COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2012/CLE/GEN/FP/00056

BETWEEN

BEULAH RAHMING

Plaintiff

AND

THE MAILBOAT COMPANY LIMITED

Defendant

BEFORE	The Honourable Mrs. Justice Estelle G. Gray Evans
Appearances:	Miss NtshondaTynes for the plaintiff
	Miss Meryl Glinton for the defendant
Hearing Date:	3 December 2013
Closing Submissions:	13 December 2013(Defendant)
	20 December 2013 (Plaintiff)

Evans, J

1. The plaintiff is a 62-year old woman who claims to have slipped and fell, sustaining injuries, while disembarking the motor vessel Fiesta Mailboat ("the Mailboat") at about 2 o'clock on the morning of 14 April 2009. At the time of the alleged incident the plaintiff was 58 years old, having been born on 12 January 1951. The defendant is the owner and operator of the Mailboat.

2. This action was commenced on 5 March 2012 by a generally indorsed Writ of Summons in which the plaintiff claims damages for personal injuries caused by the negligence of the defendant, its servants or agents, on the Mailboat in Freeport, Grand Bahama, on or about 13 or 14 April 2009.

3. In her statement of claim filed 11 April 2012 the plaintiff alleges that on or about the aforesaid dates she was a passenger on the Mailboat making a trip from Nassau, New Providence to Freeport, Grand Bahama, and while attempting to leave the Mailboat after it had docked at the Freeport Harbour, via a flight of stairs, she slipped on a liquid or other slippery substance on the stairway and tumbled down the stairs, sustaining personal injury. The plaintiff alleges further that the accident and resulting injuries were caused by the negligence and/or breach of contract of the defendant, its servants or agents.

4. The plaintiff also alleges that the defendant exposed her to a trap, failed to warn her of dangers of which the defendant knew or ought to have known and failed to discharge its common law duty of care to her, as a result of which she suffered pain, injury loss and damage.

5. In its defence filed 15 May 2012 the defendant admits that it is the owner and operator of the Mailboat; does not admit or deny the plaintiff's claim regarding the alleged accident and injuries and puts her to strict proof thereof; denies the plaintiff's allegations and particulars of negligence and/or breach of contract; does not admit that the plaintiff has suffered pain, injury, loss and damage and puts her to strict proof thereof. In addition, the defendant avers that at all material times it provided, promoted and maintained safe and precautionary means of use of the stairway on the Mailboat and guarded against dangers thereon or in the use thereof, be they usual or unusual dangers. While not admitting that the plaintiff slipped and fell while descending on a stairway on the Mailboat, the defendant avers that if the plaintiff did fall, it was due, wholly or in part, to her own negligence.

6. It was agreed that this trial would be on the issue of liability alone.

7. Evidence at the trial was provided by the plaintiff and her witness, Ms Carmen Dean, and by Mr Miraldi Kodi on behalf of the defendant. Each of the witnesses provided witness statements which were used as evidence-in-chief.

8. In her witness statement filed 25 November 2013 the plaintiff states:

1) I am the plaintiff herein. I am 62 years old having been born on the 12th January 1951.

2) I am also known by my maiden name Beulah McPhee and by the name Beulah McPhee-Rahming.

3) On the 13th April 2009 I was returning to Freeport from Nassau on the Fiesta Mailboat following the Easter holiday weekend.

4) I was a paying passenger and had paid a roundtrip fare of more than $100.00.

5) I was travelling with my husband, now deceased, and my 3 year old granddaughter.

6) The boat docked in the Freeport Harbour around 2 o'clock in the morning on the 14th April 2009.

7) I was awake when we arrived but I had slept for several hours during the earlier part of the journey.

8) As we approached the Freeport Harbour, members of the boat's crew came around and made several announcements that they needed the ship cleared of passengers as soon as possible because they had to make another trip.

9) I made sure my personal items were together and got ready to leave the ship.

10) I was wearing comfortable clothing, flat shoes and a small purse over my shoulder.

11) One of the male crew members took my grandchild by the hand and led her off the boat as they were doing with the other children.

12) My husband was walking behind me towards the stairs.

13) I was coming down the stairs I slipped on a wet or slippery substance and fell.

14) Prior to falling I had been looking where I was going but I did not see the substance on the ground.

