

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law & Equity Division**

**2013/CLE/gen/01472**

**BETWEEN**

**EYVONNE WALLACE**

**Plaintiff**

**AND**

**DOCTORS HOSPITAL (BAHAMAS) LIMITED**

**Defendant**

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

**Appearances: Eyvonne Wallace Pro Se**

**Adrian Hunt for the Defendant**

**16 December 2019 and 20 January 2020**

**Closing Submissions (April & December 2020)**

**JUDGMENT**

## **WINDER, J**

The Plaintiff (Wallace) has brought this suit for personal injury claiming negligence against the Defendant (Doctors), her former employer.

### **Background**

1. Wallace began her employment with Doctors as a Patient Care Technician (PCT) in June 2007. On 22 September 2011 she worked in the Intermediate Care Unit on the 7:30am to 3:30pm shift. During her shift she escorted a 63 year old female patient (JP) to the bathroom on two separate occasions. On the second occasion before exiting the bathroom, the patient collapsed.

2. Wallace claims that JP collapsed and fell backward onto her, causing her to sustain injury to her back. She underwent back surgery the following year which has left her unable to walk.

3. Wallace's evidence was that she was stationed in the Maternity Ward and not the Intermediate Care Unit where the incident in question took place. She was asked to assist in the Intermediate Care Unit for the morning shift on 22 September 2011. She first escorted JP to the bathroom at about 8:30am on the morning of the incident. Wallace says when she attended JP for the first time she disconnected the intravenous line connected to her, accompanied her to the bathroom and then back to the bed. Approximately an hour later, JP used the call button in her room and she again expressed the need to go to the toilet. After using the toilet JP was washing her hands when she advised Wallace that she felt dizzy. She held onto the bathroom sink for support. It was at this point that Wallace says she pulled the emergency call light for assistance. She says that she positioned herself behind JP. Three minutes passed, but no help was forthcoming says Wallace. She asked JP how she was feeling and was told that she was

feeling a 'little better'. JP then washed her hands but as she went to dry them she passed out and fell backwards onto Wallace.

4. Wallace deposed that she weighed 150lbs at the time of the incident and that JP was weighing between 250lbs to 300lbs. She says she cried out for help as she was unable to get out from under JP on her own. Dr. Michael Darville came into the bathroom, checked JP's vital signs and left to get more assistance. After Dr. Darville left the bathroom she says that JP regained consciousness and asked what had happened. When Dr. Darville returned he assisted her up from the floor while other members of staff, assisted JP and took her to the Intensive Care Unit.

5. The pain in her lower back and waist started immediately, and spread to her entire back, says Wallace. She was advised to make an incident report and then go to the Emergency Room (ER) for assistance, which she did. She was seen and treated in the ER and sent home with medication by an ER physician. She says she later found out that JP was brought in for a heart valve blockage which had caused her to stop breathing and she was resuscitated prior to the fall in the bathroom.

6. On 2 October 2011 Wallace says she returned to the ER with back pain which radiated down her right leg. The ER physician on this occasion referred her to Dr. Valentine Grimes, Orthopaedic and Spine Surgeon. On 6 October 2011 Wallace consulted with Dr. Grimes for the first time and was diagnosed with mechanical back pain. He ordered physical therapy for six weeks and prescribed pain medication.

7. Dr. Grimes, whom Wallace continued to attend, referred her to neurologist Dr. Charles Rahming on 27 March 2012. She saw Dr. Rahming on 11 April 2012 and was diagnosed with bilateral lumbar radiculopathy. On 19 April 2012 Dr. Grimes referred her to Dr. Barrett McCartney who gave her a series of epidural injections which did not provide the expected pain relief for which they were administered. As a result on 12 July 2012 Dr. Grimes recommended a surgical consult.

8. On 5 October 2012, Dr. Grimes referred Wallace to Dr. John Nordt in Florida, USA. She had a consultation with Dr. Nordt on 26 November 2012 and also had an MRI performed that same day. On 27 November 2012, Dr. Nordt recommended surgery, and Wallace underwent decompressive spinal surgery on 14 December 2012. Wallace was capable of ambulating immediately prior to the surgery, unfortunately this was not the case immediately post-surgery.

