COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMERCIAL DIVISION

2011/COM/LAB/FP0002

BETWEEN

DAWNDENEZZA SANDS

Plaintiff

AND

HUTCHISON LUCAYA LIMITED

Defendant

BEFORE	The Honourable Mrs Justice Estelle G. Gray Evans
APPEARANCES:	Mr Wayne Munroe, Q.C. with Mr Ernie Wallace for the plaintiff
	Mr Dwayne Fernander for the defendant
HEARD ON:	2015: 29 September; 26 November
	2016: 14 March

JUDGMENT

Gray Evans, J.

1. The plaintiff, Dawndenezza Sands, is a former employee of the defendant, Hutchinson Lucaya Limited, a company incorporated in the Commonwealth of The Bahamas and the owner of premises situate at Our Lucaya Resort, Freeport, Grand Bahama, which carries on business as a Hotel and Beach Resort.

2. The plaintiff commenced this action on 7 January 2011by a generally indorsed writ of summonsin which she claims damages for personal injuries and consequential loss caused by the negligence and or breach of duty of the defendant, its servants or agents, on 19 April 2009, while she was employed by the defendant company at Churchill's Kitchen in the Convention Centre, Freeport, Grand Bahama, together with interest and costs.

3. In her statement of claim filed 24 February 2011, as amended and re-filed on 14 January 2013, the plaintiff alleges, inter alia, as follows:

(1) On or around 17 April 2009 in the course of her employment she was engaged in preparing for a function at the Convention Center. The defendant had booked two functions, one being a large Jewish function that is held at the hotel every year which places a heavy demand on the limited employees and equipment that is available; that due to the shortage of staff and equipment, along with the excessive pressure that was placed on the plaintiff as Banquet Chef, she had to ensure that the Convention Center was set up properly for the said function she was scheduled to work. The plaintiff alleges further that she worked solely to prepare for the function and went to Churchill's kitchen to collect the grocery items needed. As this was not something that she was mandated to do, being the Banquet Chef and as a result of the shortage of staff she did so in order to prepare for the function; that upon returning to the banquet kitchen the plaintiff had to reach abnormally over items that were scattered over the floor to retrieve equipment needed due to the fact that the kitchen was unkept [sic]. As she did so, she experienced aches and discomfort in her mid and lower back.

(2) The following day the plaintiff was scheduled to be off from work and did continue to experience more pain and discomfort.

(3) On or around 19 April 2009, the plaintiff returned to work and in the course of her employment prepared for a function that was scheduled for that day for which she had to deliver food items to Chop Beach by means of a cart. Again there was a shortage of staff available to work the said function. While doing so, several heavy items fell off of an unsteady cart. The plaintiff bent over to collect the items and place them back on the cart. As she did so, the pain in her mid and lower back became more severe.

(4) On the next day the plaintiff reported to her employer that she was injured at work.

(5) The said accident was caused by the negligence and/or breach of duty of the defendant their servants or agents.

4. The plaintiff provided the following particulars of negligence:

(1) Failing to provide the plaintiff with adequate and sufficient staff as requested on the day in question.

(2) Failing to provide the plaintiff with adequate equipment needed for said function.

(3) Failing to do what a reasonable employer would have done by providing the plaintiff with the necessary training needed when considering to re-deploy the plaintiff to a Head Cashier position after the said accident.

(4) Failing in all circumstances to take reasonable care for the safety of the plaintiff.

(5) Exposing the plaintiff to an unnecessary risk of injury.

(6) Failing to set up and implement a safe system of work for the plaintiff; and

(7) Failing to provide the plaintiff with a safe place of work.

5. The plaintiff alleges that she suffered the following injuries:

i. Lumbar Spondylolysis

ii. Thoraco-Lumbar strain

iii. Lumbar disc Herniation

iv. Large central disc extrusion at L4-5 with mild central canal sterosis

v. Hyperflexion/Hyperextensioninjury to the neck and back

vi. Lower truck myofascitis

6. In its defence filed 9 March 2011, the defendant denies or does not admit the plaintiff's allegations of negligence and or breach of duty, injury and or damage, and puts the plaintiff to strict proof thereof. The defendant pleads in the alternative that the plaintiff contributed to her injuries by her own negligence.