15) The stairwell and the area approaching the stairwell were not well-lit.

16) I believe that if the lighting was better I would have seen the substance and would have been able to avoid it.

17) Immediately after falling I felt severe pain in my left leg and was unable to get up.

18) Three men who I believe were crew members lifted me off the boat and set me down on pallets on the dock.

19) Sometime afterwards, an ambulance arrived and took me to the Rand Memorial Hospital and I was attended to in the Accident and Emergency Department.

20) There were no hazard or warning marks on the ship warning passengers with respect to the stairwell.

21) No one warned me about the stairwell.

22) I took proper and reasonable care for my own safety while using the stairway as I exited the boat on the 14th April 2009; I was alert; I watched where I was walking; I do not drink alcohol.

23) The contents hereof are true and correct.

9. Cross-examination by counsel for the defendant (Q) of the plaintiff (A) was as follows:

Q. I have only one question for you. At the time that you allegedly fell, did any other person fall with you?

A. No. Just myself.

Q. In the medical report, you indicated that you fell down 14 stairs, is that correct?

A. I don't remember.

Q: Those are my only questions for this witness.

10. On re-examination, the plaintiff, in response to her counsel's question as to what injuries she sustained when she fell, said: "When I fell I received...the cartilage in my knee was torn, the ligaments in my leg. And the doctor indicated that I had damaged some nerves."

11. In her witness statement filed 25 November 2013 Ms Dean states:

1) On the 13th April 2009, I was a passenger aboard the M/V Fiesta Mailboat from Nassau, New Providence to Freeport, Grand Bahama.

2) I was travelling with my sister and we were using tickets purchased by my brother, Dennis Dean, for himself and his son.

3) Before docking at the Harbour in Freeport around 2:00 a.m. on the 14th April 2009, several members of the Mailboat's staff came around and began rushing us off the boat.

4) They told us that we needed to quickly leave the boat upon arrival in Freeport because they had to make a run to the United States that same morning. This announcement was made about 3 or 4 times.

5) When the boat docked in Freeport, I saw the plaintiff and her husband walking in front of me heading in the direction of the stairs to the boat's exit.

6) I also saw the boat's staff taking the bags of passengers down the stairs and assisting small children down the stairs off the boat.

7) The stairs on the M/V Fiesta Mailboat are steep and narrow.

8) As I got closer to the stairs, I saw the plaintiff on the ground on the stairs. She appeared to be in pain.

9) I said to my sister, "O my goodness the lady fell".

10) The plaintiff's husband tried to help her off the ground but he could not.

11) Eventually, several members of staff came and carried the plaintiff down the stairs and onto the dock.

12) I saw when an ambulance came and took the plaintiff away.

13) The area of the M/V Fiesta Mailboat where the plaintiff fell was dark and dimly lit.

14) During 2009 I was a regular passenger on the M/V Fiesta Mailboat and I can recall frequently seeing a bucket and mop near the stairs and bathrooms as the floor near those areas was always wet.

15) I do not specifically recall seeing a bucket and mop near the stairs on the 14th April 2009 although there might have been.

16) The contents hereof are true and correct.

12. Cross-examination by counsel for the defendant (Q) of Ms Dean (A) was as follows:

Q: You did not see, yourself, the liquid on the stairs? You don't recall seeing any liquid on the stairs that day?

A: No, ma'am.

Q: That's my only question for this witness.

13. The defendant's only witness was Mr Miraldi Kodi, a Mechanical Engineer and Technical Advisor to the defendant since September 2002. He was not onboard the Fiesta on 13 or 14 April 2009. However, in his witness statement filed on 7 December 2013, he states:

1) That I am a qualified Mechanical Engineer having obtained my Bachelors in Mechanical Engineering (Marine Elective) from Andhra University, Visakhapatnum, India. I have 11 years of sailing experience within various ranks from 5th Engineer to 2nd Engineer including 6 years as Chief Engineer on Ocean going vessels. I have also had 11 years experience overseeing ships from positions on-shore in Ship Management companies as a Technical Manager/Ship manager. In this capacity, I have been responsible for overseeing and/or coordinating the operation, maintenance, surveying, repairs, supply of stores and spares for ships, amongst the duties. I have been a Technical Advisor for the defendant since September 2002. I make this witness statement in my aforesaid capacity and based upon my expertise in the field.