9. On 1 October 2013 Dr. Grimes wrote to the Occupational Health & Safety Unit of NIB stating a diagnosis of lumbar radiculopathy for Wallace and the need for her to have a consultation with Neurologist Dr. Edwin Demeritte and an MRI of the lumbar spine. The findings of the MRI which was performed on 1 October 2013 was that Wallace suffered from mild levoscoliosis. At L4-5 and L5-S1 she had undergone discectomy and posterior fusion with bilateral pedicle screws. On 15 October 2013, Dr. Demeritte made a post-surgical diagnosis of lumbrosacral neuritis.

### *The Claim*

10. On 27 August 2013 Wallace filed a generally indorsed Writ of Summons. Her Amended Statement of Claim provided, in part, as follows:

1. The Plaintiff was at all material times employed by the Defendant as a Patient Care Technician in the Nursery Department of the Maternity Unit.

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3. On the 22<sup>nd</sup> September, 2011 at around 9:30am the Plaintiff, whilst assisting a patient to the restroom, noticed that the patient was not well and proceeded to press the emergency buzzer. No one came to her assistance right away. As per her training and as mandated by the Defendant, she then stood behind the patient and gripped her from behind for support. The patient then passed out and fell backwards on the Plaintiff thus causing the Plaintiff to sustain injury, loss and damages.

4. The said injuries were caused by the negligence and/or breach of duty of the Defendant.

### AMENDED PARTICULARS OF NEGLIGENCE

The Defendant was negligent in that it:

- i. Failed to take reasonable care for the safety of the Plaintiff;
- ii. Failed to provide a safe system of working for the Plaintiff;
- iii. Failed to provide adequate staff;
- iv. Failed to assign adequate staff to the patient given the patient's weight and medical history;
- v. Failed to inform the Plaintiff of the patient's previous medical history; and
- vi. Negligently and/or in breach of duty, knowing of the patient's passing out history, failed to render assistance to the Plaintiff when needed.

5. By reason of the matter aforesaid, the Plaintiff has suffered personal injury, loss and damages,

#### PARTICULARS OF INJURIES

The Plaintiff was born on May 6<sup>th</sup>, 1971 and was aged 40 at the date of the said accident whereby she sustained the following injuries:

- i. Mechanical back pain;
- ii. Spinal instability at L4-5 and L5-S1;
- iii. Degenerative Disc disease;
- iv. Small Benign extradural CSF containing cysts noted within the neural foramina along the exiting right L5 and bilateral exiting S1 nerve roots;
- v. Axial Spine pain.

#### SPECIAL DAMAGES

Summary of Loss to date of trial

i.	Transportation Services	
	a. Felix Francois	\$2,000.00
	b. Yellow Cab	\$1,119.00
	c. Night Drivers	\$ 420.00
	Sub-total	\$3,539.00
ii.	Accommodations	
	a. Edwin Bethune	\$2,277.00
	b. Courtyard Marriott	\$ 201.94
	Sub-total	\$2,956.94
	<b>TOTAL</b>	<b>\$6,495.94</b>

6. The Plaintiff also claims interest upon such damages as may be awarded to her pursuant to the Civil Procedure (Award of Interest) Act 1992.

#### AND THE PLAINTIFF CLAIMS

- (1) The total sum of \$6,495.94;
- (2) Damages for personal injury, suffering and loss of Amenities;
- (3) Interest pursuant to the civil Procedure (Award of Interest) Act, 1992;

- (4) Such Further or other relief as to the Court deems just and fit; and
- (5) Costs

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11. On 11 June 2014 Doctors filed a Defence in this action which provided in part, as follows:

1. Paragraph 1 of the Amended Statement of Claim is admitted save that the Plaintiff was employed as a Patient Care Technician by the Hospital. While she was primarily stationed in the Maternity Ward, she was not solely stationed in the Maternity Ward and was obliged to assist any department where she was needed.

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3. Paragraph 3 of the Amended Statement of Claim is denied. It is denied that assistance was not rendered immediately. It is averred that the Defendant provided the appropriate training to the Plaintiff and it is denied that the Plaintiff acted in accordance with her training and is put to strict proof of the same.

