

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2019/CLE/gen/00617

BETWEEN

JOBINA BAIN

Plaintiff

AND

BB ENTERTAINMENT LTD.

T/A HILTON RESORTS WORLD BIMINI

Defendant

Before Hon Mr Justice Ian R Winder

Appearances: Donovan Gibson for the Plaintiff

Raynard Rigby with Shade Munroe for the Defendant

29 September 2020

JUDGMENT

WINDER, J

This is the plaintiff's claim alleging negligence as a result of a slip and fall at the defendant's hotel premises situated at Bimini, Bahamas on 27 July 2016. The trial which was conducted remotely, was concerned only with the question of liability.

[1.] The plaintiff's claim, as set out in her Statement of Claim, provided, in part, that:-

...

2. On 27<sup>th</sup> July 2016 while being a patron/visitor at the Defendant's premises, the Plaintiff while walking through the lobby, slipped and fell on a wet surface.
3. The said accident was caused by the negligence and or breach of common law/statutory duty on the part of the Defendant and/or its servants or agents.

PARTICULARS OF NEGLIGENCE AND/OR BREACH OF  
COMMON LAW/STATUTORY DUTY

The Defendant, its servants or agents were negligent and/or in breach of common law/statutory duty in that it:

- i. Failed to provide a safe place for customers to walk.
- ii. Failed to adequately warn the Plaintiff or take sufficient steps for the Plaintiff's safety.
- iii. The Defendant failed to keep the floor in good and tenable condition.

...

[2.] The Defence denied responsibility for the incident and pleaded in the alternative contributory negligence. According to the Defence, which provided in part that:

...

4. Paragraph 3 is wholly denied. In particular, it is denied that the Defendant was negligent and/or in breach of any common law and/or statutory duty as alleged or at all. It is further denied that the said

accident was caused by the alleged or any negligence and/or breach of common law and/or statutory duty on the part of the Defendant and/or its servants or agents.

5. Further or in the alternative, the Defendant avers that the said incident was caused or contributed to by the Defendant and to the extent that any injury, damage and/or loss was sustained in consequence of the alleged accident, such injury damage and/or loss was caused wholly or in part by the Plaintiff's own negligence as particularized below.

Particulars of Contributory Negligence

- i. Failing to look where she was going/walking;
- ii. Failing to keep any or any proper look out while walking;
- iii. Failing to observe or pay heed to the Defendant's wet caution signs which were at all material times displayed and visible to her;
- iv. Failing to observe or pay heed to the warnings of the likelihood of the presence of water being in proximity to her selected path/walkway;
- v. Accepting and or assuming any or all risk foreseeable and probable and or arising out of the alleged slip and fall by continuing to walk toward, in close proximity to, on and/or across the subject locus; and
- vi. Failing in the above respects to take any proper care for her own safety.

...

- [3.] The plaintiff was the only witness to give evidence, in her case, in the trial. According to her witness statement:

1. At the material time, I was employed as the Local Office Manager-Bimini The National Insurance Board.
2. I was commencing a Tour of Duty in Bimini which is a three year contract to Manage the National Insurance Board's Office in Bimini.
3. I arrived in Bimini on Sunday the 24<sup>th</sup> July 2016 and discovered that my accommodations were not yet available and thus I had to check in to the Hilton at Resorts World Bimini until my accommodations were made available.
4. I was booked in Room #281 which was on the Second Floor of the Main Building.