7. Evidence at trial was given by the plaintiff and Dr H. Freeman Lockhart on her behalf. The plaintiff also relied, inter alia, on medical reports by Doctors Valentine Grimes and Greg Schor Haskin. Mr Freddie Smith gave evidence on behalf of the defendant.

8. At the date of her accident the plaintiff held the position of Banquet Chef, the position to which she had been promoted on or about 29 April 2007. The plaintiff's job description included, inter alia, managing all aspects of the banquet kitchen and servicing all outlets with regard to employees, food and product and planning; planning and overseeing the day-to-day banquet culinary operations and giving employees directions regarding the same.

9. The plaintiff's evidence in support of the allegations in her statement of claim as set out in her witness statement filed on 14 May 2015, is that on Friday, 17 April 2009, she began work at about 6:00 a.m. She said it was a very busy time as the defendant company's hotel was hosting a large Jewish Group called "Megan David". She said there was a shortage of staff – 42 employees had been requested but only 33 were provided. Hence she had to work very hard; performing tasks that she ought not to have performed, but which she did because she was the manager. She managed to get through the day and got off duty around 6:45 p.m. The following day, Saturday, 18 April 2009, was her day off and she spent it in bed as she was extremely tired, she says, from having worked almost 60 hours that week.

10. The plaintiff returned to work around 10:00 a.m. the following day, Sunday, 19 April 2009. She said that she along with her junior, Kirk Russell, and two line staff were on duty. They were preparing for a VIP function on Chop Beach. While she and the two line staff were taking food to the function site some of the items fell off the trolley that one of the associates was pulling. After salvaging some of the food, they continued to the function site. The plaintiff said she left her associates to complete setting up for the function and she returned to the area where the food had spilt to clean it up.

11. The plaintiff gave the following account as to what happened next:

(1) As I got back to the area where we had the spill, I got off the tugger and began to clean up the mess. I bent down and started to collect the items that had fallen on the ground. I was able to put the first set of items on the back of the tugger. As I proceeded to pick up the remainder and place it on the tugger I was unable to get up. It felt like my back gave out on me. I was unable to move. I remained in the bending position for at least three (3) to five (5) minutes.

(2) Finally I was able to move a bit and at this time, I was experiencing severe pain in my mid and lower back. I then went back to the banquet kitchen and informed Kirk of my situation. I asked Kirk to assist me in getting the rest of the items to the function site and to keep an eye on the function through its completion. After taking the items there and seeing that everything was in place, I informed Kirk that I was unable to complete the shift due to the severity of the pain that I was experiencing. So I left work at about 7:00 pm that evening. I got home around 7:30 pm, took a bath and went to bed around 8:00 pm.

12. The plaintiff said that although she had much discomfort throughout the night, and had no rest, because the next day was the "final of the group's functions", and because she was "a committed employee", the following morning, 20 April 2009, she went to work "to see the function through to the end despite how much pain [she] was in." After ensuring that everything was in order, she went to the Investigations Department and reported the incident and gave a written statement to Mr Franklyn Gibson. That statement was in similar terms to the plaintiff's evidence-in-chief. The plaintiff said she also requested medical assistance and was provided with the necessary forms to attend the Rand Memorial Hospital, where she was diagnosed with having a lower back muscle strain and given three days off from work.

13. The plaintiff said that at the end of those three days she saw Dr Lockhart, who also diagnosed her with having a muscle strain and he gave her additional time off. The plaintiff was later seen by other doctors who diagnosed her as having suffered the injuries pleaded. The plaintiff also underwent two surgeries.

14. Under cross examination, the plaintiff admitted that she had helped to stock the cart from which the items had fallen. She also agreed with counsel for the defendant that the reason she went back to clean up the food that had spilled was because her job description included performing cleaning tasks, occasionally.

15. The plaintiff also admitted that in addition to being responsible for planning and overseeing the defendant's day-to-day banquet culinary operations, she was also expected, as part of her job description, to be able, inter alia, to:

(1) Lift up to 15 lbs on a regular and continuing basis;

(2) Push and pull carts and equipment weighing up to 250 lbs occasionally;

(3) Bend, stoop, squat and stretch to fulfill cleaning tasks occasionally.

16. However, on re-examination the plaintiff said that the defendant had no system whereby she was taught to "do any of those things" safely. Moreover, the plaintiff said, that although she was required to do those things, she was never asked to demonstrate that she had any of the physical abilities which the position required.