4. Paragraph 4 of the Amended Statement of Claim and its particulars are denied and the Plaintiff is put to strict proof. As particularized in the Amended Statement of Claim the Defendant responds as follows:

a. The Defendant denies that it failed to take responsible care for the safety of the Plaintiff. The Defendant's employees are trained upon commencement of their employment and on an annual basis how to appropriately react in circumstances in which a patient requires assistance.

b. Particular 4(ii) is denied and the Defendant repeats paragraph 4(1) herein.

c. Paragraph 4(iii) is denied and the Plaintiff is put to strict proof.

d. Particular 4(iv) and 4(v) are denied. The Defendant avers that the Plaintiff had access to the patient's weight and medical history which would have been placed in the medical records. It is further averred that the Plaintiff had access to the patient's fall risk assessment which would have made the Plaintiff aware of the patient's condition.

e. Particular 4(vi) is denied. The Plaintiff was assisted as soon as reasonably practicable.

5. Paragraph 5 of the Statement of Claim and its particulars are denied and the Plaintiff is put to proof that the injuries claimed occurred as a result of alleged negligent acts of the Defendant. It is further averred that if the Plaintiff was injured, it was not as a result of any action or inaction of the Defendant.

6. Paragraph 6 of the Statement of Claim and its particulars are denied. The Defendant denies that the Plaintiff is entitled to Damaged and Interest claimed in the Statement of Claim or at all.

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12. At the trial Wallace testified on her own behalf and subpoenaed Dr. Grimes and Dr. Kevin Bowe (who was the Medical Officer at the National Insurance Board in 2013). The Defence called Charlotte Johnson, Registered Nurse and Coordinator of Doctors' Organizational Learning Department, as well as Dr. Jay G. Stein, Orthopedic Surgeon. All witnesses were subject to cross examination on their evidence.

13. While under cross examination, Wallace maintained her evidence that she stood directly behind JP before JP collapsed onto her. Counsel for Doctors put it to Wallace that the position she took of standing behind JP, was not in line with her training. It was also suggested to Wallace that she told Dr. Nordt that she lifted a 300lb JP. Wallace denied both allegations. Counsel further challenged Wallace suggesting that her accounts, as to how she sustained the back injury, were all different. None of the accounts, he suggested to Wallace, spoke to JP falling on her. Wallace was also directed to accounts of her lifting JP (in the reports of Dr. Nordt) and the notes from Mercy Hospital, following the surgery which say that Wallace bent down to support a patient.

14. Wallace was also pressed on her diagnosis of radiculopathy/compression of the spine. It was put to her that the MRI performed while she was in Miami, when she saw Dr. Nordt, did not reveal this diagnosis. It was suggested to Wallace that her back pain was in fact a pre-existing degenerative condition. Ultimately, Counsel for Doctors suggested that a significant complication during the surgery lead to Wallace not being able to walk. Wallace disagreed with this suggestion. She responded, saying that all surgeries come with complications, but that doesn't mean that the surgeons themselves did something wrong. In respect of the surgery that took place on 14 December 2012, she told the Court, that major surgery comes with major complications.

15. Dr. Grimes confirmed the history of his treatment and referrals for Wallace stemming from her back pain. Dr. Bowe confirmed that he was the Medical Officer at NIB at the time and that he did authorize the requests made by Dr. Grimes in August 2013 to have Wallace referred back to Dr. Nordt for follow up.

16. Nurse Charlotte Johnson gave evidence on behalf of Doctors. In her witness statement, Nurse Johnson averred that a part of a PCT's training includes Body Mechanics and Lifting, which she says trains PCTs in proper procedure, techniques and methods for lifting and ambulating patients. As per her witness statement, at paragraph 4, the training provided taught PCTs:

The Body Mechanics & Lifting Techniques ("the BMLT") which is reviewed annually involves training PCTs in the fundamentals of (i) how you lift, (ii) what you left, (iii) where you stand in relation to the patient, and (iv) how you support the patient. PCTs should therefore, before lifting or ambulating patients, first assess the patient to determine whether they can lift or ambulate the patient themselves, or if help is required. Thereafter, once the PCT is ambulating a patient, the proper positioning is for the PCT to be slightly behind the patient, so as to avoid the risk of injury from the patient unexpectedly falling backwards.

17. Nurse Johnson went on to say that the training dictated that an obese patient connected to an IV should have been bed-panned instead of ambulated to the bathroom. Wallace in turn, submitted that PCTs were never taught to ambulate patients and the body mechanics course only taught her how to lift inanimate objects.

