COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2016/CLE/gen/01031

BETWEEN

ADRIANNA THOMPSON

Plaintiff

AND

CLEARVIEW MANAGEMENT LTD.
d/b/a
SANDALS GRANDE EMERALD BAY

Defendant

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mrs. A. Pamela Thompson of Sturrup Thompson for the Plaintiff
Mrs. Genell K. Sands of McKinney Bancroft & Hughes for the Defendant

Hearing Dates: 16 May. 2019, 4 September 2019, 4 November, 6 November 2019, 16 March 2020, 16 December 2020, 30 April 2021, 21 May 2021

Negligence – Personal injuries – Liability of employer – Occupier's liability – Safe premises – Employee injured in slip and fall accident – Whether employer negligent or in breach of duty - Whether employer took all reasonable precautions to prevent accidents – Whether employee entitled to damages – Health and Safety at Work Act, 2002 - Costs

By Generally Indorsed Writ of Summons filed on 6 July 2016 and Statement of Claim filed on 9 August 2016, the Plaintiff, a Room Attendant employed by the Defendant, sued the Defendant for damages for negligence which resulted in personal injury from a slip and fall accident which occurred on 22 February 2014 while she was carrying out her cleaning duties.

The Plaintiff alleged that the Defendant breached its duty to provide a safe work environment. The Defendant denied having breached its duty, asserting firstly that its duty was not to guarantee the Plaintiff's safety, but to take reasonable steps to avoid danger which it did. Secondly, the Defendant asserted that the Plaintiff did not take sufficient care

in walking on the damp floor and that it was reasonable to expect the Plaintiff to have guarded against the risks and dangers ordinarily incidental to the tasks she performed.

HELD: Finding that the Defendant is not liable for the personal injuries suffered by the Plaintiff, her claim is accordingly dismissed with each party to bear their own costs.

1. It is the duty of the Plaintiff to prove on the preponderance of evidence that the Defendant was guilty of negligence or breach of its common law duty under the head of occupier's liability. This must be done by evidence and, on the evidence, the Plaintiff has fallen far short of the mark.

2. The employer's duty of care does not warrant the safety of the employee's employment. The employer undertakes only to take reasonable precautions to protect the employee against accidents – **Wilsons & Clyde Coal Company Ltd. v English** [1938] AC 55 applied.

3. It is a well-established legal principle that where a person holds a particular position he will be expected to show the degree of knowledge normally expected of a person in that position and to guard against risks normally incidental to that position. Thus, the Defendant could reasonably expect the Plaintiff to appreciate and to guard against special risks and dangers inherent and ordinarily incidental to the tasks she was engaged to perform: **Hall v The Ruffco Holding Corporation Bahamas Ltd** [2008] 2 BHS J. No. 15; **Sturrup v. Resorts International (Bahamas) 1984 Ltd.** [1991] BHS J. No. 103 and **McKenzie v. Kerzner International and Another** [2013] 1 BHS J. No. 226 considered.

4. The mere fact that an injury is sustained by a person on the premises of another, even in the work place, does not, without more, establish negligence. Each person while performing his duty as an employee has to assume a measure of responsibility for his own safety and has to be alert to hazards which exist in the workplace: **Mckenzie v Kerzner** applied.

5. The taking of precautions does not eliminate, but merely minimizes, the inherent risks which exist in the workplace. The employee accepts those risks.

6. Costs are discretionary. Although the successful party is entitled to costs generally, a judge is not precluded from departing from this normal practice so long as he/she gives reasons when deciding to make an unusual order as to costs: **Eagil Trust Co. Ltd. v Pigott-Brown and Another** [1985] 3 All ER 119 at 122 - per Griffiths LJ.

JUDGMENT

Charles J
Introduction

[1] This is a claim in Occupiers Liability.

[2] By Generally Indorsed Writ of Summons filed on 6 July 2016 and Statement of Claim filed on 9 August 2016, the Plaintiff ("Ms. Thompson") claims against her former employer, the Defendant ("Sandals") damages for negligence which resulted in an injury from an incident which occurred on 22 February 2014. On that date, Ms. Thompson was asked to clean a guest room at Sandals. As she was doing so, she slipped and fell backwards on the floor which was damp.

