plaintiff would not have been served food containing foreign object (unsafe food) and thus would not have suffered the harm. This is known as the “but – for” test.¹² In my view, factual causation has been satisfied.

¹⁰ 2003 (1) SA 389 (SCA) at para [9]

¹¹ *Minister of Police v Skosana* 1977 (1) SA 31 (A)

¹² *International Shipping Co (Pty) Ltd v Bent*

[33] With regard to the second inquiry, that is, legal causation, has the plaintiff established that the defendant's conduct was the legal cause of the plaintiff's harm. In my view, there was a sufficiently adequate connection that existed between the conduct and the factual consequence, taking into account the policy considerations and concepts such as reasonableness, fairness and justice.

[34] It is my considered view that the plaintiff has established all the elements of delict. The defendant is therefore liable for the claim for delictual damages.

[35] In the result, the following order is made:

35.1 The plaintiff's claim on merits succeeds;

35.2 The defendant is liable for such damages as the plaintiff may prove in due course to have suffered arising from the needle – like foreign object that was contained in the food that was served to the plaintiff by the defendant;

35.3 The defendant is ordered to pay costs on Scale B.

MANTAME J

WESTERN CAPE HIGH COURT

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