17. As indicated, the defendant's evidence came from Mr Freddie Smith.

18. It is common ground that Mr Smith was not employed by the defendant at the date of the accident. In his witness statement, Mr Smith avers that his statement was made based upon documents within the defendant's possession which he verily believed to be the truth.

19. At paragraphs 3 through 12 of his witness statement, Mr Smith avers as follows:

(1) The defendant's personnel file reflects that in 2009 she was employed by the defendant as a Banquet Chef. Her duties included but were not limited to "[m]anage all aspects of the banquet kitchen. Service all outlets with regards to employees, food produce and planning.

(2) The plaintiff's essential functions, which she was aware of, required that 80% of her time be devoted to "[p]lan and oversee day to day banquet culinary

operations and give direction to employees, visually inspect, select other food products of the highest standard in the preparation of items." Ten percent of the plaintiff's time was allocated to "conduct employee training on a regular basis."

(3) The physical requirements of the position that the plaintiff accepted were, among other things, that she had the "[a]bility to physically handle knives, pots, mirrors, or other display items as well as grasp, lift and carry same from shelves and otherwise transport up to 50 pounds to every area of the kitchen. Ability to perform cutting skills on work surfaces, topped with cutting board, 3 to 4 feet in height (banquet kitchen, prep kitchen, bake shop, etc). Proper usage and handling of various kitchen machinery to include slicers, buffalo chopper, grinders, mixers and other kitchen related equipment."

(4) It was also a requirement of the plaintiff that she "[m]ust be able to exert well-paced ability in limited space and to reach other locations of the hotel on a timely basis."

(5) Additionally, as a part of the plaintiff's physical requirements for the position, it was a term that the plaintiff, "[m]ust be able to lift 15 lbs on a regular basis; and must be able to push and pull carts and equipment weighing up to 250 lbs occasionally."

(6) Importantly, the position required that the plaintiff (i) must be able to bend, stoop, squat and stretch to fulfill cleaning tasks occasionally; and required (ii) grasping, writing, standing, sitting, walking, repetitive motions, bending, climbing, listening and hearing ability and visual acuity."

(7) The plaintiff voluntarily accepted this position with all of its requirements and executed the 4th page of the job description.

(8) The plaintiff was rostered to work on 19th April 2009. She stated that there was a shortage of staff on that day. This is incorrect. On the 19th April, the defendant's records indicate that there was no staff shortage as alleged by the plaintiff. In fact, the defendant's records reflect that both kitchen and stewarding, inclusive of the line staff and managers worked banquets that day as per TIME CARD and approved Roster records for 19/4/2009.

(9) There is no report in the defendant's possession that suggests that any concerns were raised to management relative to the staffing levels on 19th April 2009 nor on the 17th April 2009 as alleged by the plaintiff. All staffing concerns would have been addressed prior to the approval of the work roster for that week.

(10) Further, the defendant's records also reveal that there was an investigation conducted by the head of the culinary department, Chef Dwain Clare, which concluded that on the 19th April 2009, there was ample staff on hand to attend to the banquet event for that day. The results of the investigation were settled in a Memo to Renee McKinney-McPherson (HR Director at the time) dated 6th September 2010

20. In that memo, which was included amongst the agreed documentary evidence, Dwain Clare, CEC, Executive Chef, wrote:

> "As a follow-up with reference to Dawn Sands legal matters as it relates to her industrial accident on Sunday, April 19th, 2009.
>
> Please find attached information requested by her attorney.
>
> 1. Both Banquets Kitchen & Stewarding Schedules as it relates to the day in question. Bear in mind that Ms Sands was responsible for scheduling of staff to work and to order and ensure that all food related products are in place for the staff to prepare accordingly as per the client. Ms Sands having been in the

capacity of Banquets Chef since April 29th, 2007, was solely responsible for the overall Banquets operation; in absolutely no which way was there any interruption in the scheduling of Banquets staff by the Chef's office. Once schedules were completed, they were forwarded to the Chef's Office for signing. Based on the events for the said day, there were adequate staffing for the entire day, both AM & PM shifts and Kitchen & Stewarding there were never any concerns regarding lack of staffing or equipment. Any equipment needed, the request would be forwarded to the Stewarding Dept who would then supply as requested.

2. Based on the numbers for the said day in question, also attached are the Banquet Event Orders (BEOs) which outline all fundamental information as it relates to the client's request and the daily events of all events scheduled. As noted on the BEOs, there were several "small" events.

