



[2016] JMSC Civ. 110

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2012 HCV 06099

BETWEEN	RENAY BRYAN	CLAIMANT
AND	SUGAR AND SPICE LIMITED	DEFENDANT

Diana McFarlane instructed by Page and Haisley for the claimant

Christopher Honeywell for the defendant

Heard: June 16 and 20, 2016

Occupiers liability – Slip and fall – Duties of occupier – Duties of visitor

TIE, J (AG.)

The Claim

[1] The claimant's case was that on October 15, 2011, whilst as an employee to the defendant company, she fell down stairs that were wet and slippery and sustained personal injuries. She claims that the defendant was negligent in failing to provide a safe system and place of work and, in the alternative, she claims damages for breach of its statutory duty under the **Occupiers Liability Act**.

The Defence

- [2] The defence, as filed, contended that the claimant was not an employee of the defendant, but rather an employee of another entity. It stated that she was at the premises to observe the work process at the defendant's company as a part of training by her employer.
- [3] The defence further denies that the floor was wet and slippery. It contends that the claimant was negligent in failing to exercise care whilst descending the stairs, failed to use the stair railing and failed to wear proper footwear as the defendant company required.

The Evidence

- [4] The court heard evidence from the claimant and defendant solely. The claimant's evidence was that on the day in question, whilst lawfully executing her duties with the defendant, she fell whilst descending a flight of stairs at the defendant's premises which were wet and slippery. The fall resulted in injury to her person and she was taken to the hospital where she received treatment and was given a sling as well as oral and topical pain medication. She was subsequently given five days sick leave.
- [5] She contends that she was exposed to an unnecessary risk of injury by the defendant's failure to provide a safe work environment. Further, there were no warning signs that the staircase was wet and slippery.
- [6] Under cross examination when pressed as to her employer, her memory failed as regards a number of issues including her signing a contract and as regards the information on her pay slip. She however accepted that she was terminated not by the defendant but by the entity that the defendant contends was her employer.
- [7] As regards the incident itself, she indicated that it had been raining that morning and that this caused the stairs to be wet. She stated that the stairs in issue are

located inside the building and are not exposed to rainfall. Further there was no leak to the roof. She was thereafter questioned as regards the distance of the stairs from the entrance to the building given her posture that the wet stairs were as a result the rain that had fallen. She testified that the distance is 'not far' and pointed out a distance which the court estimated to be 25 feet. When questioned she accepted that upon entering the door, one enters a garage which one has to traverse in order to get to the bakery. Thereafter one encounters the staircase. She was unable to give an indication as to the size of the garage. The size of the bakery however was estimated to be 25 feet by 28 feet based on the distance pointed out by the claimant.

[8] Under cross examination she accepted that the staircase had a rail and that she did not use the rail, but reached for it when she was falling. She however could not recall where along the staircase she fell. She acknowledged that the shoes she was wearing were slippery because they were plastic. She thereafter added that it can be slippery if rain falls. She left for the hospital around ten minutes after she fell, after Mr. Chang, the general manager and director of Sugar and Spice Limited, had taken a photograph of her shoes.

[9] Mr. Chang denied that the claimant was ever an employee of the company, but instead explained that she was at the premises at the behest of her employer, LILA limited, as a part of training. He contends that she was never paid by the defendant company.

[10] As regards the claimant's fall, he denied that the staircase was wet. He indicated that even though it had rained earlier, it had stopped long before she fell. Moreover, the staircase in issue is some 33 yards from the entrance way and as such, even if someone entered the building with wet shoes, their feet would be thoroughly dry upon getting to the staircase. He contends that minutes after the incident, he inspected the staircase and it was completely dry.

- [11] He also indicated that the claimant on the day in issue wore inappropriate footwear and that she should have been instructed by her employer as to the proper footwear. He stated that there are surveillance cameras and a review revealed that she tripped or slipped at the second to last step, lost her balance, she tried to grab the rail along the staircase and instead hit her elbow on the step.
- [12] He informed the court that after the incident, based on information received, he asked the claimant to see her shoes and, according to him, the soles were smooth and not suitable for the conditions of a bakery. The only aspect of his evidence that was challenged under cross examination was his assertion that the staircase was dry. He conceded under cross examination that it would not be visible on camera if the staircase was wet, but reiterated that when he viewed the said stairs minutes after the incident, it and the surrounding areas, were dry. The tenor of the questions put to him under cross examination was that this water on the staircase was from the rain that fell. There was no challenge as to the distance of the staircase from the outside.

The Law

- [13] On the evidence, it was clear that the claimant was not employed to the defendant company. In fact, she conceded that her employment was terminated by another entity. It is apparent that counsel for the claimant also conceded that she was not so employed as the issue was not pursued in cross examination of the defendant's representative or in closing submissions. As such, the issue for determination surrounds that of liability under the **Occupier's Liability Act**. Section 3 (1)-(4) of the said legislation is applicable and states as follows:

"3. (1) An occupier of premises owes the same duty (in this Act referred to as the "common duty of care") to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor by agreement or otherwise.

