COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2013/CLE/gen/00180

BETWEEN

MIGUEL FERNANDER

Plaintiff

AND

NEPTUNE WATERTOYS LIMITED

d/b/a BLUE ADVENTURES

Defendant

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Donovan Gibson and Ms. Palincia Hunter of Munroe & Associates for the Plaintiff
Mrs. Vanessa L. Smith of McKinney Bancroft & Hughes for the Defendant

Hearing Dates: 18, 19 April 2018, 07 June, 13 June, 30 August 2018

Negligence – Existence of duty of care – Breach of duty – Causation – Defendant's golf cart rolled unto Plaintiff's golf cart – Whether Defendant breached duty of care - Remoteness of Damage – Unforeseen accident – Burden of Proof – Whether Plaintiff has proven accident and resulting injuries were caused by negligence of Defendant

Expert witnesses – Independence and impartiality of expert witnesses

On 1 June, 2011, Carlo Demeritte, an employee of the Defendant, was driving a Carryall golf cart eastwardly from Club Med towards the Zero Entry Deck by the Challenger slides at Atlantis Resort. Accompanying him on the Carryall was Shaniqua Bain and Thomas Bastian, both of whom were also employees of the Defendant. Mr. Bastian was in the passenger seat of the Carryall and Ms. Bain was seated on the front dashboard facing Mr. Bastian.

Prior to reaching their destination, the Carryall approached the Cushman which was parked on the right side of the golf cart path. The Plaintiff, who was seated in the driver's seat of

the Cushman, was speaking to Frito Simeon, a lifeguard Manager employed by the Atlantis Resort. The Cushman was stationary.

A group of guests were walking towards the Carryall so Mr. Demeritte pulled off to the right side of the golf cart path directly behind the Cushman. The Carryall came to a stop but rolled forward a bit as the golf cart path is on a slight incline and it was wet. The Carryall collided with the rear of the Cushman. There was no damage to the Cushman. No one was injured save for the Plaintiff, as he alleged.

Later that day, the Plaintiff attended the Cove's Nurse's Station complaining of injuries to his neck, back and right shoulder. Subsequently, he was transported to Doctor's Hospital after he made a police report with the Paradise Island Bridge Police Station.

The Plaintiff commenced an action seeking damages in negligence relative to the accident and special damages in the amount of $27,938.76. The Defendant alleged that Mr. Demeritte was not negligent in the operation of the Carryall and that in any event the Plaintiff's injuries were not caused by the accident and the Plaintiff's injuries were not foreseeable.

HELD:

1. As an employee of the Defendant, Mr. Demeritte ought to have known that the area is full of activity with guests walking up and down and the area is generally wet since the waterslide, lazy river and the pool are in close proximity.

2. Mr. Demeritte failed to keep any or any proper look out and/or to observe or heed the presence of the Plaintiff and also failed to exercise reasonable skill, care and diligence while driving the Carryall in breach of the duty of care owed to the Plaintiff: **Bourhill v Young** (1943) AC 92 applied: **Custins v Nottingham Corp** [1970] R.T.R. 365 distinguished.

3. The Plaintiff failed to discharge his burden of proof that the accident caused the significant injuries he alleged or that he had any pre-existing conditions that were further exacerbated by the Accident: **Barnett v Chelsea and Kensington Hospital Management Committee** [1969] 1 Q.B. 428 relied upon.

4. Expert witnesses must act independently regardless of by whom he or she is paid. Their duty is to assist the court, not the party who pays him/her. It is then for the Court to determine the issue of causation based upon the totality of the evidence: **Darwin Azad Sahadtah and Kamalar Mohammed Sahadath v The Water and Sewage Authority of Trinidad and Tobago** Claim No CV2016-01737 considered.

5. It is not reasonably foreseeable that a slow moving golf cart gently tapping the back of another golf cart would result in the extensive injuries claimed by the Plaintiff: **Simmons v British Steel Plc** [2004] UKHL 20 applied.

6. Costs are discretionary. The discretionary power to award costs must always be exercised judicially and not whimsically or capriciously. The Judge is required to exercise his discretion in accordance with established principles and in relation to the facts of the case and on relevant grounds connected with the case, which included any matter relating to the litigation; the parties' conduct in it and the

circumstances leading to the litigation, but nothing else: see **Scherer v Counting Instruments Ltd.** [1986] 2 All ER 529 and **Soldier Crab Limited t/a Sandy Toes v Aqua Tours Limited** 2013/CLE/gen/0310 considered.

7. The amount claimed on the Defendant's Bill of Costs of $58,812.34 was unreasonably high. Reasonable costs taxed at $35,000.00.

JUDGMENT

Charles J:

Introduction

[1] On a bright and sunny summer afternoon in June 2011, there was an accident on the premises of the Atlantis Resort, Paradise Island when a Carryall golf cart ("the Carryall") carrying three passengers collided with a Cushman golf cart ("the Cushman") which was in a stationary position. The Plaintiff ("Mr. Fernander"), then the Manager of the Water Park Operations at the Atlantis Resort, was seated in the driver's seat of the stationary Cushman. He alleged that he sustained personal injuries to his neck and cervical spine as a result of that accident.

[2] Shortly thereafter, Mr. Fernander instituted the present action against Neptune Watertoys Limited d/b/a Blue Adventures ("the Defendant") seeking damages in negligence for personal injuries caused to him by the Defendant, its servants and/or agents. The Defendant did not dispute that the accident took place. However, it contended that the degree of impact was slight and could not possibly have caused the injuries alleged by Mr. Fernander.

Salient facts

[3] Most of the salient facts is agreed. To the extent that there is any departure from the agreed facts, then what is expressed must be treated as positive findings of fact made by me.

[4] On 1 June 2011, Carlo Demeritte, an employee of the Defendant, was driving the Carryall eastwardly from Club Med towards the Zero Entry Deck by the

Challenger slides at Atlantis Resort. Accompanying him on the Carryall was Shaniqua Bain and Thomas Bastian, both of whom were also employees of the Defendant. Mr. Bastian was in the passenger seat of the Carryall and Ms. Bain was seated on the front dashboard facing Mr. Bastian.

