

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law & Equity Division**

**2017/CLE/gen/00499**

**BETWEEN**

**LYDIA ADDERLEY**

**Plaintiff**

**AND**

**PUBLIC HOSPITALS AUTHORITY**

**THE ATTORNEY GENERAL**

**Defendants**

**Before Hon. Mr. Justice Ian R. Winder**

**Appearances: Sidney Campbell and Cyril Ebong for the Plaintiff**

**Raquel Whyms with Audirio Sears for the Defendants**

**21 April 2021 and 16 August 2021**

**JUDGMENT**

## **WINDER J**

This is a slip and fall claim by the plaintiff (Adderley) who alleges that she fell at her place of employment, the Princess Margaret Hospital.

1. Adderley's case is that on 22 June 2015 she slipped and fell on a wet spot in the area of the pharmacy. She alleges that she fell on her back hitting her head to the floor. Adderley says that she was unable to pick herself up and was assisted by a male patient who was in the area of the pharmacy. At the material time Adderley was employed with the First Defendant (PHA) as a patient relations officer.
2. Adderley did not see a doctor until the following day, she claims that the Accident and Emergency Section of the hospital was crowded. Adderley says that she reported the incident informally to the risk manager of PHA on the day she fell, which caused the employee for the cleaning company to visit the area. The fall was not reported to the PHA until 26 June 2015 when an incident report was completed.
3. Adderley says that the accident was the result of the negligence of the PHA, its servants or agent and in breach of the duty owed to her by the PHA and was due in no manner whatsoever to any act or failure on her part.
4. Adderley's evidence was that there was a caution sign in the area where she fell but that it was not in her view and that it was not visible to someone travelling the route she was taking. She says that she saw it after she fell because it was in front of her some distance away.
5. Adderley admitted that there was no report of bruising or swelling at the time of her visit to Dr. Burrows the following day and that no x rays were ordered or time off from work given. She admitted that she was taking the pain medication Robaxin

and Voltarin prior to the accident on 22 June 2015 but denied that this usage related to a car accident which she had in 2006, where she sustained a back injury.

6. Adderley called Nathaniel Butterfield as a witness to give evidence in support of her case. Butterfield, who worked at the hospital prior to the incident, says that he was at the hospital registering to see the doctor as an outpatient at the time of the incident. He says that the incident took place in the vicinity of the registration area and the pharmacy. Butterfield confirmed that Adderley fell on her back and on her buttocks. He says that whilst he did not observe her fall, she was coming down the ramp area and slipped.

7. Butterfield's response concerning the fall was as follows:

Q. Tell us again where you said she was headed to and describe the direction for me, please?

A. Okay she was coming down the ramp where you register for out-patient and she slip.

Q. So, she slipped by the ramp?

A. Correct, I don't know if it was wet in that area or whatever.

Q. I am asking you if she slipped by the ramp?

A. Yes, ma'am, coming down the ramp she was coming down.

Q. And you said you didn't know if it was wet? That's what you're saying?

A. I don't know if it was wet or whatever. I didn't see it, but I know she slip. I don't know if it was wet at the time.

8. I did not assess Butterfield as an entirely credible witness considering his demeanor and the nature of his evidence. He began his evidence prior to the luncheon adjournment on 21 April 2021 and upon the resumption of his evidence, in response to a question as to whether he observed any cleaners in the area after the fall, Butterfield volunteered the following statement:

Q: While you were waiting, do you recall if anyone came to clean the floor or dry up the floor to any effect?

A: Yes. That's after she fell. I think some people came, but it wasn't no sign visible.

9. Then, when confronted by his earlier statement about not knowing if the floor was wet he engaged in the following exchange:

Q: You had said earlier that you didn't know if anything was on the floor when you gave your evidence at first, yes? When you gave your evidence at first, you said you didn't know if anything was on the floor?

A: Nothing on the floor like what? Sign visible?

Q: When she fell water, any liquid or fluids?

A: Yes, it was wet, it looked like it was wet, I saw, but there wasn't any sign, that's what.

Q: I didn't ask about a sign.

A: Okay. Alright, my apologies.

I approached Butterfield's evidence with some degree of caution.

10. Butterfield later stated that whilst he was waiting a creole speaking person, from the cleaning company, came to clean up the floor or dry up the floor. Butterfield says that he did not know what time of day the incident occurred but believed that it occurred in the morning hours.

11. 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."

12. Having heard all of the evidence of the witnesses and observed their demeanor as they gave their evidence, I am not satisfied that the PHA is liable to the plaintiff in negligence. Whilst I accept that the floor upon which Adderley fell may have been

wet from recent mopping at some time prior to the fall, I am not satisfied that it was wet at the time of her fall. 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. Whilst Adderley claims that the signage was present but not visible until after she fell, she nonetheless alleges that she saw the sign as she got up and returned to her office. I am prepared to accept that the sign was present and visible and that in her haste she did not notice it.

13. In addition to the signage, I find that Adderley, who describes herself as always rushing around, was about to leave work, and more likely than not, not paying adequate attention as she negotiated coming down the ramp in the area when she fell. I did not find that the floor was wet at the time of the fall and accept Butterfield's initial (unrevised) evidence, that he did not see any indication that the floor was wet.

14. In respect of allegations of breach of its duties under the Health and Safety Act, I am satisfied that there has not been any breach. I have already found there was adequate signage/warning. Additionally, Adderley's own evidence was that a system of cleaning and reporting of spillages was in place as both she and Butterfield claim that a cleaner was available and came to mop up the area shortly after the incident.

15. In all the circumstances therefore the claim is dismissed with costs to the Defendants to be taxed if not agreed.

Dated this 26<sup>th</sup> day of October 2021



Ian R. Winder

Justice