(2) The common duty of care is the duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be

reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

(3) The circumstances relevant for the present purpose include the degree of care and of want of care, which would ordinarily be looked for in such a visitor and so, in proper cases, and without prejudice to the generality of the foregoing-

(a) an occupier must be prepared for children to be less careful than adults;

(b) an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.

(4) In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances.”

[14] Harris J.A. in **Victoria Mutual Building Society v Barbara Berry SCCA S4/2007**, (delivered July 31, 2003) reminded that:

“The statutorily regulated duty of care is essentially similar to that of the common law. However, at common law, a visitor is required to employ reasonable care for his own safety. Under the statute, the degree or want of care which would ordinarily be looked for in an invitee is only a relevant factor.”

[15] The learned Judge of Appeal referred to the dicta of Kelly, C.B in **Indemauro v Davies (1867) LR 2 CP 311** as regards the duty of the occupier and visitor.

“With respect to such a visitor at least, we consider it settled law that he, using reasonable care on his part for his own safety, is entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual danger, which he knows or ought to know; and that, when there is evidence of neglect, the question whether such reasonable care has been taken by notice, lighting, guarding or otherwise, and whether there was such contributory negligence in the sufferer, must be determined by a jury as a matter of fact.”

Analysis

[16] There is no dispute that the claimant was a lawful visitor, nor is there any dispute that she fell on the stairs. There being no suggestion that the staircase was

inherently defective, the first issue for determination is whether or not there was water on the staircase which caused the claimant to fall.

- [17]** I have considered the evidence in its entirety and I am not satisfied that the claimant has proved on a balance of the probabilities that water was on the stairs. I find the evidence as presented by the claimant to be rather bare and inadequate. There was for instance an absence of evidence describing the water on the staircase. Was the entire staircase wet, or was it solely the step where she fell? Was it damp or was it drenched? There was also no description of the state of the areas leading to the staircase.
- [18]** This lacuna in the evidence of the claimant who is obliged to prove her case is disconcerting. This was information that would obviously have been within her knowledge had the water been present and would have assisted in presenting a clear picture to the court. The absence puts her credibility in issue. Indeed, her general inability to respond to crucial questions did not engender confidence in her evidence.
- [19]** The claimant's case that the water on the stairs was caused by rainfall is not believable. Whilst there is no requirement on the part of the claimant to establish the source of the water, the incredulity of her account impacts negatively on her credibility. The claimant indicated that the staircase is indoors and that there was no leak in the roof. The clear inference from the evidence was that this water was caused by persons' wet feet, it having been raining.
- [20]** I find the claimant's evidence that the entry point was 'not far' from the staircase, having pointed out a distance of about 25 feet to the court, as not credible. It was evident that this could not be accurate based on the route one has to traverse. She accepted that upon entering the main door, one has to walk across the garage and then through the bakery to get to the stairs. Whilst she was unable to give an indication as to the size of the garage, based on her

description the bakery alone is around 25 feet by 28 feet. Given her estimation of the size of the garage, her indication as regards the distance of the stairs from the entry point cannot be accurate.

- [21]** The evidence of Mr. Chang that the staircase is 33 yards away from the door was unchallenged by the claimant. I accept this distance as more accurate. Given the distance of the staircase from the entry point, it is unbelievable that persons entering would have wet shoes after covering that distance. It is not believable that the stairs could have become wet because of water being brought in from persons' shoes. The claimant did not impress the court as sure in her account and could not be regarded as a credible witness.
- [22]** The defendant, on the other hand, struck the court as being a truthful and reliable witness. His responses, under cross examination, were forthright and unembellished, even in instances where his response would not assist his case. For instance, he readily admitted that a review of the surveillance footage did not allow him to determine if water was on the stairs.
- [23]** I accept that he did view the stairs a few moments after the incident and that it was dry. Given the brevity of the time that had elapsed between the incident and his viewing the stairway, I was not persuaded by the suggestion that the absence of water at the time that he viewed it was not indicative of the absence of water when she fell.
- [24]** I am, therefore, not satisfied that there was water on the staircase that made it wet and slippery and that this was the cause of her falling. There are however two factors, which are unchallenged, which point to the claimant not exercising the requisite care in descending the stairs. Firstly, she accepts that she was wearing plastic shoes that were slippery. Secondly, she admits that she did not use the railing for the stairs whilst she was descending. From my assessment of the evidence it is more believable that the claimant fell because she failed to exercise the care that a reasonable person ought to in descending stairs in

slippery shoes. I so conclude without any regard to suggestions by the defendant as regards the claimant being informed of the appropriate footwear to be worn on the premises. I am of the view that the claimant assumed a risk in descending stairs in admittedly slippery shoes and without utilising the handrail to her detriment.

[25] In the circumstances I find that there is nothing to satisfy the court that the defendant breached the duty of care to persons using the building. Judgment is therefore entered for the defendant with cost to be agreed or taxed.