[5] Prior to reaching their destination, the Carryall approached the Cushman which was parked on the right side of the golf cart path. Mr. Fernander, who was seated in the driver's seat of the Cushman, was speaking with Frito Simeon, a lifeguard Manager employed by the Atlantis Resort. The Cushman was stationary.

[6] A group of guests were walking towards the Carryall so Mr. Demeritte pulled off to the right side of the golf cart path directly behind the Cushman. The Carryall came to a stop but rolled forward a bit as the golf cart path is on a slight incline and it was wet. The Carryall collided with the rear of the Cushman. There was no damage to the Cushman. No one was injured save for Mr. Fernander, as he alleged.

[7] Later that day, Mr. Fernander attended the Cove's Nurse's Station complaining of injuries to his neck, back and right shoulder. Subsequently, he was transported to Doctors Hospital after he made a police report with the Paradise Island Bridge Police Station.

[8] On 7 February 2013, Mr. Fernander filed a generally indorsed Writ of Summons seeking damages in negligence relative to the accident. On 28 February 2013, he filed a Statement of Claim alleging that the accident was caused by the negligent driving of the Defendant and/or its agent. In paragraph 4 of his Statement of Claim, Mr. Fernander alleged that the Defendant and/or its agent was negligent and/or in breach of his duty of care in that he was:

(i) Driving too fast;

(ii) Failing to keep any or any proper look out and/or to observe or heed the presence of Mr. Fernander;

(iii) Failing to see Mr. Fernander in sufficient time to avoid colliding with him or at all;

(iv) Failing to stop, to slow down, to swerve, or in any other way so as to manage or control the said Carryall as to avoid the collision; and

(v) Failing to exercise reasonable skill, care and diligence whilst driving the said Carryall.

[9] In paragraph 5 of the Statement of Claim, Mr. Fernander, then 39 years of age, particularized the injuries which he suffered as (i) severe cervical spine stenosis with cord and nerve root compression resulting in progressive neurological deterioration and (ii) neck spasm.

[10] Mr. Fernander claimed special damages in the amount of $27,938.76.

The issues

[11] There are two issues which arise for consideration namely:

1. Was the accident caused by the negligence of the Defendant? and;

2. If so, whether the injuries allegedly suffered by Mr. Fernander were as a direct result of the accident?

The evidence

[12] Mr. Fernander testified and subpoenaed Dr. Magnus Ekedede to give expert evidence on his behalf. Even though Dr. Ekedede was the first witness to give evidence, I shall firstly deal with the evidence of Mr. Fernander and then that of Dr. Ekedede.

[13] In his witness statements filed on 5 February 2014 and 3 March 2014 respectively, Mr. Fernander testified that around 14:30 hours on 1 June 2011, he pulled the Cushman over and parked off the pathway between the

Challenger Deck and the Mayan Pool/Zero Entry Deck to speak with an Assistant Manager. He alleged that he was not within any lane of traffic. The Cushman was also stationary. While parked there, he heard someone shouted "hit the brakes, hit the brakes". As he turned around to see what was happening, he saw the Carryall carrying four passengers (the driver and three passengers) slammed the rear of the Cushman. One passenger sat adjacent to the driver, one opposite the passenger who was sitting adjacent to the driver and the third passenger stood in the rear of the Carryall. After the impact, he got out of the Cushman to inspect the rear to determine whether there was any damage. There was no visible damage so he got back in the Cushman and drove to the Day Visitor's Pool Deck where he was stationed.

[14] His evidence is that a few minutes after he arrived at the Pool Deck, he began to experience pain in his lower back and neck. Thereafter, he sought medical attention. While he was being examined by paramedics in the rear of the ambulance, the police took a statement from him. He was taken to Doctors Hospital where he was admitted to the Accident & Emergency Department ("A&E"). Once at Doctors Hospital, he was examined by the A&E staff who informed him that he had a spinal injury and would need to see a specialist. He spent about six to seven hours at the hospital before he was discharged. He eventually saw Dr. Ekedede who became his primary physician.

[15] Between the date of the accident and January 2014, the National Insurance Board ("NIB") paid all of his medical expenses. However, in January 2014, NIB wrote to him advising that they will no longer be responsible for any future medical expenses as Dr. Kathlyn DeSouza deemed him to be 9% disabled. He appealed that decision and he was successful. NIB deemed him 40% disabled although there is no documentary evidence to support this finding.

[16] In his witness statement filed on 3 March 2014, Mr. Fernander stated that he never wore a neck brace and his employers would never have permitted him to come to work with a neck brace or a cast as this indicates serious injury and it is their policy not to allow employees with serious injuries to work. No doubt, he was responding to an allegation made by two of the witnesses for the Defendant namely Shaniqua Bain and Thomas Bastian. He also stated that he does not personally know any of the two individuals or even had a relationship with either of them.

[17] Under cross-examination by learned Counsel Mrs. Smith who represented the Defendant, Mr. Fernander was shown a Report which he gave to a nurse at Atlantis on 2 June 2011 wherein he stated: "*A golf cart from Blue Ventures hit the Cushman from behind that I was parked and sitting on causing me to jolt forward suddenly and forcibly*."

[18] He stated that he was seated in the driver's seat of the Cushman at the time of the impact. He was not thrown off the Cushman at any time when the impact occurred. His hands were on the handle which he grabbed after he heard someone shouted "hit the brakes, hit the brakes." He saw the Carryall coming towards the Cushman. He saw the impact.

[19] To the best of his knowledge, none of the passengers in the Carryall were injured even though one was seated on the front dashboard with her back. No one in the Carryall fell off, moved or shift positions although one passenger was not in a very secure position. The third passenger who stood in the rear of the Carryall was not in a very secured position but he did not recall whether she fell or slipped during the impact.

[20] He left the scene of the accident after he got out of the Cushman to check whether there was any damage. He did not see any damage so he got back into the Cushman. He had no problem whatsoever.

[21] At the date of the accident, Mr. Fernander had been working at the Atlantis Resort for about three to four years.

[22] He was not aware of any protocol for reporting accidents that occur on the property. But if an employee is injured, there is something done at the nurses' station and a security report is given. After the accident, Mr. Fernander returned to his station. He began to experience some pain so he went to the nurses station by the Zero Entry Pool. The nurses there were unable to assist immediately. After that, he caught a ride to the Cove and reported the accident to his Manager before attending the Cove's nurses' station. At that time, the intensity of his pain was about an 8 on a scale of 1 to 10.