2) Save where otherwise specifically noted I make this statement from my own knowledge. Where the contents hereof consist of my own knowledge, they are true; and where the said contents consist of information relayed to me by other persons or derived from what is contained in documents not prepared by me, I have indicated the sources and grounds thereof which I verily believe to be true to the best of my information and belief.

3) I am informed of a complaint against the Mailboat arising from a slip and fall incident which allegedly occurred onboard the said vessel. I am aware

that the plaintiff in this action has alleged that the Mailboat was negligent due to inadequate lighting on the stairwell, causing or permitting a slippery substance to be or remain on the stairway, failing to take steps to prevent the stairway from being wet, and failing to cause the stairway to be identified with hazard markings.

4) With regard to the lighting of the stairway, this is a matter of industry standards. The stairway lighting is according to ship design. The design of each ship encompasses the lighting in every part of the ship and must meet certain specifications. The design of the Mailboat meets with the required structural standards and has received approval from the Classification Society, which establishes and maintains technical standards for the construction and operation of ships. Pursuant to the standards set by the Classification Society, only overhead lighting is acceptable onboard to ensure the safety of passengers.

5) Additionally, there is onboard at all times an electrician who checks the entire ship daily for any bulbs which have ceased functioning. While I note that there is no allegation on behalf of the plaintiff of there being a faulty bulb or missing light, it is our ship's policy and standard procedure that any electrical or lighting problems discovered during the course of travel are reported to the electrician who would replace any faulty bulbs immediately.

6) Accordingly, any allegation of negligence as a result of the lighting on the stairwell is likely due to be wholly inaccurate, as lighting on the said vessel has been certified and approved as adequate for passenger safety.

7) Regarding the matter of the liquid substance on the stairwell, it is not ship policy to conduct any cleaning of the ships while passengers are on board, save in situations where the same is necessary for passenger safety. That is to say, any liquid on the stairwell would not have been the result of the stairwell having been mopped during travel.

8) I personally attended the ship to inspect for the possibility of the stairwell getting wet during travel; for example if the waters are particularly rough or if there is a significant amount of rain during travel. On my analysis, it is not possible for the stairs indicated by the plaintiff to have been exposed to ocean water. It may be possible for the stairway to be exposed to heavy rainfall; however, such exposure is only possible on the last four steps of the stairway. If the plaintiff fell from the top of the stairway, as she indicated, it is possible this resulted from spillage by a passenger during their exit.

9) If liquid on the stairway was noticed by Mailboat staff, it would have been cleaned up immediately, as they also would be at risk as they assist passengers in exiting the vessel. That being said, there are adequate signs around the stairway advising passengers to proceed with caution. There are also signs advising that passengers utilizing the stairs do so at their own risk and that passengers in need of assistance should wait for

an attendant. These signs have been placed in various locations approaching, and on, the stairwell for many years now and were certainly present at the time of the alleged incident.

10) I must also note that the circumstances of the alleged incident do seem a bit curious to me. If the plaintiff fell down 14 stairs, as she alleges, no doubt the other passengers in front of her on the stairwell would have fallen as well. It is highly unlikely that she could have fallen to the degree alleged without numerous other passengers falling in the process, in domino-like fashion.

11) Therefore, in my opinion, the plaintiff's alleged accident could not have been caused by or been the fault or negligence on behalf of the defendant due to insufficient lighting as the defendant has taken all reasonable steps to comply with industry standards to ensure passenger safety. Further, the defendant would not have caused the stairwell to be wet (negligently or otherwise), as cleaning of the stairwell does not occur during travel. It is possible that rainwater may have gotten onto the last four stairs of the stairway; however, it is not possible for rainwater to have been a factor on the higher stairs. However, it is possible that liquid resulted from passenger spillage.

14. Under cross-examination Mr Kodi admitted that he did not make the voyage from Nassau to Freeport on the Mailboat on 13 April 2009; that he was not on the Mailboat on 14 April 2009; that he had only learnt about the plaintiff's accident about a week before the trial; that he had no personal knowledge of the lighting on the Mailboat on 13 April 2009 or 14 April 2009; that he had no personal knowledge of the visibility of signage in any area of the Mailboat on 14 April 2009; that he was not able to say whether any bulbs were blown in the area of the stairwell on that date; that he was not aware of what happened on the Mailboat on 13 and 14 April 2009; that he could not say whether staff members performed their duties properly on those dates. In relation to his statement that he personally attended the ship to inspect the same, Mr Kodi admitted that that visit did not occur until late November 2013.

