[2026] JMSC Civ. 34

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2023CV02110

BETWEEN ALICIA WALLACE-COHEN CLAIMANT

A N D JAMAICA BROILERS GROUP LTD DEFENDANT

IN OPEN COURT

Mrs. Dameta Franklin-Gayle instructed by Gayle-Franklin & Co for the Claimant

Mr. Munroe Wisdom with Ms. Keren Campbell instructed by NSD&Co for the Defendant

HEARD: February 19, 2026 DELIVERED: March 13, 2026

Tort – Negligence – Breach of Occupiers Liability Act – Whether Defendant is Liable for the Claimant Slipping and Falling on their premises.

Tort – Negligence – Employer's Liability – Whether Defendant Breached their Duty of Care to the Claimant as her Employer

DALE STAPLE J

BACKGROUND

[1] On the afternoon of the 30th March 2023, the Claimant, the Defendant's former employee, alleges that whilst she was opening a door in the lobby of the Defendant's Feed Mill, she slipped and fell due to the presence of water on the floor of the lobby.

[2] She claims that as a consequence of this, she has suffered injuries, loss and damage and seeks compensation therefor. Her claim for compensation is

grounded in the tort of negligence and breach of the **Occupier's Liability Act**. The area of negligence with which the Claimant is concerned is breach of the Defendant's duty to her as an employer.

[3] The Defendant has denied the claim and insisted that they are not at fault for the Claimant's slip and fall. In their Further Amended Defence filed on the 10th April 2025, the Defendant accepted that the Claimant fell on the day in question, but denied that the fall was a consequence of any negligence or breach of duty on their part.

[4] The Court is now called upon to determine whether or not the Defendant is indeed liable to the Claimant for her slip and fall and whether it is also liable for the injuries she says she suffered as a consequence.

[5] I remind myself that it is for the Claimant to satisfy me, on the balance of probabilities, that the Defendant is responsible for her slip and fall and the injuries she suffered as a consequence.

[6] The Court is grateful to counsel for the submissions in this matter. I wish to assure the parties that their submissions were carefully considered.

NEGLIGENCE GENERALLY AND SPECIFICALLY FOR SLIP AND FALL CASES

[7] The factual and legal issues to be decided in this case concern what is commonly known as slip and fall cases. These are cases in which persons allege that as a consequence of some negligent act on the part of the occupier of a property, they slipped and fell, resulting in injury.

[8] This area is covered by the provisions of the **Occupier's Liability Act,** which imposes a duty on the occupier of premises to keep the premises in such condition that it does not expose their invitees to foreseeable risk of harm[1].

Duty to Have and Maintain a Safe Place of Work - Whether or not the Defendant Breached Duty to Have and Maintain a Safe Place of Work – Was the floor of the Defendant's premises in an unsafe condition for workers?

[9] It is not disputed that the Claimant was employed to the Defendant as an Administrative Assistant at the time of the incident. As her employer, therefore, the Defendant would owe a duty of care to the Claimant to have and maintain a safe place of work.

[10] The authority of *Davie v New Merton Board Mills*[2] established that amongst the duties of an employer to an employee is the duty to take reasonable care for their safety in providing, amongst other things, a safe place of work and a safe system of work.

[11] The Claimant must satisfy the Court, that it was more likely than not, that the Defendant did not provide and maintain a safe place of work at the Feed Mill and as such they breached this duty of care to her.

[12] To set up the breaches of both the **Occupier's Liability Act** and their duty of care to her as her employer, the Claimant set out the following allegations of negligence:

1. *Failing to provide a safe place of work.*
2. *Failing to provide a safe place of work.*
3. *Failing to provide the requisite warning, notices and/or special instructions to the Claimant and its other*

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[1] See s. 3 of the Occupiers Liability Act
[2] [1959] 1 All ER 340

employees in the execution of its operation so as to prevent the Claimant being injured.