[23] Despite the pain, he went to his Manager first. He said that the nurse at Atlantis examined him and told him that he had a spinal injury. There is no such diagnosis of him in the report of 2 June 2011. Mr. Fernander said that he was examined by Warren Grant, a trained paramedic who told him that his injury was a code 2 situation. He was asked what is meant by a Code 2. He said that you have a serious injury which necessitates immediate assistance at the hospital. An ambulance is necessary. He said that he was wheeled in a stretcher wearing a neck brace. He admitted that he had been involved in other work-related accidents while at the Atlantis Resort. He said that on one occasion he twisted an ankle and his knee popped out of place.

[24] Under further cross-examination by Mrs. Smith, Mr. Fernander acknowledged that on 4 July 2009, he had an injury to his right ankle (Tab. 4 of the Defendant's Supplemental List of Documents) and on 7 February 2010, while he was attempting to pick up a chair on the pool deck, his left knee twisted and popped. He later saw Dr. Robert Gibson. Previous to that accident, he wore a knee brace.

[25] Mr. Fernander was questioned with respect to how many doctors he saw in relation to this accident. Besides the ER doctors, he said two: Dr. Abubakar and Dr. Ekedede. Under cross-examination, he was asked and he answered that he also saw Dr. Walkine, Atlantis' physician who diagnosed him with a herniated disc in his neck. In his letter dated 9 February 2012 to Karen Carey, Senior Vice President, Atlantic, with respect to the herniated disc, Dr. Walkine said: *"This condition is probably preexisting and not caused by the accident."*

[26] Upon further cross-examination, Mr. Fernander admitted that before the accident, he suffered lower back pain and he had seen a doctor. He had to do physiotherapy. He testified that his back pain started around 2000 or 2001. He also testified under cross-examination that the accident in question was a whiplash although there is no medical evidence to that effect.

[27] In an answer to a question by the Court, Mr. Fernander stated that he was released that same night from Doctors Hospital. He spent about six to seven hours there.

[28] Dr. Ekekede was subpoenaed by Mr. Fernander to give expert testimony on his behalf. Dr. Ekedede was Mr. Fernander's lead physician for some years yet he had to be subpoenaed which in passing is strange.

[29] Be that as it may, Dr. Ekedede was deemed an expert in neurological surgery with expertise in brain and spine. He had been practising his profession for at least 25 years of which 22 of those years were here in the Bahamas.

[30] He examined Mr. Fernander on 12 January 2012. Dr. Ekedede wrote that the patient visited his office today complaining of neck pain and spasm as well as lower back pain. He had an MRI of his vertical spine which reports HNP at C5-C6, C6-C7 and C7-T1. He recommended that Mr. Fernander will need C5-C6 and C6-C7 ACDF and Plating for treatment of his symptoms.

[31] On 15 March 2012, Dr. Ekedede wrote that Mr. Fernander underwent a major spinal surgery with fusion and will be unable to work until 6 June 2012 (Tab. 10 of Expert's Bundle of Documents).

[32] On 12 April 2012, he wrote again that Mr. Fernander would not be able to return to work until he completes physiotherapy.

[33] On 11 June 2012, Dr. Ekedede said that Mr. Fernander "*is doing great post cervical ACDF on 23 February 2012 and will be returning to work on 2 July 2012*". Mr. Fernander was advised to refrain from lifting, bending excessively, overreaching and standing for long periods.

[34] At Tab. 4, there is a report of Dr. Ekedede dated 15 October 2012 addressed to the law firm of Michelle Y. Campbell & Co. I set out fully the contents of the report which states that:

> **"[Mr. Fernander] sustained an industrial accident at Atlantis on 1 June 2011. He has been suffering from severe neck pain and lower back pain that did not improved (sic) on physiotherapy and medications. As a matter of fact, his upper extremities were numb, painful and burning tremendously. The symptoms progressed to the point that he requested transfer from Dr. Abubakar's care to my care on the 27th January 2012.**
>
> **An MRI and EMG study confirmed severe cervical spine stenosis with cord and nerve root compression resulting in progressive neurological deterioration such as intense left upper extremity radiculopathy with weakness as well. Also, he has neck spasm with inability to move his neck from side to side as well as progressive left lower limb weakness.**
>
> **For the above reasons, he underwent an ACDF in February 2012 followed by physiotherapy. Frankly, he has done tremendously well but not entirely recovered. He cannot lift heavy objects or overreach. He should continue with limb strengthening exercises and occasionally he should take muscle relaxer if need be.**
>
> **Obviously, he cannot be involved in vigorous/contact sports. From my records, February 2012, he has not returned to work due to this illness."**

[35] On 9 March 2017, Dr. Ekedede wrote another report. He signed it. The report states, in part, that his (Mr. Fernander) symptoms are weakness on the left upper extremity and tingling, numbness, neck stiffness and pain etc. Dr. Ekedede further wrote:

> **"Usually myelopathy means the cord is severely affected that leads to progressive muscular weakness if the cause is not treated. In severe myelopathy, the patient can be paralysed therefore the surgery was necessary to avoid catastrophic neurological deterioration.**
>
> **Mr. Fernander may need future MRI's, EMG/NCS to determine his future prognosis as regards to future surgeries. Meanwhile, he is required to do twelve (12) sessions of physiotherapy yearly for three (3) years."**

[36] In his opinion, the injuries that Mr. Fernander sustained were consistent with the incident which he described to him.

[37] Under intense cross-examination by Mrs. Smith, Dr. Ekedede agreed that he examined Mr. Fernander for the first time about six months after the accident. He did not recall reviewing Dr. Abubakar's letter. He was not aware that Mr. Fernander had at least two industrial accidents prior to the one on 1 June 2011. If he had known about the previous injuries, it would have affected his diagnosis of Mr. Fernander although in the same breath, he said that his diagnosis would have been the same if he had known of any other possible industrial accidents that Mr. Fernander could have had. He was asked what causes myelopathy to which he replied that it is spinal cord dysfunction. Trauma according to him, is a sudden event which leads to bodily damage.

[38] Dr. Ekedede said under cross-examination that if he did not do the surgery, Mr. Fernander would not be walking. He was unaware that Mr. Fernander had any previous accidents.