15. On re-examination, Mr Kodi said that there were certain procedural requirements that the Mailboat and its crew had to meet, failing which the Mailboat could be withdrawn from service; that to his knowledge the Mailboat nor its staff had ever been sanctioned in the 11 years the Mailboat has been in service. He said that the signs on the Mailboat have been in place since 2002 when the Mailboat began operating.

16. Counsel for the plaintiff submits that the evidence on behalf of the plaintiff as to what occurred on the Mailboat at about 2:00 a.m. on the morning of 14 April 2009 was unchallenged and un-contradicted. In that regard, she pointed out that the plaintiff was not cross-examined on her evidence relating to the dimness of the stairwell, the absence of warning signs aboard the

Mailboat, the conduct of the defendant's staff or the manner in which the plaintiff used the stairwell. Further, that Ms Dean was not cross-examined on her evidence relating to the darkness of the stairwell or the conduct of the defendant's staff. Moreover, counsel argues, no suggestion was made to the plaintiff or Ms Dean in cross-examination that their evidence relating to the events of 14 April 2009 was not the case. Therefore, counsel submits, the plaintiff's and Ms Dean's evidence on those matters is deemed to have been accepted by the defendant as truth. (Halsbury's Laws of England volume 17, 4th edition, para 278).

17. It is not disputed that of the three persons that testified, only the plaintiff and Ms Dean were in a position to give any first hand evidence as to the conditions onboard the Mailboat on the date in question. Mr Kodi admitted under cross-examination, and counsel for the defendant conceded, that he was not on the Mailboat at the material time and could not personally speak to the state of the lighting, presence or visibility of warning signs or other conditions onboard the Mailboat on that date and at that time.

18. As opined by the learned authors of Halsbury's Laws of England, 4th edition, volume 17 at paragraph 278:

> "If in the course of a case it is intended to suggest that a witness is not speaking the truth upon a particular point, his attention must be directed to the fact by cross-examination showing that that imputation is intended to be made, so that he may have an opportunity of making any explanation which is open to him, unless it is otherwise perfectly clear that he has had full notice beforehand that there is an intention to impeach the credibility of his story, or the story is of an incredible and romancing character."

19. No contrary evidence was led by the defendant as to the actual conditions onboard the Mailboat on the date in question and as has been observed by countless judicial officers, the court can only act on evidence. No matter how persuasive the authorities cited, and how plausible the submissions or assumptions of counsel, they are all useless without evidence, since cases are often distinguished on their facts.

20. In the circumstances, Ifind, on the evidence on behalf of the plaintiff, which I accept, that on the morning of 14 April 2009, at about 2:00 a.m., the passengers onboard the Mailboat, including the plaintiff, were urged by the Mailboat's crew to disembark the vessel quickly when they arrived in Freeport, as the Mailboat had to make a trip to the United States that same morning; that the stairwell and the area approaching the same were not well-lit; that the stairway was steep and narrow; that the plaintiff fell down while descending the stairs, receiving injuries; that the area in which the plaintiff fell was dimly lit; that there were no hazard or warning marks

on the ship warning passengers with respect to the stairwell; and no one warned the plaintiff about the stairwell.

21. The plaintiff says that her accident was caused by the negligence of the defendant.

22. As a general rule, in order for the defendant to be held liable for the plaintiff's accident and resulting injuries, the plaintiff must prove that the defendant owed her a duty of care; that the defendant breached that duty and as a result the plaintiff slipped and fell, thereby suffering loss and damage.

23. It is common ground that the plaintiff as a paying passenger on board the Mailboat was an invitee of the defendant and, therefore, the relationship between the parties was that of occupier and invitee. It is also common ground that as The Bahamas has no occupiers' liability legislation, the principles of common law occupiers' liability are applicable in this case.