3. The payroll report time cards for all staff (both Kitchen & Stewarding inclusive of the line staff and managers) who had worked Banquets on the said day. Based on the time cards and schedules, there were sufficient staffing and manpower as there were both AM Chef being Ms Sands herself, PM Chef – Kirk Russell and Stewarding Manager – Wayne Fiddler.

Should there be any further information required, please feel free to contact myself directly for clarity.

Sincerely,

Dwain Clare, CEC, Executive Chef."

21. As indicated, the plaintiff, at paragraph 4 of her statement of claim, pleaded that on 17 April 2009, when reaching "abnormally over items that were scattered over the floor to retrieve equipment needed due to the fact that the kitchen was unkept" [sic], she "experienced aches and discomfort in her mid and lower back, and that she "continued to experience more pain and discomfort" the following day, which was her scheduled day off from work.

22. However, I agree with counsel for the defendant that those allegations were not supported by any evidence from the plaintiff or otherwise.

23. The undisputed evidence, however, is that the plaintiff was injured on 19 April 2009. That is what the plaintiff said in her evidence-in-chief and, as appears from the accident/incident report which she filed with the defendant's Risk Management Department on 20 April 2009, that is what she reported to the defendant's investigator, Mr Franklyn Gibson, the day following the incident. According to that report the plaintiff reported that the "incident/accident occurred on Sunday, April 19th, 2009, sometime around 4:45 p.m."

24. Furthermore, both Dr H. Freeman Lockhart and Dr Greg Schor Haskin in their medical reports stated that the injuries suffered by the plaintiff were as a direct result of the accident that occurred at the defendant company's hotel on 19 April 2009. Those medical reports were agreed.

25. I, therefore, find that the plaintiff, on 19 April 2009, in the course of her employment at the defendant company's hotel, while bending down to pick up food items which had fallen to the ground from a cart being pulled by one of the defendant's employees, had an accident which resulted in her suffering the injuries as pleaded.

26. The plaintiff's claim is rooted in common law negligence and it is accepted that in order to prove common law negligence, the plaintiff must establish and prove that (i) she was owed a duty of care by the defendant; (ii) the defendant breached that duty; (iii) as a result of the defendant's breach, she sustained reasonably foreseeable injury and damage. (See Donaghue v Stevenson [1932] A C 562).

27. "Negligence" is defined as "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 man and reasonable man would not do." Alderson, B. in the case of Blyth v Birmingham Waterworks (1856)11 Exc 781, 784.

28. In the case of Wilsons & Clyde Coal Company Ltd v English [1938] AC. 57, Lord Wright at page 84 expressed the view that the duty which rests on the employer is personal to him and his failure to perform such duty is his personal negligence. At page 81, His Lordship, quoting from the decision of Lord Cairns in the case of Wilson v Merry & Cunningham L.R. 1 H.L. (Sc) 326, at page 332, said:

> "What the master is, in my opinion, bound to his servant to do, in the event of his not personally superintending and directing the work, is to select proper and competent persons to do so, and to furnish them with adequate materials and resources for the work."

29. Lord Wright continued:

> "To this must be added a third head - namely, to provide a proper system of working...By this is meant, not a warranty, but a duty to exercise...all reasonable care."

30. Lord Justice Pearce in Wilson v Tyneside Window Cleaning Co [1958] 2 All ER 265 opined that the three main headings referred to by Lord Wright in Wilsons & Clyde Coal Company Ltd v English *supra* are for convenience of definition and argument "but all three are ultimately one manifestation of the same duty of the master to take reasonable care so to carry out his operations as not to subject those employed by him to unnecessary risk." See also Smith v Baker [1891] AC 325; and Lightbourne v Carnival's Crystal Palace Hotel [1996] BHS J No 63.

31. Swanwick, J, in the case of Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd [1986] 1 WLR 1776, at page 1783, deduced the following principles from the authorities:

> "...the overall test is still the conduct of the reasonable and prudent employer, taking positive thought for the safety of his workers in the light of what he knows or ought to know; where there is a recognized and general practice which has been followed for a substantial period in similar circumstances without mishap, he is entitled to follow it, unless in the light of common sense or newer knowledge it is clearly bad; but, where there is developing knowledge, he must keep reasonably abreast of it and not be too slow to apply it; and where he has in fact greater than average knowledge of the risks, he may be thereby obliged to take more than the average or standard precautions. He must weigh up the risk in terms of the likelihood – of injury occurring and the potential consequences if it does; and he must balance against this the probable effectiveness of the precautions that can be taken to meet it and the expense and inconvenience they involve. If he is found to have fallen below the standard to be properly expected of a reasonable and prudent employer in these respects, he is negligent."