5. That on Wednesday 27<sup>th</sup> July, 2016 around 8:40 a.m., I left my room to the elevator and went two floors down to the Ground Floor. Upon exiting the elevator, I was walking along a tiled corridor towards the Main Lobby in order to exit the Building.
6. I was wearing a black skirt suit, stockings and black Etienne Aigner low rubber soled shoes. I had my laptop computer bag along with my hand bag strapped across my right shoulder and I held a small satin bag by the straps with my left hand.
7. As I was walking towards the lobby, I notice a male employee mopping the area about 20 feet ahead of me and a yellow caution sign displayed near to him. I looked down and noticed that the floor underneath my feet was excessively wet but no caution sign was placed at that juncture.
8. As there was no alternative route to get to the outside, I had no choice but to continue walking along the tiled corridor which I proceeded to do with caution. However, after making about four to five steps I slipped and fell backwards with my right knee buckling under my body. Both the male employee and the sign were some seven feet away from where I actually slipped and fell.
9. The male employee assisted me in getting up and collecting my bags. He asked if I was alright. I replied "Yes. Thank you" and proceeded to walk to the Lobby and out to the company vehicle and subsequently reported to work.
10. I mentioned the fall to my colleague Mrs. April Cartwright – Miller. I noticed a very slight bruising and swelling on my right knee. It was accompanied by bearable discomfort.
11. As the day progressed, the pain in my leg increased and I took an Ibuprofen tablet. This helped and I was able to work without interruption. Nearing the end of the workday the swelling in my knee started to increase.
12. While I was in my hotel room later that evening preparing for the farewell dinner for Mrs. Cartwright-Miller my knee increased to an alarming size. I proceeded downstairs to The Tides restaurant to meet my colleagues and inform them that I would need to seek medical attention.
13. I went to the front desk and reported the incident. The representative proceeded to call security. When the security officer arrived, he informed that he would take me to the Local Bimini Clinic. I was transported from the Hotel to The Security Office. The manager of Security asked me some questions related to the fall and took

pictures of my right knee and also a facial shot. I was then given an accident report form to complete and was told that I could complete it while I was waiting to be seen at The Clinic.

14. I was then driven to The Local Office Clinic where I completed a registration form and was interviewed by Nurse Stuart about my medical background. I was examined and Dr. Smith was called for consultation. I was told that I had suffered a haematoma. Nurse Stuart stated that it would not be necessary to drain the same as my body was expected to reabsorb the fluid. She stated that Dr. Smith would prescribe some painkillers and a muscle relaxant but also gave me the option to continue taking the ibuprofen tablets for the pain. I was prescribed Robaxin 500mg and Voltaren Tablets. I was also given a medical certificate for two days off from work and further given instructions to keep my leg elevated and iced.
15. I was then driven back to The Hotel shortly after 9 p.m. where I proceeded to go back to the restaurant to inform my colleagues that I would not be reporting to work on Thursday 28<sup>th</sup> July, 2016 and would return on Friday 29<sup>th</sup> July, 2016. Present were Ms. Abigail Pritchard, Mrs. Moniece Gray, Mrs. Inger Dorsett, Mrs. April Cartwright Miller and Mrs. Olive Johnson.
16. I completed the accident report and returned it to the security officer and thereafter returned to my hotel room. Upon arrival at my room, I sent an e-mail to Mrs. Tami Francis to inform her about my fall and that I would not be reporting to work on Thursday July 28<sup>th</sup> and would return to work on Friday July 29<sup>th</sup>, 2016. I also carbon copied the e-mail to Mrs. Amanda Dean of The Human Resources Department.
17. On the morning of Thursday 28<sup>th</sup> July, 2016 I also telephoned both Ms. Gardenia Evans and Mrs. Tami Francis to inform that I would not be reporting to work. I was unable to reach Mrs. Francis but successfully reached Ms. Gardenia Evans. I sent a photo of my knee injury and a photo of the medical certificate to Ms. Evans. I informed her that I would submit the necessary forms at a later date. Upon return to work on Friday July 29<sup>th</sup>, 2016, I filled the prescription for the Robaxin 500 mg at Jovan Medical Centre in Alice Town Bimini.
18. On Tuesday 2<sup>nd</sup> August, 2016, I returned to New Providence as instructed by Acting Director Theresa Burrows and Assistant Director Tami Francis. I however did not report to work until Wednesday August 3<sup>rd</sup>, 2016 due to the stress involved with travelling.

19. I then sought medical attention initially from Dr. Chambers eventually being referred to Dr. Amar Rajadhyaksha at Miami Institute of Joint Reconstruction.