24. Under common law occupiers liability, the defendant,as occupier of the Mailboat, owed the plaintiff, its invitee, the common law duty to use reasonable care to prevent damage to her from an unusual danger of which the defendant knew or ought to have known; and, of which the plaintiff did not know or of which she could not have been aware. The plaintiff also had a duty to use reasonable care for her own safety. See Indermaur v Dames (1866) L.R. 1 C.P. 274, 288; London Graving Dock v Horton [1951] A.C. 737; and Cox v Chan [1991] BHS J. No. 110.

25. In Indermaur v Dames, Willes, J. put it like this:

> "...he [the invitee], using reasonable care on his part for his own safety, is entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual danger, which he knows or ought to know; and that, where there is evidence of neglect, the question whether such reasonable care has been taken, by notice, lighting, guarding, or otherwise, and whether there was contributory negligence in the sufferer, must be determined by a jury as matter of fact".

26. The occupier's duty is not absolute.In the case of Cox v Chan, Sawyer, J (as she then was), opined at paragraph 21 that:

> "...it is clear from the decided cases, including Indermaur v. Dames, that the duty of care which a person like the defendant owes to a person like the plaintiff is not an absolute duty to prevent any damage to the plaintiff but is a lesser one of using reasonable care to prevent damage to the plaintiff from an unusual danger of which the defendant knew or ought to have known and, I may add, of which the plaintiff did not know or of which he could not have been aware. If it were otherwise then the slightest alleged breach of such a duty would lead to litigation and could, perhaps, hamper the progress of quite lawful and needful businesses."

27. Lord Porter in London Graving Dock v Horton, at page 747 opined:

> "I am not conscious that it has been stated in plain terms, but it is noticeable that what is declared to be the duty is, not to prevent unusual danger, but to prevent damage from unusual danger. It is in this consideration, as I think, that notice or knowledge becomes important. Either may prevent damage, though the unusual danger admittedly exists..."

28. And as to what constitutes an "unusual danger", he said at page 745:

> I think "unusual" is used in an objective sense and means such danger as is not usually found in carrying out the task or fulfilling the function which the invitee has in hand, though what is unusual will, of course, vary with the reasons for which the invitee enters the premises."

29. And as for how reasonable care is exercised Lord Porter inLondon Graving Dock v Horton *supra* said:

> "This problem is dealt with in the latter part of Willes, J.'s statement, by which I understand him to mean: Even if there is unusual danger, the duty to use reasonable care to prevent damage may be performed by notice, lighting or guarding, and the recognition that the invitor may fulfill the obligations imposed upon him by notice or lighting indicates that adequate warning to the invitee may be a compliance with the duty which is owed by the invitor."

30. In the circumstances of this case, the defendantas occupier of the Mailboat, had a duty of was to use reasonable care to see that the stairway by which passengers, including the plaintiff, as its invitees, were invited to exit the Mailboat, was reasonably safe; and that if the stairway was an unusual danger, of which the defendant knew or ought to have known, and of which the plaintiff was unaware and/or could not have known, then the defendant had a duty to use reasonable care to prevent damage to the plaintiff therefrom.

31. Counsel for the plaintiff submits that inasmuch as it is unusual for an elderly person or any member of the general public to be required to depart premises via an inadequately lit, steep and narrow stairwell, the dark/dimly lit, steep and narrow stairwell constituted an unusual danger of which the defendant through its staff, who was also using the stairwell, knew, or ought to have known.

32. Counsel for the defendant disagrees that the stairway was inadequately lit, but submits that even if it was, it was not an unusual danger. In that regard, and relying on comments by Viscount Dilhorne in the case of Wheat v E. Lacon& Co. Ltd. [1966] 1 Q.B. 552, counsel for the defendant submits that if a stairway that is steep and completely unlit does not constitute a danger amounting to negligence, then it cannot be said that a lit, though inadequately, stairway, constitutes an unusual danger.

33. In Wheat v E. Lacon& Co. Ltd., Viscount Dilhorne at page 576 commented:

> "I think that the respondents reasonably ought to have foreseen that a visitor might use the staircase when unlit. A visitor might not discover the switch to operate the light. But I do not myself consider that this staircase if unlit was a dangerous staircase for someone to use who was taking proper care for his own safety. Though steep it was not dangerously steep and it was straight." [underline added]

34. However, counsel for the plaintiff points out that Viscount Dilhorne was speaking, not of staircases generally, but of the particular staircase in that case as he specifically said "this staircase". Further, Ms Tynes argues, Viscount Dilhorne's decision regarding the stairway appears to have been influenced by the fact that "no witness was prepared to say that the staircase was dangerous" (p. 567).