32. It is, however, accepted that the employer's duty is not absolute. See, for example, Levesley v Thomas Firth and John Brown Ltd [1953] 2 All ER 866 and Mackey-Bethel and Canadian Imperial Bank of Commerce [1993] BHS J. No. 8. In that latter case, Hall, Jopined: "Employers have no duty to ensure that the workplace is risk free. There are hazards in every workplace as there are in every household, and an employee does have the responsibility to take reasonable care for his own safety." See also Quigley v Complex Tooling and Moulding [2005] IEHC 71.

33. Furthermore, "the mere fact that an injury - even a severe injury - is sustained by an employee while at work does not, without more, establish negligence". See Sturrup v Resorts International (Bahamas) 1984 Ltd [1991] BHS J. No. 103, 1985 No. 83. As Peart J, in Barry McLoughlin v Martin Carr t/a Harloes Bar [2007] 3 IR 496 opined, no matter how appalling the

nature of the accident or its devastating effect on the plaintiff, that is not sufficient in itself to make the defendant liable to compensate the plaintiff for what she has gone through.

34. There is no dispute in this case that, as her employer, the defendant owed the plaintiff a duty of care; and, as Lord MacMillan in Lochgelly Iron and Coal Co. v McMullan [1934] AC 1, said, it is "quite immaterial" whether the duty to take care arose at common law or was imposed by statute. The question is: Did the defendant breach that duty and thereby cause the plaintiff's accident and resulting injuries?

35. In his closing arguments, counsel for the plaintiff abandoned a number of the allegations of negligence on the part of the defendant as pleaded in her statement of claim, but he maintained that the defendant had breached its duty to the plaintiff by failing to:

(1) provide the plaintiff with a safe place of work;

(2) set up a safe system of work for the plaintiff, thereby exposing her to unnecessary risk of injury; and

(3) take reasonable care for the safety of the plaintiff.

36. It is settled law that the onus of proof that the defendant has breached its duty of care owed to the plaintiff is on the plaintiff: See Brown v Rolls-Royce Ltd [1960] 1 WLR 210; Ng Chun Pui v Lee Chuen Tat [1988] RTR 298 PC; and, as pointed out by counsel for the defendant, this must be done by evidence and not simply by pleading. See also the judgment of Adderley, J Hall v The Ruffco Holding Corporation Bahamas Ltd. [2008] 2 BHS J No 15.

37. The plaintiff must, therefore, prove that but for the defendant: (i) failing to provide the plaintiff with a safe place of work: and or (ii) failing to set up a safe system of work for the plaintiff, thereby exposing her to unnecessary risk of injury; and or (iii) failing to take reasonable care for the safety of the plaintiff, she would not have had the accident and suffered the injuries as aforesaid.

38. In that regard, the plaintiff contends that the defendant failed to provide sufficient staff to work the functions that it had scheduled for the day on which the plaintiff was injured and that such failure made the defendant's workplace unsafe. Further, that while the plaintiff was required, as part of her job description, occasionally, to lift, pull or push, heavy items, the defendant did not provide her with the training and instruction of how to carry out those physical duties and demands. Further, counsel for the plaintiff submits, notwithstanding the physical demands/requirements of her job, the defendant failed to provide her with a back brace for her use when lifting heavy items; and in counsel for the plaintiff's submission, there is no evidence that the defendant informed the plaintiff of its health and safety standards, if any existed, or on how such system should operate. Therefore, counsel for the plaintiff argues, the defendant failed to provide the plaintiff with a safe system of work.

39. Additionally, counsel for the plaintiff submits, the defendant negligently failed in its obligation to devise a reasonably safe system of work to deal with obvious dangers and failed to give the plaintiff instructions to ensure as to how she should carry out her physical duties. In that regard, counsel for the plaintiff submits, the defendant failed to provide adequate staff and equipment on the day in question knowing that this period was a hectic time for the defendant company.