[39] The Defendant called two witnesses namely Shaniqua Bain and Thomas Bastian. They were unable to call Mr. Demerritte as he had since passed away.

[40] Ms. Bain testified that she currently works for James Sarles Real Estate. At the date of the accident, she was a Dive Instructor at the Atlantis Resort working for the Defendant.

[41] In her evidence-in-chief, she stated that she was sitting on the front dashboard facing Mr. Bastian who was in the passenger seat. Mr. Demeritte was driving. They approached the Cushman. Mr. Fernander was seated in the driver's seat of the Cushman which was stationary. He was speaking with Mr. Simeon, the lifeguard manager.

[42] When approaching the Cushman, some guests were walking towards them so Mr. Demeritte pulled off to the right side of the golf cart path directly behind the Cushman. They were travelling between 2-3 mph as they are not required to speed on Atlantis property.

[43] Ms. Bain testified that upon coming to a stop directly behind the Cushman, the Carryall slowly rolled forward and gently tapped the back of the Cushman. She said that the golf cart path is on a slight decline and it was wet. According to her, Mr. Fernander did not acknowledge that the Cushman had been contacted. He did not turn around, make any sound or communicate with them. Thereafter, Mr. Demeritte greeted Mr. Simeon and it was only at that point that Mr. Fernander turned around to acknowledge them. She said that when Mr. Demeritte began talking to Mr. Simeon, it was at that stage that Mr. Fernander told Mr. Simeon that he would catch up with him later and drive off.

[44] Ms. Bain testified that approximately 30 minutes after Mr. Fernander drove off, she saw him talking to other employees at the towel hut. Again, he did

not appear to be physically impaired in any way or suffering from any physical injuries.

[45] At approximately 5.00 p.m. on 1 June 2011, Ms. Bain asserted that she received a radio communication from Mr. Fernander's manager who informed her that she is required to make a report concerning the accident. Ms. Bain said that she was surprised by the request as she did not really think anything material took place. She gave a statement.

[46] Ms. Bain stated that there is a protocol at the Atlantis Resort regarding accidents on the property. According to her, if there is a slip and fall, it is called a code 2 and if you have a spinal injury, you would be unable to move and Emergency would have to come and remove that person, be it an employee or a guest. She also asserted that she has known Mr. Fernander for many years before 1 June 2011 and for as long as she has known him, he has worn a knee brace and walked with a limp. She had also seen him wearing a neck brace when at work.

[47] Under cross-examination, Ms. Bain maintained that she was not blocking Mr. Bastian's view. She said that the way she was seated he would have still been able to see straight ahead. She also saw when Mr. Fernander stopped. She maintained that the Carryall was travelling very slowly.

[48] Under further cross-examination, Ms. Bain was referred to Tab 7 of the Agreed Bundle of Documents. She asserted that she did not make a Statement on 2 June 2011. When shown the Statement, she said that (i) it is not her signature; (ii) the phone numbers are not hers and (iii) she does not reside at Shrimp Road. She also does not know Nicholas McKinney. Simply put, she insisted that the Statement is a fabrication.

[49] Regarding the neck brace, she said that she would see him wearing it early in the mornings and in the evenings when it was time to leave. She was

adamant that the Atlantis Resort does not discriminate so he would be permitted to wear his neck brace to work.

[50] The next witness for the Defendant was Thomas Bastian who made a witness statement on 13 November 2013 but it was filed in the Supreme Court on 5 February 2014. At the time, he was the Assistant Manager of the Defendant. He worked at Lagoon Beach situated at the Atlantis Resort. He was a passenger in the Carryall driven by Mr. Demeritte on 1 June 2011. He was seated in the passenger seat and Ms. Bain was seated on the dashboard and facing him. They were driving east from Club Med towards the Zero Entry Pool Deck by the Challenger slides when they approached a Cushman. Mr. Fernander was seated in the driver's seat. The Cushman was stationary on the right side of the golf cart path speaking to Mr. Simeon.

[51] Mr. Bastian averred that when approaching the Cushman, some guests were walking towards them so Mr. Demeritte pulled off to the right side of the golf cart path directly behind the Cushman. He said that they are not permitted to speed on the Atlantis property so he estimated that they were travelling at about 2-3 mph. Upon coming to the stop directly behind the Cushman, the Carryall slowly rolled forward and gently tapped the back of the Cushman. The golf cart path was on a slight decline and wet. Like Ms. Bain, he stated that it is common in his experience that upon coming to a stop in a golf cart the vehicle tends to roll slightly forward. Mr. Fernander did not acknowledge that his Cushman had been contacted. He did not turn around, make any sound or communicate with them.

[52] He gave almost identical testimony to Ms. Bain. Like her, he also had known Mr. Fernander for many years prior to the incident and as long as he had known him, he has worn a knee brace and walked with a limp. Before 1 June 2011, he has seen Mr. Fernander wear a neck brace at work. He is aware of the protocol at the Atlantis Resort with respect to accidents on the property. He said that the first code is code 2 –slip and fall and the second code is

code 2 red, which is that you do not move and you call an ambulance. With respect to accidents, a staff member is to immediately call security. Mr. Bastian also stated that if a staff member or a guest is suspected to have a spinal injury, the protocol is that you are not allowed to touch the guest or staff until the lifeguard and security arrive.

[53] Mr. Bastian was also extensively cross-examined by Mr. Gibson. With respect to the protocol, he said that they were informed of it during training. It is a part of their training.

[54] He said that he was able to see above Ms. Bain as his seat is high and the dashboard is low. She was not obstructing him.

[55] Mr. Bastian said that the reason for the Carryall stopping so close to the Cushman was the timing. According to him, guests just started to come so they pulled directly behind the Cushman and gently tapped it.

[56] That was the totality of the evidence adduced at the trial.

Factual findings

[57] This is a civil case wherein the burden of proof is based on a preponderance of evidence. Having had the opportunity of seeing, hearing and observing the demeamour of the witnesses and visiting the *locus in quo* at the Atlantis Resort , I found the evidence given by the witnesses for the Defendant to be more plausible than that of Mr. Fernander and his witness, Dr. Ekedede. I am afraid that I found the evidence and opinions of Dr. Ekedede to be unreliable and not independent. I will expound fully on this when I come to consider the second issue.