35. On the other hand, Miss Tynes contrasted Viscount Dilhorne's comments in Wheat v Lacon with the conclusion of the Court of Appeal in the case of Stone v Taffe [1974] 3 All E.R. 106, that although nothing was wrong with the stairs in that case, "unlit, they were dangerous".

36. Counsel for the defendant submits further that the plaintiff could not suggest that the stairway in question was unusual to her, as she was returning on a roundtrip ticket and thus had been exposed to the stairway previously. She would, counsel suggested in her closing submissions, have been familiar with the steepness and the lighting of the stairway from her voyage to Nassau.

37. An unusual danger does not cease to be an unusual danger simply because of familiarity and in that regard I respectfully adopt the sentiments expressed by Lord Normand in the case of London Graving Dock supra at page 753 where he said:

> "I would not agree that a danger which is unusual...ceases to be an unusual danger because through frequent visits to the place it becomes familiar. In such a case another question will arise, whether in fact the invitee had sufficient notice, but the danger in my opinion remains an unusual danger."

38. In any event, I agree with counsel for the plaintiff that there is no evidential basis in this case to support the defendant's contention that the plaintiff was "familiar" with the stairwell on the Mailboat. Although the plaintiff was admittedly on the second leg of a round trip voyage, no questions were put to her in cross-examination as to her knowledge of, or familiarity, with the stairway or even about any previous trips which she may have taken onboard the Mailboat or her previous use, if any, of the stairway.

39. That being said, I confess that I find it difficult to accept that the stairway, even dimly lit, down which more than fifty persons, including crew members with bags and small children,

were able to descend on the date and at the time in question, without incident, was an unusual danger.

40. I note Miss Tynes' submission that, like the stones in the case of Protheroe v Railway Executive [1951] 1KB 376, the inadequate lighting in the instant case was "a danger to people" who were being rushed to find their way off the ship, as, in her further submission, anybody using the stairwell to exit a ship at 2 o'clock in the morning was entitled to have an adequately lit stairwell by which to do so.

41. While I accept that latter submission, I note with regard to the former thatalthough there is evidence that an announcement had been made by the defendant's staff to the effect that passengers should disembark quickly, there is no evidence that the plaintiff was, in fact, rushing or that she was being jostled by others. Her evidence is that she took proper and reasonable care for her own safety while using the stairs; that she was alert and that she watched where she was going. Not, in my view, the behavior of someone who was, or felt as if she was, being rushed off the boat. Moreover, from the evidence, at least three other persons, the plaintiff's husband, Ms Dean, and her sister, disembarked after the plaintiff did and there is no evidence that any of them had any difficulty using the stairway. The plaintiff's evidence on cross-examination was that no one else had fallen.

42. Furthermore, there is no evidence that the stairwell on the Mailboat was unlit, as was the case of the stairways in Wheat v Lacon and Stone v Taffe, and although the plaintiff and Ms Dean said that the stairway was "not well lit" or "dark and dimly lit", neither of them said that it was dangerous. Further, the evidence is that there was some light – sufficient,as pointed out by counsel for the defendant,to enable Ms Dean, as she got closer to the stairs, to see the plaintiff "on the ground on the stairs". There was also sufficient light to enable Ms Dean to see that the plaintiff "appeared to be in pain" and to see the plaintiff's husband trying to help her off the ground; as well as sufficient light for other passengers, including Ms Dean, to descend without incident, even after the plaintiff had slipped and fallen. Additionally, although counsel for the plaintiff referred on several occasions to the plaintiff as an "elderly" person, the fact is that on 14 April 2009, the plaintiff was 58 years old and I doubt that at the time she would have considered herself "elderly". Furthermore, there is no evidence that descending those stairs posed any greater difficulty for the plaintiff as a 58 year old person.

43. Indeed, as I understood the plaintiff's evidence, descending the stairs, although dimly lit, was not the problem. The problem, it appears, was the alleged wet or slippery substance on the stairway that, because of the dimness of the lighting, the plaintiff says, she was not able to see, although she was "looking where [she] was going".