- [4.] Under cross examination the plaintiff was challenged by Counsel for the defendant as to what she meant by "excessively wet". This she described as more water than usual, after accepting that the water did not cover up to a quarter of her shoes. She admitted that she observed warning signs on the floor before she slipped and fell. She also admitted to noticing a man some 20 feet ahead of her with a mop and a bucket mopping the floor. Her evidence was that when she fell she was 7 feet away from the man/mopper. She acknowledged that she walked 13 feet on the "excessively" wet floor, yet she did not fall. The plaintiff also confirmed during cross examination that when she first noticed the wet floor and the wet floor signs, that she did not call out to the man/mopper to assist her or to come and dry up the floor where she was walking.
- [5.] The plaintiff admitted that she did not change her clothing after the fall. She indicated that she continued to the lobby, left the Hotel and went to work for the rest of the day.
- [6.] The plaintiff was challenged with her contemporaneous statements to the hotel security which did not describe the floor as excessively wet and indicated, rather clearly, that she fell in the lobby area. She was also challenged with her report dated 13 September, 2016 to her employer where she didn't indicate that the floor on which she had slipped and fell was excessively wet. She was also confronted with her statements in both reports where she mentioned that she observed wet caution signs that were visible to her prior to her falling. The plaintiff said that she refer to this because she had already given her employer a verbal account of the floor being excessively wet.
- [7.] The defendant called Bertis Thompson and Damali Horne as witnesses in its case. The Witness Statement of Bertis Thompson stated that he was a Security

Supervisor at the Hotel and that around 8:30 p.m. on 27 July, 2016 the incident involving the plaintiff, earlier that day, was reported to the defendant. The incident report was completed at the time, he photographed the plaintiff's injuries and she was taken to the Local Clinic in Bimini by Security Officer Bradley Brown.

[8.] The Witness Statement of Damali Horne stated that there was no heavy mopping in the lobby/guest area at the time the incident occurred. She was not an eye witness but states that the general practice of the Hotel is to carry out "major cleaning during the midnight shift."

[9.] Occupier's liability does not impose a strict or absolute duty on an occupier, such as the defendant, to prevent any and all damage to an invitee or licensee. The state of the law was ably put by **Sawyer J.** (as she then was) in the case of **Cox v Chan [1991] BHS. J. No. 110**. At paragraph 21, of the decision, **Sawyer J** states:

"[I]t 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."

[10.] Having heard the evidence and observed the demeanor of the witnesses as they gave their evidence, I am not satisfied that the defendant is liable to the plaintiff in negligence. Whilst I accept that the floor upon which she fell may have been wet from recent mopping, I am also prepared to find, on the evidence, that adequate warning, of the potential danger posed by the wet floor was given by signage. In addition to the signage, the man mopping the floor was plainly in the plaintiff's view as she approached him. The plaintiff acknowledged this fact in her witness

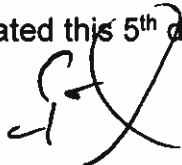
statement as well as on oath. Further, the incident report, given shortly after the accident, described the incident in the following terms, in her handwriting:

On the morning of July 27<sup>th</sup> 2016 (Wednesday) at about 8:40am, I was walking when I slipped on the wet floor. Signs were visible and displayed. The attendant who was moping helped me up and I proceeded to continue to walk to the front lobby and eventually my car. I felt pain in my right knee but it was bearable. The swelling was slight. As the day progressed the pain increased slightly. I took a painkiller. Upon return to my room this evening I observed the swelling increase. I then made the decision to report the matter to management.

It is the finding of this court that the plaintiff saw the sign but nonetheless continued to walk, cautiously she says, on the path towards the person who was mopping. This appears to be some 13 feet, or more than half of the distance from where she says she first saw him mopping. I did not accept her evidence that there was excessive water on the floor. I accept the evidence of Ms Horne that major cleaning was conducted at night and that at the time of the accident no heavy mopping was taking place. This is consistent with her evidence that notwithstanding the fall her clothing was unaffected. Additionally, she also acknowledged that, at the time, she was carrying several bags, her handbag, a laptop bag and a satin bag, which likely affected her balance. I am therefore satisfied that the defendant discharged its duty to use reasonable care to prevent damage to the plaintiff from an unusual danger of which it knew or ought to have known. I am also satisfied that this was not a case of a danger which the plaintiff did not know or of which she could not have been aware.

[11.] In all the circumstances therefore I dismiss the plaintiff's claim. The defendant shall have its reasonable costs to be taxed if not agreed.

Dated this 5<sup>th</sup> day of March 2021



Ian R. Winder

Justice