40. In counsel for the plaintiff's submission, in failing to provide a safe system of work, the defendant failed to take reasonable care for the safety of the plaintiff, as was its duty to do, and as a result, the plaintiff sustained injuries to her mid and lower back; which injuries, in his submission, the defendant ought reasonably to have foreseen would be done to persons who may be in its employ if a proper system of work was not in place.

41. In support of his submissions, counsel for the plaintiff relied on the cases of Lightbourne v Carnival's Crystal Palace Hotel supra; Stokes v Guest, Keen and Nettlefold (Bolts and Nuts Ltd supra; Sturrup v Resorts International (Bahamas) 1984 Ltd supra; Levesley v Thomas Firth and John Brown Ltd supra; Harris v Bright Ash Felt Contractors [1953] 1 QB 617; Naismith v London Film Productions Ltd [1939] 1 All ER 794; and McSweeney v Super Value Food Store Ltd, C.L. No. 481 of 1979

42. Counsel for the defendant argues that the plaintiff has failed to prove that her accident on 19 April 2009 was caused by negligence and or breach of duty on the part of the defendant. Further, that the plaintiff has failed to prove that the defendant did not discharge its duty to have a safe place or system of work as the unchallenged evidence of the defendant is that its workplace is safe and that it provides a safe system of work for its employees.

43. Counsel for the defendant pointed out that the plaintiff had been employed by the defendant for years and was experienced in the culinary department and that she was well aware of her obligations "to fully comply with Starwood rules and regulations for the safe and effective operation of the hotel's facilities." Counsel pointed further that the undisputed medical evidence is that the only cause of the plaintiff's injuries was the fact of bending to pick up prepared food items that spilled off the food trolley that she, along with staff that she had supervised, stacked

44. In support of his submissions, counsel for the defendant relies on the cases of: Wilsons & Clyde Coal Company Ltd v English supra; Wilson v Tyneside Window Cleaning Co supra; Pratt v Cable Beach Resort Limited 2012] 1 BHS J. No. 52; Brown v Rolls-Royce Ltd supra; Ng Chun Pui v Lee Chuen Tat supra; Hall v Ruffco Holding Corporation Bahamas Ltd supra; Rhonda Gaul v Sandals Resorts International Limited 2004/CLE/GEN/00586 (unreported); Bonnington Castings Ltd v Wardlaw[1956] A.C. 613; and Mackey-Bethel v Canadian Imperial Bank of Commerce [1993] BHS J. No. 8.

45. The crux of the plaintiff's case, as I understand it, is that her accident and injuries were caused by the negligence of the defendant in firstly, failing, to provide adequate staff to work the various functions scheduled at its hotel property on 19 April 2019; and secondly, by failing to provide the plaintiff with training in how to carry out her job functions and or, thirdly, in failing to provide the plaintiff with a back brace to assist her with lifting heavy items.

46. Although pleaded at paragraph 6 of her statement of claim that there was a shortage of staff to work the function to which the plaintiff and her co-workers were delivering food items via a cart, I agree with counsel for the defendant there was no such evidence led by the plaintiff or on her behalf at trial.

47. The plaintiff's evidence-in-chief was that on the date of her accident, 19 April 2009, she along with three other staff members were on duty. She does not say that that number was below the number of persons required for the function for which they were scheduled to work; nor does she say how many persons ought to have been there.

48. And while her evidence is that on 17 April 2009, 42 persons were requested but only 33 were provided, the undisputed evidence is that the plaintiff's accident and resulting injuries occurred on 19 April 2009 and not 17 April 2009.

49. Furthermore, not only does the defendant deny that there was a shortage of staff on 19 April 2009, but Mr Smith, stated that from his review of the defendant's records, both kitchen and stewarding inclusive of the line staff and managers worked banquets that day as per time card and approved roster records for that date. According to Mr Smith, there was no record that any concerns were raised to management relative to the staffing levels on 19 April 2009. (See paragraphs 10 and 11 of Mr Smith's witness statement filed 24 September 2015). Under cross

examination, Mr Smith said that when he said there was no shortage of staff, he was speaking about the amount of people rostered to work based on the functions for that date.

50. In the circumstances, I find that the plaintiff has failed to prove the allegation at paragraph 6 of her amended statement of claim that there was a shortage of staff available to work a function that was scheduled for 19 April 2009 and for which she had to deliver food items to Chop Beach. Therefore, I find that the plaintiff has failed to prove that the defendant created an unsafe place of work for the plaintiff by failing to provide adequate staffing to work scheduled functions on 19 April 2009.