[3] Ms. Thompson subsequently instituted the present action seeking damages for personal injuries caused to her by Sandals, its servants and/or agents. In her Statement of Claim, Ms. Thompson alleged that Sandals was under a duty to ensure her safety. She stated that, on the day in question, Sandals breached its duty of care by:

(i) Failing to apply grit or take any other necessary steps to prevent the floor becoming slippery and dangerous;

(ii) Failing to install a floor covering with a roughen, course, scratch, grate surface;

(iii) Failing to inspect the said area regularly, or at all, before requiring her to venture into an area unfamiliar to her, to carry out a chore outside her job description;

(iv) Failing to warn her of the potential danger posed by the area, namely that there was a substance on the floor and/or that the floor was slippery and dangerous by virtue of the same, or, in the premises, failing to discharge the common duty of care owed to her.

[4] Ms. Thompson claims special damages in the sum of $1,340.00, general damages, punitive damages, interest and costs.

[5] In its Defence, Sandals denied liability, asserting that it had taken all reasonable precautions to prevent accidents, which was the extent of the duty owed to Ms. Thompson. Sandals further asserted that Ms. Thompson's injuries were caused wholly or were contributed to by her own negligence in that she ought to have appreciated and guarded against the inherent risks which were incidental to the task she performed. Sandals alleged that Ms. Thompson was negligent in that she:

1. Failed to exercise reasonable care or to take any or any adequate precautions for her own health and safety while carrying out her work on its premises;

2. Failed to keep any or any proper lookout or to observe or heed the presence of any water or other substance that might or may have been present on the floor which she had just mopped;

3. Failed to keep a proper look out or to pay any or any sufficient attention as to where she was walking and how she was walking in the area in which she had just mopped; and

4. Failed to wear protective clothing such as non-slip/skid shoes while carrying out the cleaning of the room and the mopping of the bathroom.

[6] Sandals further averred that it reasonably expected Ms. Thompson to appreciate and guard against the risks and dangers inherent and ordinarily incidental to the tasks that she performed.

Salient facts

[7] The salient facts are broadly not in dispute. To the extent that some of the facts may be in dispute, then what is expressed must be taken as positive findings of facts which I made, based on the evidence adduced as well as documentary evidence.

[8] At all material times, Ms. Thompson was employed by Sandals as a Room Attendant in the Housekeeping Department. The job description of a room attendant includes:

- Responsibility for the overall cleanliness of the guestrooms, public bathrooms and public areas – to include offices;
- To conduct self-inspection after cleaning all assigned rooms; i.e. vacant and dirty/occupied and dirty;
- To service all rooms assigned in the required time;
- To complete a maintenance walk in each assigned room and report any issues to the Linen room for action;
- To follow-up quickly on all room maintenance problems reported, ensuring that all problems are fixed;
- To record on worksheet all maintenance issues observed;
- Ensuring that rooms are maintained to the 'SANDALS' Standard;
- Handling any routine projects assigned on a daily, weekly or monthly basis;
- To assist with any other task that may be assigned.

[9] On 22 February 2014, after a complaint from a guest that Room 4109 was not sufficiently cleaned, Ms. Thompson was asked by a Manager of Housekeeping to clean the room. After mopping the floor, Ms. Thompson slipped and fell on her back and hit her head and shoulders. The parties disagree as to how and where in the room the accident occurred.

[10] At the commencement of her employment at Sandals, Ms. Thompson underwent theoretical and practical training for new employees. This training included instruction on the use of the hotel's cleaning product, Echo Lab, which was the same product which Ms. Thompson was using at the time of the accident and had been using throughout her employment at Sandals. The training also covered information on uniform, footwear, guest interaction, sequence of cleaning and safety measures. In the hotel's sequence of cleaning, mopping was the last task.

Sandals required all housekeeping staff to wear closed-in non-slip shoes, which Ms. Thompson was wearing at the time of the accident.

[11] The housekeeping department conducted daily meetings where staff members were reminded of proper footwear, uniform and the sequence of cleaning.

[12] Ms. Thompson had 20 years of experience as a room attendant/housekeeper, most of the experience being at other hotels/resorts.

[13] The tiles in the room were a matte, pitted surface.

[14] After the accident, Ms. Thompson was taken to the Nurse's Station. She executed an Accident Injury Report and a Voluntary Employee Statement. The contents of those accounts differed from the account she gave at trial.