[58] I also found that the evidence of Ms. Bain corroborated that of Mr. Bastian in a material way. I did not find either of them to be evasive as Counsel for the Plaintiff invites the Court to find. On the contrary, I found their evidence to be reliable and consistent.

[59] The onus is on Mr. Fernander to prove his case. He chose not to bring any witnesses, not even Mr. Simeon. He however, implored the Court to treat a statement made by Mr. Simeon in an Incident Report dated 2 June 2011 as credible. According to Mr. Gibson, Mr. Simeon has no interest in this matter and his statement is close as possible to being independent.

[60] In the Incident Report taken by one Nicholas McKinney, Mr. Simeon said:

> **"…I saw a golf cart coming our way next thing I know I heard when it collided with the Cushman. The hit pushed the Cushman forward a little bit…I said to Karlo who was driving the golf cart "hey you cant drive aye…."**[Emphasis added]

[61] Although, Mr. Simeon did not testify and his statement remains untested, Mr. Simeon is not saying anything different from what I found to be the facts of this case. The facts, as I found them, are on 1 June 2011, the Carryall was travelling at about 2-3 mph eastwardly from Club Med towards the Zero Entry Pool Deck. On the site visit, it was evident that besides rules, no golf carts could speed on the Atlantis Resort on any given day as there is a leisurely number of guests in that area. Mr. Fernander himself admitted that, on the day of the accident, there were "quite a few guests on the park and there was a group that actually came up."

[62] Prior to reaching its destination, the Carryall approached the stationary Cushman which was parked on the right side of the golf cart path. Mr. Fernander was seated in the driver's seat and he was speaking with Mr. Simeon. As the Carryall approached the Cushman, some guests were walking towards the Carryall so Mr. Demeritte pulled off to the right side directly behind the Cushman. As the Carryall came to a complete stop, it slowly rolled forward because the path was wet and is on a slight incline. It gently touched the Cushman. There was no damage to the golf carts and/or injuries to any passengers except for Mr. Fernander, as he alleged.

The law of negligence

[63] In the tort of negligence, liability is based on the conduct of the defendant and has four elements or requirements namely:

1. The existence of a duty of care situation (i.e. one which the law attaches liability to carelessness). There has to be a recognition by law that the careless infliction of the kind of damage complained of on the class of person to which the plaintiff belongs by the class of person to which the defendant belongs is actionable;

2. Breach of the duty of care by the defendant, i.e. he failed to measure up to the standard set by law;

3. A casual connection between the defendant's careless conduct and the damage; and

4. That the particular kind of damage to the particular plaintiff is not so unforeseeable as to be too remote.

See: Adderley J (as he then was) in **Pratt v Cable Beach Resort Limited** [2010/COM/lab/00014] (unreported).

Existence of a duty of care

[64] In general, a duty of care will be owed wherever in the circumstances it is foreseeable that if the defendant does not exercise due care the plaintiff will be harmed: see **Clerk & Lindsell on Torts (9th Ed)**, at paras. 8:05 et seq.

[65] In **Donoghue v Stevenson** [1932] A.C. 532, at page 580, Lord Atkin described the principle as:

> **"…The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, Who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions, which you can reasonably foresee would be likely to injure your neighbour. Who, then in law is my neighbor? The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question…."**

[66] Subsequently, in the landmark case of **Caparo Industries Plc v Dickman** [1990] 1 All ER 568, the House of Lords established the tripartite test in establishing whether or not a duty exists. In order for a duty of care to arise in negligence: (1) harm must be reasonably foreseeable as a result of the defendant's conduct as established in **Donoghue v Stevenson**; (2) the parties must be in a relationship of proximity; and (3) it must be fair, just and reasonable to impose liability. The test was affirmed by Evans J. in **Hepburn v Hutchison Lucaya Limited** [2012] BHS J. No. 27, at paragraph 40.

[67] In the present case, it is accepted by the Defendant that its agent, Mr. Demeritte owed a duty of care to persons lawfully using the golf path including Mr. Fernander.

Issue 1: Breach of duty of care

[68] The first issue for determination is whether Mr. Demeritte breached the duty of care which he owed to Mr. Fernander. Put differently, was the accident caused by the negligence of Mr. Demeritte?

[69] A defendant will be regarded as having breached his duty of care if his conduct falls below the standard required by law. The standard normally set is that of a reasonable and prudent man. In **Blyth v Birmingham Water Works** [1856] 11 Exch. 781 at 784, Anderson B said:

> **"Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do."**

[70] It is not disputed that Mr. Fernander's Cushman was stationary when the collision, however slight, occurred. Although the collision did not occur on a public road per se, I agree with Mr. Gibson who represented Mr. Fernander that the authorities dealing with road users are equally applicable to an instance when an accident occurs on a private pathway.

[71] In that regard, it is well established in law that a driver of a vehicle on the road owes a duty of care to other road users to drive carefully. The locus classicus is **Bourhill v Young** (1943) AC92. Lord Thankerton established that a driver of a vehicle on the road is under a duty to take proper care not to cause damage to other road-users. In order to fulfil this duty the driver should keep a proper look out, observe traffic rules and avoid excessive speeds.

[72] In the present case, in order to determine if Mr. Demeritte breached his duty of care, the court must consider whether his conduct fell below the standard of a reasonable and prudent man.

[73] In **Hall v Brooklands Auto-Racing Club** [1933] 1 KB 205 at page 224 Greer L.JJ. described the 'reasonable man' as **"…***the man in the street," or "the man in the Clapham omnibus," or, as I recently read in an American author, "the man who takes the magazines at home, and in the evening pushes the lawn mower in his shirt sleeves."*

[74] In the Bahamas, we may liken such reasonable man to "*the man in the jitney*."

[75] Learned Counsel for the Defendant, Mrs. Smith submitted that Mr. Demeritte did not breach the duty of care which he owed to persons (including Mr. Fernander) lawfully using the path. When the Carryall approached the Cushman, a group of guests were walking towards the Carryall which required Mr. Demeritte to pull off the golf cart path. As the Cushman was already parked on the side of the path, Mr. Demeritte stopped directly behind it to allow the guests to walk past freely. This, she says, is entirely consistent with actions of 'a reasonable man' as defined above.