51. While Mr Smith at paragraph 22 of his witness statement avers that the defendant's workplace is safe and it provides a safe system of work for its employees, and counsel for the defendant argues that that evidence is undisputed, I note, as counsel for the plaintiff points out, that nowhere in its evidence does the defendant actually say what is its safe system of work. Further, although the plaintiff's job description provides that she must have some working knowledge of certain federal, state and local laws governing aspects of her employment, the plaintiff's evidence is that not only does she not have such knowledge but no such information was provided to her by the defendant.

52. I also note as counsel for the plaintiff pointed out that the defendant did not provide the plaintiff with any training on how to carry out the physical tasks which were a part of her job description or provide her with a back brace for bending and lifting or pushing heavy items, which she may have been required to do occasionally.

53. However, it is clear from the above authorities that while an employer owes a duty to take all reasonable precautions to protect his employee from injury by providing a safe system of work, training, tools and equipment to perform the work, the authorities are also clear that an employer is not obliged to warrant his employee's safety and the employee also has a measure of responsibility for his or her own safety.

54. In this case, the plaintiff says she hurt her back while bending to pick up certain food items that had spilled from a cart being pulled by one of her associates. She does not say what those items were or how much they weighed. She was expected, as part of her job description, to be able to lift up to 15 pounds "on a regular and continuing basis"; she was required to "bend, stoop, squat and stretch" to fulfill cleaning tasks occasionally. The plaintiff does not say that the task of bending to pick up the spilled food items required any particular skill; nor, is there any evidence as to whether the provision of a back brace was a feature of the industry or whether or not a back brace, if provided, would have prevented the accident and resulting injury. Indeed, there is no evidence that the plaintiff requested a back brace to assist her with her lifting duties. As pointed out by counsel for the defendant, while counsel for the plaintiff suggested that the failure to provide a back brace may be considered a failure to provide a safe system of work, the plaintiff provided no evidence that she required such a brace or that there was any other special technique that she required and with which the defendant was obliged to equip her to perform her cleaning task, but failed to do.

55. As opined by Professor John Flemings in the 4th edition of Law of Torts at page 420, "...there is a sphere in which it is legitimate to leave to a skilled workman the decision whether any difficulty [she] may encounter calls for managerial assistance for it would be a mistake to treat the relationship between him and his employer as equivalent to that of imbecile child and nurse."

56. As the authorities bear out, while it is the employer's job to provide a safe system of work, it is impractical to expect an employer to provide for every eventuality or create a procedure for every possible task that an employee has to perform; and as observed in the case

of Rhonda Gaul v Sandals Resorts International Limited supra, not every accident that happens at work is caused by negligence of the employer; or, as I had cause to note in the case of Ferguson v Grand Bahama Power Company[2011] 2 BHS J. No. 2, "just because an employee is injured 'on the job', does not necessarily mean that the employer has been negligent or has breached its statutory duty to the employee."

57. In any event, it seems to me that even if the defendant were in breach of its duty to provide a safe system of work and a safe workplace or to provide training in matters related to the plaintiff's job functions, that would not be the end of the matter. The plaintiff would still have to show that there was a causal link between that breach, if there was one, and the injuries she suffered.

58. To borrow an example from the judgment of Peart J in Barry McLoughlin v Martin Carr trading as Harloes Bar supra at pages 506-507: "It will avail a plaintiff nothing in a road traffic accident case to establish that the defendant's vehicle had a defective brake light in breach of his statutory duty in that regard, if the absence of the brake light in no way caused or contributed to the accident in which the plaintiff suffered injury."

59. Regrettably for the plaintiff in this case, she has, in my judgment, failed to show what the defendant could have done to prevent the occurrence of the accident that resulted in the injuries she suffered on 19 April 2009.

60. In the circumstances, I am unable to find that the defendant was negligent or that it breached any duty it owed to the plaintiff and consequently, I find that the injuries which the plaintiff suffered on 19 April 2009 were not due to the negligence or breach of duty on the part of the defendant; that it was simply an unfortunate accident, for which no one is to blame.

61. Accordingly, the plaintiff's claim is dismissed. Judgment is to be entered for the defendant with costs, to be taxed if not agreed.

DELIVERED this 30th day of June A.D. 2016

Estelle G. Gray Evans

Justice