[15] She then underwent two (2) surgeries and now suffers from decreased mobility.

[16] Sandals does not dispute that Ms. Thompson fell. They do, however, dispute Ms. Thompson's evidence as to how the fall occurred.

The issue

[17] The key issue that arises for determination is whether Sandals breached its duty to provide Ms. Thompson with a safe system of work.

The law

[18] The Health and Safety at Work Act, 2002 prescribes the duty of employers with regard to safety at the workplace. Section 4 (1) provides:

> **"It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees."**

[19] In The Bahamas, the liability of occupiers is governed by common law principles as there is no statute governing Occupiers Liability. In **Wilsons and Clyde Coal Co. Ltd v English** [1938] A.C. 57, the House of Lords decided that Wilsons & Clyde Co Ltd, as an employer, had a duty of care to ensure a safe system of work

and this duty could not be fully delegated to another employee. Thus, the employers always remain responsible for a safe workplace for their employees and are vicariously liable for any negligence of another. This duty includes three aspects; providing proper materials, employing competent workers and providing valuable supervision.

[20] In **Hall v The Ruffco Holding Corporation Bahamas Ltd** [2008] 2 BHS J. No. 15, in considering the meaning of common law negligence, Adderley J (as he then was) stated at paras 24 and 25 of the Judgment that:

> **"24. When applied within the context of employer and employee, at common law the employer's duty of care is that implied in the rule of common employment as set forth in Wilsons & Clyde Coal Company Ltd v. English [1938] AC. 55 ["Wilsons & Clyde Coal Company"] cited by counsel for the plaintiff where Lord Wright at p. 84 described the employer's duty as follows:**
>
> > **"The obligation is threefold, as I have explained, i.e. "the provision of a competent staff of men, adequate material and a proper system and effective supervision."**
>
> **25 Halsburys Laws of England Volume 20 1911 edition at paragraph 234 states which is still good law:**
>
> > **"<u>It is an implied term of the contract of service at common law that a servant takes upon himself the risks incidental to his employment..."</u>**
> >
> > **<u>...</u>**
> >
> > **<u>"Apart from special contract or statute therefore, he cannot call upon his master, merely upon the ground of their relationship of master and servant, to compensate him for any injury which he may sustain in the course of performing his duties.</u>**
> >
> > **<u>...</u>**
> >
> > **<u>"The master does not warrant the safety of the servant's employment; he undertakes only that he will take all reasonable precautions to protect him against accidents..."</u>**
>
> **In Smith v. Baker & Sons [1891] A. C. 325 ["Smith v. Baker] at p. 360 Lord Herschell states:**
>
> > **"Where a person undertakes to do work which is intrinsically dangerous, notwithstanding that**

> **reasonable care has been taken to render it as little dangerous as possible he no doubt voluntary subjects himself to the risks inevitably accompanying it and cannot, if he suffers, be permitted to complain that a wrong has been done to him even though the cause from which he suffers might give to others a right of action.”** [Emphasis added]

[21] It is a well-established legal principle that where a person holds a particular position he will be expected to show the degree of knowledge normally expected of a person in that position and to guard against risks normally incidental to that position. Thus, Sandals could reasonably expect Ms. Thompson to appreciate and to guard against special risks and dangers inherent and ordinarily incidental to the tasks she was engaged to perform.

The evidence

[22] On the question of liability, the sole dispute between the parties is how the accident occurred. Ms. Thompson contended that she fell after mopping the floor. She further stated that she had completed cleaning the room in its entirety and was exiting when she fell. Sandals relied on two reports given by Ms. Thompson after the accident. According to those reports, Ms. Thompson said she had finished mopping and fell upon re-entry into the room after getting the vaccum cleaner.

[23] Ms. Thompson gave evidence on her own behalf and called a neurosurgeon, Dr. Ekedede and an orthopaedic surgeon, Dr. Gibson, both deemed medical experts in their respective fields. Sandals called 4 witnesses to testify on their behalf including the loss adjuster for their insurer, Iain Parish, executive housekeeper, Juanita McKenzie, Assistant Human Resources (“HR”) Manager, Dwayne Simpson and orthopaedic surgeon, Dr. David Barnett (deemed an expert in orthopaedic surgery).