[76] There is no dispute that Mr. Demeritte pulled off of the pathway at the time of the accident to allow the guests to walk past freely. I accepted the Defendant's version that the Carryall was travelling at 2-3 mph. I also

accepted that the Carryall came to a complete stop behind the Cushman after which it slowly rolled forward and gently tapped the back of the Cushman, as the golf cart path is on a slight decline and was wet.

[77] Mrs. Smith submitted that given those facts, Mr. Demeritte acted prudently because it was only after he came to a complete stop that the Carryall rolled forward and tapped the Cushman as a result of the slope and wet surface.

[78] The question still remains whether the conduct of Mr. Demeritte (who collided with the stationary Cushman) fell below the standard of a reasonable and prudent man?

[79] Mrs. Smith relied on the UK Court of Appeal case of **Custins v Nottingham Corp** [1970] R.T.R. 365. In that case, the defendant was driving a bus very slowly along a road after a freezing night and a fall of snow. The driver, on seeing a man 70 yards away standing in the road by a bus stop, applied the brakes slowly and stopped the bus without difficulty. The bus thereupon slid sideways and struck the pedestrian. The plaintiff brought an action for damages for negligence against the driver and the bus owners.

[80] At First Instance, the Commissioner found the driver had been negligent. Subsequently, the defendant successfully appealed the decision. Giving the leading judgment, Salmon LJ stated, at page 368, in relation to the defendant's conduct:

> **"What more could he have done than drive very slowly, keep a proper lookout and apply his brakes gently? It is common knowledge that if you are unlucky when you are driving on an icy road, whatever care you may take, it sometimes by mischance occurs that the vehicle does slide and gets out of control. In these circumstances, it does not mean that there is any negligence on the part of the driver so that he can be blamed in any way for the bus thus getting out of control."**

[81] Mrs. Smith argued that, in the present case, the accident was not as a result of any negligent action by Mr. Demeritte. According to her, there was nothing

more that he could have done. He acted as the reasonable man would. Notwithstanding his prudent actions, the Carryall inched forward and tapped the Cushman.

[82] In my opinion, the facts of **Custins** is distinguishable from the facts of the present case. In **Custins**, the defendant was driving very slowly, saw the plaintiff who was 70 or so yards away and he started to brake slowly. The vehicle skidded and got out of control because it was an icy road.

[83] In the present case, Mr. Demeritte gently tapped the brakes to allow some guests to walk past leisurely. As an employee of the Defendant, Mr. Demeritte ought to have known that that area is full of activity with guests walking up and down. Additionally, he ought to have known that the area is generally wet since the waterslide, the lazy river and the pool are in close proximity.

[84] Surely, it cannot be said that Mr. Fernander was negligent. After all, his golf cart was stationary. In my opinion, Mr. Demeritte failed to keep any or any proper look out and/or to observe or heed the presence of Mr. Fernander and also failed to exercise reasonable skill, care and diligence while driving the Carryall.

[85] I therefore find that Mr. Demeritte, an agent of the Defendant, breached the duty of care owed to Mr. Fernander.

Issue 2: Causation and remoteness of damage

[86] The next issue to consider is whether the injuries allegedly suffered by Mr. Fernander were as a direct result of the accident or whether, as the Defendant said, Mr. Fernander had pre-existing conditions.

[87] It is trite law that a plaintiff must demonstrate that the breach of duty was, as a matter of fact, the cause of the damage. In **Barnett v Chelsea and Kensington Hospital Management Committee** [1969] 1 Q.B. 428, Nield J.

confirmed the burden of proof in causation rests solely on the plaintiff. At page 438, he stated:

> **"…I am of the view that the onus of proof remains upon the plaintiff, and I have in mind (without quoting it) the decision cited by Mr. Wilmers in Bonnington Castings Ltd v Wardlaw [1956] A.C. 613."**

[88] In Barnett, the claimant's husband went to hospital complaining of severe stomach pains and vomiting. He was seen by a nurse who telephoned the doctor on duty. The doctor told her to send him home and contact his General Practitioner in the morning. He later died on that day as a result of arsenic poisoning. The hospital admitted negligence in failing to treat the man promptly. However, the claimant failed to prove that if her husband had been treated promptly, he would not have died from the poison. Therefore, there was no causal link between the defendants' negligence and the patient's death.

[89] The usual rule for causation is that, in order to recover damages for negligence, a claimant must prove that "but for" the defendant's wrongful conduct he would have not sustained the harm or loss in question. In **Clerk & Lindsell on Torts, 20th Ed.** the learned authors explained the premise of the "but for" test at paragraph 2-09:

> **"The first step in establishing causation is to eliminate irrelevant causes, and this is the purpose of the "but for" test. …The "but for" test asks: would the damage of which the claimant complains have occurred "but for" the negligence (or other wrongdoing) of the defendant? <u>Or to put it more accurately, can the claimant adduce evidence to show that it is more likely than not, more than 50 per cent probable, that "but for" the defendant's wrong-doing the relevant damage would not have occurred</u>. In other words, if the damage would have occurred in any event the defendant's conduct is not a "but for" cause."**

[90] The Defendant contended that Mr. Fernander has not shown, on the balance of probabilities, that "but for" the accident he would have not sustained the damage in question.

[91] With respect to this aspect of the case, Mr. Fernander relied substantially on the oral testimony of his expert, Dr. Ekedede who was his primary doctor. It is somewhat strange that he chose to subpoena his primary doctor so the Defendant as well as the Court was not privy to what his evidence would be except what is contained in the numerous reports that he wrote.

[92] The Defendant raised an issue as to the independence of Dr. Ekedede. Therefore, I shall remind experts of their overriding duty to the court. An expert's duty extends to assisting the court impartially on the matters relevant to his/her expertise. Put another way, *an expert witness must provide independent assistance to the court by way of objective unbiased opinion in relation to matters within the expert's expertise. He must not omit to consider material facts which could detract from his or her concluded view*.