18. Dr. Jay G. Stein, an Orthopedic Surgeon based in Miami, also gave evidence on behalf of the Doctors. He examined Wallace on 29 December, 2015. In his report on the consultation with Wallace he came to the following conclusion:

1. I believe Ms. Wallace sustained on 9-22-2011 a mild back strain, muscular nature, and an anticipated several week recovery, returning to regular duty.
2. I do not believe that the surgical decompression fusion was required due to the 9-22-2011 incident in its majority.
3. In the years post incident and postoperative, Ms. Wallace's weakness has progressed, suggesting a systemic unrelated progressive muscular weakness that may have been present prior to 9-22-2011 in an undisclosed format.

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19. In her closing submissions, Wallace submitted four points that she wished to make on her own behalf relative to the incident. She summarized them as follows:

In summary, there are four points that I would like to make. First, I'd like to point out that the incident that took place on September 22<sup>nd</sup>, 2011 was one hundred



percent preventable if the defendant had taken the necessary precautionary measures to create and maintain a safe environment for both staff and patients. Second, I'd like to point out that the defendant was well aware of the patient's medical condition, but yet they took no precautionary measures to ensure the safety of the staff and patient alike. Third, as a result of the defendant's negligence the patient collapsed on me and I suffered a life changing injury. My fourth and final point is that my current condition is a direct result of the defendant's negligence.

20. Mr. Hunt, learned counsel for Doctors, relies on the case of ***Sturup v Resorts International (Bahamas) 1984 Ltd. (1991) BHS J 103***, paragraph 53, to contend that the burden of proving negligence rests with Wallace:

The mere fact that an injury – even a severe injury - is sustained by a person on the premises of another does not, without more, establish negligence. Even in the work place, in my judgment, an employer would have to be in breach of his common law or statutory duty or there would have to be some unusual dangers (as in *Jennings v Cole [1949] 2 All ER 191*) to ground Liability for injuries so sustained.

He submits that Wallace must prove some act or omission on the part of Doctors to say that Doctors' negligence caused her injury. The inconsistencies in the various physicians' reports were reiterated. Particularly where Dr. Nordt says she lifted the patient and the postoperative hospital notes say that she bent down to support the patient. Nevertheless, says Counsel for Doctors, the method described and employed by Wallace to handle JP was not appropriate having regard to her training. Finally Doctors submitted that Wallace did not establish causation as she was unable to extract any definitive answer from Dr. Grimes on cross examination as to the cause of her pain.

#### *Analysis & Disposition*

21. In the English case of ***Sutherland v Hatton [2002] EWCA Civ 76***, Lady Hale remarked that finding liability in negligence depends upon three inter related requirements. The first being the existence of a duty of care. The second being a failure to take the care which can reasonably be expected in the circumstances. The third is a finding that damage was suffered as a result of that failure. In the case of ***Naismith v***

***London Film Productions Ltd [1939] 1 ALL ER 794*** the Court posed the question this way, '[d]id something that [Doctors] do or not do lead to the injuries incurred by [Wallace]?'

22. The report of Dr. Nordt on 27 November 2012 says that there was no obvious radiculopathy but Wallace had significant discomfort and pain. He noted pre-existing degenerative disc disease and says he was certain with the surgery that he proposed Wallace would be able to return to work. It appears that Dr. Nordt took the position based on reading his pre-operative report that Wallace was out of options at that point and she consented to the surgery being performed.

23. Wallace says that during her second encounter with JP she sustained the injury. She stated that when she entered the room she did not disconnect JP's IV line, but instead unplugged the IV pole from the wall and took it along with the patient. According to her this was the process that the nurse ordered her to do. Whilst doing this, the telemetry technician came to the door of the room and told her that there had been a disruption in the tracing being performed on JP. According to Wallace: "*[s]he asked me to ensure that the leads and wires do not get loose because an uninterrupted tracing was needed for Dr. Cargill who was on his way to see the patient*". After the telemetry technician left she took JP to the bathroom where JP collapsed and fell onto her causing her injury.

24. The first issue for determination in this matter is whether or not Doctors owed a duty of care to Wallace as an employee causing her to suffer injury and by extension the paralysis she suffered following the 2012 back surgery. It is not disputed that Doctors, as Wallace's employer, owed her a duty to provide a safe place and system of work.