44. So, while I accept counsel for the plaintiff's submission that the use of the stairway by fifty-one or more other persons without injury to anybody is not conclusive evidence that it was reasonably safe, it is, in this case, sufficient to persuade me that the stairway in and of itself, although steep, narrow and dimly lit, was not an unusual danger of which the defendant knew or ought to have known and of which the plaintiff could not have been aware.

45. In my judgment, the stairway on the Mailboat was reasonably safe for the purpose of the plaintiff and other passengersusing the same to exit the Mailboat at about 2 a.m. on 14 April 2009, and I so find.

46. The plaintiff alleges that she slipped and fell on a wet or slippery substance on the stairway.

47. In my judgment, if there was a wet or slippery substance on the otherwise reasonably safe stairway, that would have been an unusual danger.

48. The question, then is, was there a wet or slippery substance on the said stairway on 14 April 2009 at about 2 o'clock in the morning? And if so, did the defendant know or ought reasonably to have known and therefore use reasonable care to prevent damage to the plaintiff therefrom?

49. She who alleges must prove. It is unclear where on the stairway was the alleged wet or slippery substance: at, or near the top, in the middle, or at, or near the bottom. Indeed, the plaintiff's evidence is that she did not see the said substance on the stairway. The plaintiff's witness, Ms Dean, who descended the stairs after the plaintiff, says she did not see anything wet or slippery on the stairway.

50. I, therefore, accept counsel for the defendant's submission that in the circumstances, the plaintiff has failed to prove her allegation that there was a wet or slippery substance on the stairway on the Mailboat that caused her to slip and fall.

51. In any event, even if I am wrong in that finding, and there was a wet or slippery substance on the stairway that caused the plaintiff to slip and fall, there is no evidence that the defendant, its servants or agents,knew or ought reasonably to have known that it was there. No one else saw it. Indeed, there is no evidence thateven at the time she fell the plaintiff reported to the defendant or its staff that there was a wet or slippery substance on the stairway which caused her to fall. Nor is there any evidence that a check was made at the time to determine whether there was anything wet or slippery on the stairway that may have caused the plaintiff to slip and fall.

52. In the circumstances I find that even if there was a wet or slippery substance on the stairway, the plaintiff has failed to prove that the defendant knew or ought reasonably to have known that it was there and that its presence created an unusual danger.

53. As opined by Denning, LJ in the case of Hawkins v Coulsdon and Purley Urban District Council (1954) 1 All ER 97 at page 105:

> "Liability depends on whether, the occupier has actual knowledge of the state of affairs existing on the land, no matter whether he himself or someone else created it. Once he has that knowledge, then if he knows or ought to know that it is a danger, he is under a duty to use reasonable care to prevent damage from that danger."

54. The plaintiff also accuses the defendant of breaching its contractual duty to her. In that regard, counsel for the plaintiff submitted that providing an inadequately lit, steep and narrow stairwell as an exit for passengers is a breach of the defendant's contractual duty. For that submission, counsel for the plaintiff relied on the case of Protheroe v The Railway Executive [1951] 1KB376, in which Parker J. held that there is an implied warranty in a contract between a carrier and its fare-paying passengers that the premises are reasonably safe and further that the contractual duty of such carrier is to take reasonable care to see that the premises are reasonably safe for the purpose.

55. Having found that the stairway on the Mailboat used by the plaintiff and other passengers when disembarking on 14 April 2009 was reasonably safe, in my judgment,the plaintiff has failed to prove that the defendant breached its contractual duty to provide reasonably safe premises for the purpose of disembarking the Mailboat.

56. There is no dispute that the plaintiff's accident and resulting injuries were unfortunate.

57. However, having regard to the evidence, which I accept, I find that the plaintiff has failed to prove, on a balance of probabilities,that her slipping and falling on the stairway on the Mailboat on 14 April 2009, was caused by negligence on the part of the defendant as the occupier of the Mailboat.

58. In the circumstances, the plaintiff's claim is dismissed with costs to the defendant, to be taxed if not agreed.

DELIVERED this 31st day of January A.D. 2014

Estelle G. Gray Evans, J.