[93] In the Trinidadian case of **Darwin Azad Sahadtah and Kamalar Mohammed Sahadath v The Water And Sewage Authority of Trinidad and Tobago Claim** No. CV2016-01737, Kokaram J. had this to say, at pages 91-92:

> **"91.Experts cannot usurp the function of the Judge as the ultimate arbiter of fact. It is for the Court to determine the issue of causation and loss based upon the totality of the evidence…**
>
> **92. In The Ikarian Reefer [1993] F.S.R 563 Justice Cresswell set out the duties and responsibilities of expert witnesses as follows:**
>
> **"1. Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation: see *Whitehouse v Jordan* ((1981) 1 WLR 246, 256) per Lord Wilberforce.**

2. Independent assistance should be provided to the court by way of objective unbiased opinion regarding matters within the expertise of the expert witness; see *Polivitte Ltd v Commercial Union Assurance Co plc* ((1987) 1 Lloyd's Rep 379, 386) per Mr Justice Garland, and Re J ((1990) FCR 193) per Mr Justice Cazalet. An expert witness in the High Court should never assume the role of advocate."

[94] Expert witnesses must act independently regardless of by whom he or she is paid. Their duty is to assist the court, not the party who pays him/her. It is then for the Court to determine the issue of causation based upon the totality of the evidence.

[95] In the present case, Dr. Ekedede was not the first doctor to see Mr. Fernander. His initial attending physician was Dr. Abubakar. In fact, after the accident, he was taken to Doctors Hospital where he alleged that he spent about 6 to 7 hours. There is no medical record from Doctors Hospital which might have assisted the Court and certainly Dr. Ekedede.

[96] The evidence is that Mr. Fernander requested a transfer from Dr. Abubakar to Dr. Ekedede on 27 January, 2012, more than seven months after the accident. Despite this significant length of time, Dr. Ekedede never reviewed Dr. Abubakar's findings and records as it related to Mr. Fernander nor did he ever conduct any review of the complete medical history of Mr. Fernander. In the cross-examination of Dr. Ekedede the following exchange took place (see Transcript of Proceedings dated 18 April 2018 at page 21, lines 4-15:

"Q: And you did not request his medical history from any other medical doctor that he had seen before?

A: <u>That's not my practice, that means I'm in doubt, when that comes into play that means I'm not believing what he's telling me.</u> There maybe occasions if the patient move from A to D to Z, but if I knew a young man and then I examine him, which is very important for me and everything I found corresponds that what I think he's feeling and I requested test that collaborated it. I mean, I don't think I should be doubting him too much, but I understand what you're saying."[Emphasis added]

[97] Dr. Ekedede was unaware that Mr. Fernander had been in two industrial accidents prior to the accident in question. When asked, **"Would these previous injuries affect your diagnosis of him if you had known about them?"** Dr. Ekedede responded:

> **"A. Yes, in a way. If his injuries before MRI proves actually what we call verbatim, the same report from MRI after his injury. Yes, you may then consider that the volume or the magnitude of his injuries cannot be exclusively due to this recent accident..."**

[98] During the period that Mr. Fernander was under his care, Dr. Ekedede never definitively concluded that Mr. Fernander had a pre-existing condition prior to the accident. In his examination-in-chief, Dr. Ekedede testified:

> **A: "<u>I don't know if he had a preexisting condition because he never told me he had anything.</u> I don't have anything to doubt him. Now, he did discover he had one, now, I don't know about that, <u>but as far as I am dealing with this young man never had a preexisting condition all he told me he was fine before this situation</u>."**[Emphasis added]

[99] Furthermore, when Dr. Ekedede was questioned as to the common causes of cervical spine stenosis—his diagnosis of Mr. Fernander - he answered in this manner (see Transcript of Proceedings dated 18 June 2018 at page 25, lines 22-26):

> **"A. Well, that's a good question, in my experience and the general text book experience, cervical stenosis can be acute or chronic, which is why you trying to push me to whether he has a preexisting condition, isn't that?..."**

[100] Ultimately, in cross-examination, Dr. Ekedede was asked: (Transcript of Proceedings, ibid page 28, lines 19-32):

> **"Q. So, is it true, Dr. Ekedede, that it would be difficult, I believe you may have said impossible to contribute this accident as the sole cause of the plaintiff's symptoms or diagnoses?**

A: **"That's a smart question, I like to simplify things in my life. In a perfect life your question is correct, you can't say that, nobody can, but because we are dealing with this problem that we have narrowed down that we had the trauma and the trauma extrapolate these symptoms, there we can say we had this trauma there would be no symptoms, but then, as I also say you can also go because he had the symptoms everything is now because of the trauma, the court have to decide that, not the doctor…"**

[101] Learned Counsel Mr. Gibson submitted that Dr. Ekedede was very honest and informative and he made it clear that he had no interest in the matter as he does not personally know Mr. Fernander. As I distilled his evidence, it could be reduced to the following:

1. He would have reviewed Mr. Fernander as his patient initially and interviewed him;

2. There was no medical evidence to suggest a pre-existing condition as there was no MRI before the accident to compare to the MRI after the accident; and

3. The trauma from the accident was the principal cause for the injuries suffered which Mr. Fernander suffered. He however admitted that he could not say that it was the "sole" cause but certainly the accident was the principal reason for the injuries which Mr. Fernander currently suffered. He said that it is because Mr. Fernander was quite fine before the accident.

[102] Like the Defendant, I too hold some trepidation with respect to the independence of Dr. Ekedede. In my opinion, Dr. Ekedede lacked the independence and impartiality expected of expert witnesses. To say the least, he was evasive. His diagnosis of Mr. Fernander did not align with the facts of the present case. This was not a serious accident to cause the injuries which Mr. Fernander alleged, he suffered. The Carryall gently tapped

the Cushman. Had it been a forceful impact, the passengers in the Carryall particularly Ms. Bain, might have been injured since she was sitting on the dashboard. In addition, there was no damage to either golf cart.

[103] Actually, the diagnosis of Dr. Walkine in his report that Mr. Fernander had a pre-existing condition is more plausible than that of Dr. Ekedede and by extension, Mr. Fernander.

[104] In the circumstances, Mr. Fernander has failed to discharge his burden of proof through Dr. Ekedede's evidence, specifically that the accident caused the significant injuries he alleged nor does it prove that Mr. Fernander had any pre-existing conditions that were further exacerbated by the accident.