25. After considering the oral and documentary evidence in this matter I preferred the evidence of Doctors. I accept the evidence of Nurse Johnson that the positioning described by Wallace for assisting JP was not in line with her training as a PCT. Instead PCTs are taught to position themselves slightly behind the patient and not directly behind the patient. Further, Wallace's own evidence led me to believe that she was aware that there was a risk that JP could fall. Falls of course are not inevitable but are a potential

risk in a hospital environment. I accept that Doctors recognized this fact and that this is why PCTs are employed and trained how to assist with patient care.

26. JP was attached to both an IV and telemetry device. Wallace was advised by the telemetry technician that Dr. Cargill would be coming to see JP shortly and he would require an uninterrupted trace report on the patient after something she did in the room interrupted the reading. It was clearly visible to Wallace, based upon her own evidence, that JP was approximately twice her weight. With all of the above factors in play, Wallace never led any evidence that she was required to escort JP to the bathroom rather than bed-panning her or asking for assistance to take JP to the bathroom. Nurse Johnson's evidence was that the training involved assessing patients to determine if there was a need to obtain assistance in ambulating or lifting them. I do not find that Wallace's actions was that of a reasonably trained PCT on the day in question. She also had the option, having observed that JP was significantly heavier than her and connected to both a telemetry device and an IV, to bed-pan her. If she chose to assist JP to the bathroom she ought to have requested additional assistance, as the training required. Instead she chose to ambulate the patient who was undergoing active monitoring of her heart.

27. Wallace was aware that JP was not capable of ambulating to the bathroom alone. This was her second trip to the bathroom with JP who had used the call light to summon her. It was facts such as these that led me to believe that Wallace was not being totally forthright in her evidence that she was clueless that JP may have been at risk for a fall. I did not accept her evidence that *"PCTs were taught basic body mechanics, such as proper body posture in sitting, standing, bending, pulling, lifting, etc. but were never taught to lift or ambulate a patient"*. I find that Doctors did provide Wallace with training as to properly ambulating a patient to avoid incidents such as what occurred on 22 September 2011.

28. I find that Wallace did in fact assume an improper position while handling JP in the bathroom after she became dizzy. In the English Court of Appeal case of *Woolger v West Surrey and North East Hampshire 16 BMLR 120* a system of work was held not to be

unsafe when a nurse took on a patient's weight while lifting the patient and injured her back in the process. The Court found that the nurse went through training that taught her not to take the patient's weight when assisting the patient and the fact that she injured her back while doing so was a result of her not acting in accordance with her training. While the instructions not to disconnect JP's IV line and to be careful not to disrupt the leads may have kept Wallace in close proximity to JP, as she avers, these instructions did not cause or force her to employ an unsafe technique, by positioning herself behind JP.

29. I was not persuaded that assistance was not rendered immediately. However, even if Wallace stood behind JP for three minutes before JP fell, this did not absolve her from the necessity to act in accordance with her training. The fact is that Wallace should not have assumed the position that she did behind JP. Taking on a patient's weight is not in line with a PCT's training as averred by Nurse Johnson. If a healthcare worker takes on the weight of a patient after being trained not to do so, the healthcare facility is not in breach of their duty to that employee.

30. Wallace's case presents a sad and unfortunate situation. The evidence in the report of Dr. Edwin Demeritte was compelling, in his conclusion that the decompressive surgery was the effective cause of Wallace not being able to walk. In his report on 15 October 2013 he says the following:

I have advised the patient that my clinical opinion is that her current condition is a complication of the surgery done on 14<sup>th</sup> December 2012. This is supported by cause and effect demonstrated by the fact of her walking into hospital and being unable to move the unaffected limb immediately following back surgery. While the surgery was successful for the right extremity, perhaps the positioning and/or instrumentation resulted in compression of the lumbar nerve roots.

Further, Dr. Stein believed that, in addition to the surgical procedure, Wallace's condition was also suggestive of a systemic progressive muscular weakness. His evidence was also that the need for the decompression surgery was not largely the result of the injury she sustained at Doctors' premises.

31. While the medical experts have not come to a consensus for the most part on Wallace's diagnosis/diagnoses, I find that her injury and/or illness was not incurred due to any breach of a duty of care on the part of the Doctors. As was stated 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."

32. In all of the circumstances, Wallace's claim is dismissed with reasonable costs to Doctors, to be taxed in default of agreement.

Dated this 20<sup>th</sup> day of December 2021

A handwritten signature in black ink, appearing to be 'I. R. Winder', written in a cursive style.

Ian R. Winder  
Justice