Adrianna Thompson

[24] Ms. Thompson filed a witness statement on 17 January 2018 which stood as her evidence in chief at trial. She testified that, on the day of the accident, she cleaned a VIP room in response to the guest’s complaint and her subsequent assignment

to clean it. According to her, after she had completed the cleaning, as she was exiting, she slipped and fell backwards, hitting her head and shoulder in the hallway which was inside the room. She said that she was unable to brace herself for the fall because there was no railing and because she was, at the time, carrying the bucket in one hand and the mop in the other hand. She surmised that "*there must have been a substance in the hallway which I did not see when entering the room.*"

[25] Under cross-examination, Ms. Thompson conceded that at the time of the accident she was a room attendant and not a cook. She also accepted that she had been given a copy of her job description at the commencement of her employment and that the cleaning and inspection of guest rooms was within her job responsibilities.

[26] She suggested that it was possible that the guest might have dropped something on the floor after she had mopped which caused her to fall. When asked why it was not in her witness statement, she stated that she did not think it was necessary at the time. When asked whether she was alleging that it was the reason for the fall, she stated that she did not recall many things after she fell.

[27] She rejected the suggestion that the hallway floor was wet when she fell. She explained that the bucket had a ringer and the majority of the water would have been absorbed by the mop. Therefore, the floor was slightly damp. She also rejected the suggestion that she slipped on the damp floor after it had been mopped. She responded by saying that she had been working in that field for many years and it was the first time that she had fallen. She said that the floor was "*barely slightly damp*" and the non-skid shoes would have been able to hold it even if water was on the floor. She rejected the suggestion by Mrs. Sands, who appeared as Counsel for Sandals, that there was a risk of her slipping on the floor. She said that there was no risk because of the shoes which she wore.

[28] Ms. Thompson challenged the authenticity of the voluntary employee statement. She alleged that she believed it had been adjusted in that she saw cross-overs and the handwriting as well as the signature were not hers.

[29] Ms. Thompson confirmed that, after she had fallen, she did not remember immediately what had happened.

[30] She was shown photographs taken by Iain Parish, which she accepted were the tiles in the room, where the accident took place. She agreed that the tiles had a matte, pitted surface that was not shiny. She agreed that the matte, pitted tiles provide good resistance to slipping.

[31] She also accepted that she was wearing non-slip shoes because she appreciated that there is a risk of slipping when mopping.

Dr. Magnus Ekedede

[32] Dr. Ekedede, a Neurosurgeon, was deemed an expert witness by the Court. His evidence was based on the injuries suffered by Ms. Thompson and is therefore not useful for establishing liability since Sandals did not dispute that Ms. Thompson fell and suffered injuries.

Dr. Robert Gibson

[33] Dr. Robert Gibson, an Orthopaedic Surgeon, was deemed an expert witness in orthopaedic surgery. His evidence also related to the degree of injuries sustained by Ms. Thompson and is therefore not helpful in determining liability.

Sandals Injury Incident Report

[34] According to Sandals' Assistant HR Manager, Dwayne Simpson, the Sandals Accident Injury Report was taken by Sandals' employee, Antoinette Bowleg, shortly after the accident. According to the report, Ms. Thompson reported that when she had finished mopping, she went to get the vacuum cleaner and fell near the bathroom door into the bathroom, hitting her head on the tub. As she tried to get up from the floor, she fell back onto her right hand. She was on the floor for

about 4 minutes before she was able to get up. She then called housekeeping. Kesia Poitier and Juanita McKenzie came to her assistance.

Employee Voluntary Statement

[35] The Employee Voluntary Statement gave the very same account as the Sandals Injury Incident Report. It also bore her signature and is dated 22 February 2014.

Iain M. Parish

[36] Iain Parish's evidence is contained in his witness statement filed on 31 January 2018 (incorrect date in the Transcript of Proceedings which states 20 November 2017 but nothing turns on that). He is a Loss Adjuster who was engaged by Sandals' insurer to investigate the accident. He produced photographs (the photos shown to and accepted by Ms. Thompson as the tiles) which he said were the tiles in the room that Ms. Thompson cleaned. He alleged that when he went to take the photographs, he was informed by the staff that the tiles were the same ones that were there at the time of the accident. Room 4109 is a ground floor room and it is typical of many of the hotel pool of rooms.