Remoteness of damage

[105] Learned Counsel Mrs. Smith correctly submitted that even where the "but for" test is satisfied and the Defendant's breach of duty is established as a cause of the damage, the Defendant is liable only if the damage caused by his breach was foreseeable, in the sense that it was not too remote.

[106] The principles to be applied were helpfully set out by Lord Rodger in **Simmons v British Steel Plc** [2004] UKHL 20:

> **"These authorities suggest that, once liability is established, any question of remoteness of damage is to be approached along the following lines which may, of course, be open to refinement and development.**
>
> **(1) The starting point is that a defender is not liable for a consequence of a kind which is not reasonably foreseeable: McKew v Holland & Hannen & Cubitts (Scotland) Ltd 1970 SC (HL) 20 , 25, per Lord Reid; Bourhill v Young [1943] AC 92 , 101, per Lord Russell of Killowen; Allan v Barclay (1864) 2 M 873, 874, per Lord Kinloch.**
>
> **(2) While a defender is not liable for damage that was not reasonably foreseeable, it does not follow that he is liable for all damage that was reasonably foreseeable: depending on the circumstances, the defender may not be liable for damage caused by a novus actus interveniens or unreasonable conduct on the part of the pursuer, even if it was reasonably**

> **foreseeable: McKew v Holland & Hannen & Cubitts (Scotland) Ltd 1970 SC (HL) 20 , 25, per Lord Reid: Lamb v Camden London Borough Council [1981] QB 625 ; but see Ward v Cannock Chase District Council [1986] Ch 546 .**
>
> **(3) Subject to the qualification in (2), if the pursuer's injury is of a kind that was foreseeable, the defender is liable, even if the damage is greater in extent that was foreseeable, or it was caused in a way that could not have been foreseen: Hughes v Lord Advocate [1963] AC 837, 847, per Lord Reid.**
>
> **(4) The defender must take his victim as he finds him: Bourhill v Young [1943] AC 92, 109–110, per Lord Wright; McKillen v Barclay Curle & Co Ltd 1967 SLT 41, 42, per Lord President Clyde. (5) Subject again to the qualification in (2), where personal injury to the pursuer was reasonably foreseeable, the defender is liable for any personal injury, whether physical or psychiatric, which the pursuer suffers as a result of his wrongdoing: Page v Smith [1996] AC 155 , 197F-H per Lord Lloyd of Berwick."**

[107] I agree with the Defendant that, based on the evidence, it cannot be reasonably foreseeable that a slow moving golf cart gently tapping the back of another golf cart would result in severe cervical spine stenosis with cord and nerve root compression resulting in progressive neurological deterioration, as alleged by Mr. Fernander.

[108] In order for the accident to have caused the serious injuries alleged by Mr. Fernander, the impact would have had to be severe and traumatic. The evidence in this case does not demonstrate that. On the contrary, the evidence disclosed a very slow moving Carryall golf cart travelling at a speed of 2-3 mph and gently tapping the back of the Cushman. It is also important to note that the weight of the Carryall driven by Mr. Demeritte is less than that of the Cushman.

[109] Furthermore, as already found, it was clear that, based on the amount of foot traffic, it would have been difficult for Mr. Demeritte to be speeding.

[110] In the cross-examination of Mr. Bastian, he was asked about the difference in weight between the Carryall and Cushman. He stated:

> **"Q. And in terms of weight, how would you compare the weight between the Cushman and the Carryall; is the Cushman heavier?**
>
> **A. The Carryall is lighter and the Cushman is more heavy because of what it is made of."**

[111] I further find that it is too remote for a gentle tap of the Cushman to cause the extensive injuries alleged by Mr. Fernander. Also, no other passenger in either golf carts was hurt and the weight of the Carryall driven by Mr. Demeritte is lighter than the Cushman.

Conclusion

[112] In the premises, I find that although the Defendant breached the duty of care owed to Mr. Fernander and was therefore negligent, Mr. Fernander has failed to discharge his burden of proof that the accident caused the significant injuries he complained of. I also find that it is too remote for a gentle tap to cause the extensive injuries alleged by Mr. Fernander.

[113] I will therefore dismiss the action with costs to the Defendant.

Costs

[114] In accordance with case management directions, both parties submitted their respective Bill of Costs to the Court. Mr. Fernander claims $53,725.00 if successful. The Defendant claims $58,812.34. The Defendant being the successful party in this action, is entitled to its costs. Should it be $58,812.34?

[115] In **Soldier Crab Limited t/a Sandy Toes v Aqua Tours Limited**, 2013/CLE/gen/0310, a judgment of mine delivered on 22 December 2016, I expounded on some of the applicable legal principles on costs. I shall merely reiterate them.

[116] A convenient starting point is Order 59, rule 3(2) of the Rules of the Supreme

Court (“**RSC**”) which states:

> “**If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.**”

[117] In civil proceedings, costs are entirely discretionary. Section 30(1) of the Supreme Court Act provides:

> “**Subject to this or any other Act and to rules of court, the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid.**”

[118] Order 59, rule 2(2) of the RSC similarly reads:

> “**The costs of and incidental to proceedings in the Supreme Court shall be in the discretion of the Court and that Court shall have full power to determine by whom and to what extent the costs are to be paid, and such powers and discretion shall be exercised subject to and in accordance with this order.**”

[119] The discretionary power to award costs must always be exercised judicially and not whimsically or capriciously. The Judge is required to exercise his discretion in accordance with established principles and in relation to the facts of the case and on relevant grounds connected with the case, which included any matter relating to the litigation; the parties’ conduct in it and the circumstances leading to the litigation, but nothing else: see Buckley L.J. in **Scherer v Counting Instruments Ltd** [1986] 2 All ER 529 at pages 536 - 537.

Reasonable costs

[120] In deciding what would be reasonable the court must take into account all the circumstances, including but not limited to:

a) any order that has already been made;

b) the care, speed and economy with which the case was prepared;

c) the conduct of the parties before as well as during the proceedings;

d) the degree of responsibility accepted by the legal practitioner;

e) the importance of the matter to the parties;

f) the novelty, weight and complexity of the case; and

g) the time reasonably spent on the case.

.

[121] Having looked at all these factors, I consider that amount to be unreasonably high. A reasonable amount is $35,000.

Dated this 18th day of March, A.D., 2020

Indra H. Charles
Justice