4. *Inviting or allowing the Claimant as an invite [sic] of the said premises and failing to put a caution sign when floor is wet.*

5. *Failing to take any or reasonable care to see that the Claimant would be reasonably safe in using the premises as a worker.*

6. *Causing or permitting the floor to remain in an unsafe position.*

7. *Permitting the Claimant to walk on the premises / main lobby when they knew or ought to have known that it was unsafe or dangerous to do so.*

8. *Failing to take such care as in all the circumstances was reasonable to see that the Claimant would be reasonably safe in using the premises for the purposes for which she was invited or permitted by the Defendant to be on the said premises.*

Lack of Signage or Warnings

[13] The Claimant's main argument, as stated in their supplemental submissions at paragraph 24, is that the hazard was created by cleaning activity and there were no warning signs present nor warnings given.

[14] Of significance in this case is the absence of any allegation that the floor itself was inherently dangerous. There was also no factual allegation concerning the nature of the flooring material – that is, whether it was tiled, the nature of the tiling and so forth. Counsel applied to amplify the evidence from the Claimant's witness statement at the trial for her to give oral evidence of the description of the lobby, but I disallowed same as there were no factual allegations pleaded and so the Claimant could not present any evidence of these allegations without the Court's

permission[3]. I would not give permission as it was quite late in the day and would have caught the Defendant off guard if they had wanted to lead their own evidence in this regard.

[15] The nature of the flooring material is usually important in slip and fall cases. This is especially so where there is no allegation that the material in which the Claimant slipped and fell was itself inherently slippery, such as detergent[4], or floor stripping chemical[5]. Their case is that it was water. Water is not, in itself, slippery.

[16] In the recent Privy Council decision of ***Strachan v Albany Resort Operator Limited***[6], their Lordships highlighted, as part of their findings, the importance of the nature of the flooring in the question of whether warning signs or warnings would be necessary where there is a spillage.

[17] The case concerned a hotel employee who was taking some wet towels from the pool area back inside the hotel. Rain had just fallen and the outside area was wet. Importantly, there was a finding of fact from the learned trial judge that the pool area had tiles that were specifically designed to be non-slip when wet. The evidence was that the inside area was tiled and their Lordships, in the absence of any evidence, presumed that the inside tiles were the non-slip ones.

[18] The employee/appellant, it was found, fell on the outside tiles and not the inside ones. The Respondent was found not liable for the Appellant's slip and fall and this finding was upheld by the Court of Appeal and the Privy Council.

[19] Amongst their observations, their Lordships said at paragraph 18 that,

> *"Secondly, there was no evidence at trial that the presence of water in the outside area was due to, for instance, any cleaning activity*

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[3] See rules 8.9 and 8.9A of the CPR
[4] See *Wayne Ann Holdings Ltd (T/A Super Plus Food Stores) v Sandra Morgan* [2011] JMCA Civ 44
[5] See *Clover Smith v SERHA et al* [2020] JMSC Civ 241 – though in this case the Claimant lost her claim, the important point was the nature of the material on which she said she slipped.
[6] [2026] UKPC 5

carried out by an employee of the defendant for whom the defendant would be vicariously liable if the employee had negligently failed to erect wet floor signs…

[20] But they went on to say, in the same paragraph 18:

Fifthly, there was no evidence that it was reasonably necessary to erect wet floor signs in the outside area if it had rained, given that the tiles in that area were rough-textured sandstone type tiles."

[21] So whilst signs are important to erect, the circumstances of the flooring are a relevant consideration in determining whether it was reasonably necessary to erect wet floor signs.

[22] In the case of ***Valorie Smith v UGI Group Ltd***[7] the Court accepted evidence from the plaintiff that the tiles on the floor were marble tiles polished to a sheen & minutes of meetings held by the Defendant company a month after the incident where it was conceded that the marble tiles were slippery after being polished.

[23] The Court accepts that the incident happened in the lobby area of the Feed Mill of the Defendant's premises. But there is no evidence of the nature of the flooring in the lobby. Was the flooring made of tiles or some other material that became hazardous when wet? It was for the Claimant to make this allegation concerning the flooring and for the Defendant to adduce evidence to show that the signage was not necessary.

[24] In this case, therefore, the Claimant's allegations, in my view, concerning the failure to put up warning or caution signs are not made out as there is no evidence to show that the signage was necessary in the circumstances of this case due to any condition of the floor that it would be slippery when wet and so a hazard.

Was the Premises Unsafe?

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[7] (Unreported), Supreme Court, Jamaica, CL 1997/S-298, March 11, 2010

[25] It is for the Claimant to prove that the premises where she worked was unsafe. I do not find that she has so done.

[26] Her evidence is that she was at work at her desk in the area of the lobby of the Feed Mill. She said she was attempting to open the door for a colleague she slipped and fell due to the presence of water on the floor. How much water is unknown. The source of the water was a matter of speculation on her part. She said it *appeared* to be the result of the floor being freshly wiped by a member of the ancillary staff.

[27] Importantly, when one examines the same Further Amended Defence of the Defendant, they have put the Claimant to proof that there was water on the floor. They said, at paragraphs 4(e) and (f), that the Claimant, given where she was positioned, was present at the time the cleaning was done and ought to have seen when the floor was being cleaned and that the area was regularly traversed by persons before and after the cleaning.

[28] Her evidence, under cross-examination, was that the incident happened at around 2:30 in the afternoon. She conceded that other persons had passed through the main lobby on the same day of her incident.

[29] She denied seeing the floor being cleaned. It was put to her that she therefore could not say that the floor had been freshly wiped. She said that she could say that. But then she conceded that she did not see the floor being wiped and she could not see from where she was sitting.

[30] The Claimant's case is therefore constructed on an assumption. Her own evidence is that the water *appeared to be* (emphasis mine) from the recent cleaning of the floor. There is no evidence of the amount of water on the floor at the time of the Claimant's fall. The Claimant herself gave no evidence to say that her clothes were wet after the fall. She said she was assisting a colleague at the time of the fall. There is not even a name of this colleague who could provide some objective evidence of what transpired.

[31] The Court is therefore not in a position to say that the amount of water on the floor made it hazardous.

[32] The cleaning of the floor is a routine exercise. There is no evidence of the cleaning schedule for the Defendant. Therefore, there is no objective evidence from which the Court can say when the floor was wiped so that there would have been any water in sufficient amount left on the floor to cause a slip and fall. In any event, as there is no evidence of the nature of the flooring, the amount of water on the floor and the effect of water on the flooring, the Court cannot say that the mere presence of water on the floor was sufficient to render it unsafe.

[33] There is no evidence that other persons in the past had slipped or slipped and fallen on the flooring of the lobby after it was wiped. The evidence is that the Claimant, on the day in question, saw no such slipping and falling before she had her incident. Therefore, there would have been no reason for the Defendant to have taken any extra precaution to put up warning signs or to warn persons in the circumstances.

[34] There was, in my view, no other evidence of this "unsafe" premises. The evidence, indeed, is that the place was wiped routinely. There is no evidence that the items used to wipe the flooring contained slippery substance which would leave a slippery residue thereby creating a hazard.

[35] The duty imposed by an employer and by s. 3 (2)of the Occupier's Liability Act 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." (Emphasis mine)*

[36] In my view, the Claimant has not satisfied me that the Defendant has failed, in the circumstances of this case, to discharge this duty.

Mechanism of Fall

[37] The Claimant's explanation of how she fell also left the Court in a position of unclarity. At paragraph 3 of her witness statement she said:

> "While attempting to open the door for a colleague, I unexpectedly slipped and fell due to the presence of water on the floor."

[38] How she fell to the floor is still somewhat puzzling to me. She said she was attempting to open the door. But there is no clear explanation as to what she meant by attempting. Did she hold the door and whilst in the process of pulling or pushing it fell? If so, how did she manage to fall to the floor whilst holding on to the door? Did she fall before holding the door and opening same?

[39] It is for the Claimant to set out her evidence in a clear and convincing manner giving "cogent evidence" of what happened to her on which the Court can rely. The Court can ask questions to help clarify evidence. That is the job of counsel in the preparation of the witness statement which serves as the evidence in chief. The Court cannot, and in my view should not, help a litigant to make their case. In my view, a Defendant is perfectly entitled to sit back and say or do nothing if the Claimant's evidence is unclear or incoherent. In my view, her evidence is neither clear nor cogent.

[40] In the circumstances of this case therefore, I am not satisfied that the Claimant has put forth clear and cogent evidence of the Defendant's liability for her unfortunate fall.

DISPOSITION

1 Judgment for the Defendant
2 Costs to the Defendant to be taxed if not agreed.

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Dale Staple
Puisne Judge