[37] He testified that the tiles have a pitted, matte, non-slip surface to them. The tiles were well laid. He sought to establish the slip resistance of the tiles by giving evidence of his findings from an experiment. He said that he poured some water on the tiles and placed his shoe on the wet tile. His shoe/foot did not slip at all. The pitted surface of the tiles proved, in his opinion, to lend good slip resistance.

[38] Under cross-examination, it was revealed that Mr. Parish could not verify whether the tiles had been changed since the accident. However, the tiles in his photographs were the same as those that Ms. Thompson accepted were there at the time of the accident.

[39] Under further cross-examination, Mr. Parish stated that he did not test the slipperiness of the floor with lotion so he could not say whether the same result would have obtained if lotion had been on the floor. He conceded that he did not

test the slipperiness of the floor by walking but by putting his foot in it at an angle. He also conceded that he was not in a rush at the time of the experiment.

Juanita McKenzie

[40] Ms. McKenzie's evidence in chief is contained in her witness statement filed on 3 April 2018. She testified that she is the Executive Housekeeper at Sandals and had been employed there since January 2010. She said she was appointed Executive Housekeeper on 1 May 2013.

[41] Ms. McKenzie stated that, in addition to the theoretical training, Ms. Thompson was provided with practical training which involved being assigned to a more senior trainer for the first two weeks of her employment. She also stated that the tiles in the room where the accident occurred are matte and that no one including Ms. Thompson ever complained that the tiles posed a danger or were unusually slippery when wet. She maintained that there were no previous slip and fall accidents in the bathrooms or hallways of guestrooms. She added that the wearing of non-slip shoes is intended to minimize the risk of slipping.

[42] Ms. McKenzie also pointed out the discrepancy between Ms. Thompson's witness statement and her Employee Voluntary Statement. She stated that the statement alleged that, after mopping, Ms. Thompson was going to get the vacuum cleaner and she slipped upon re-entering the room.

[43] Under cross-examination, Ms. McKenzie insisted that the room was not a VIP area and that it was one of Ms. Thompson's assigned rooms. She rejected the suggestion by learned Counsel for Ms. Thompson, that what Ms. Thompson responded to was an emergency. She explained that it was a complaint from the guest that the room was not up to the guest's cleaning standard. She stated that there had been no complaint that the guest was ill. To her knowledge, the guest was well.

[44] Ms. McKenzie testified that, after the fall, she went to the area and met Ms. Thompson as she was walking out of the room. They walked together to the

Nurse's Station. She asserted that Ms. Thompson was able to walk and talk. She admitted that, after the accident, she did not check the floor. She said that if anyone would have done so, it would have been Ms. Thompson's immediate supervisor.

[45] In re-examination, Ms. McKenzie stated that she was not informed by the immediate supervisor who would have inspected the room that there was lotion or other greasy substance on the floor. She also stated that when they were walking to the Nurse's Station, Ms. Thompson did not mention the possibility of lotion or any other substance being on the floor. Finally, she agreed that if the cause of the fall was otherwise than mopping the floor, she would have expected it to be in the Sandals Injury Incident Report as well as the Employee Voluntary Statement.

Dwayne Simpson

[46] Mr. Simpson filed a witness statement on 19 December 2019 which stood as his evidence in chief at trial. His evidence was based on his review of Ms. Thompson's file.

[47] He was the Assistant HR Manager at the time of this trial. He did not, however, commence employment at Sandals until 31 March 2014, i.e. after the accident. He said that he did not prepare Ms. Thompson's Employer's Voluntary Statement.

[48] He testified that all staff members undergo orientation and training which includes instruction on the hotel rules, guest interaction, dress code, uniform and footwear. He further testified that all housekeeping staff are instructed to wear closed in non-slip shoes. After orientation, said Mr. Simpson, Ms. Thompson received training which included instruction on cleaning products, the sequence of cleaning, safety measures and proper uniform and footwear.

[49] Mr. Simpson stated that, during morning meetings, if staff members are not appropriately dressed, they are given the opportunity to leave and change or they are referred to Human Resources.

[50] He recalled the contents of the Sandals Injury Incident Report and the Employee Voluntary Statement. He stated that there is no record of Ms. Thompson or any other staff or guest ever having complained to senior staff members that the floor tiles posed a hazard or became unusually slippery when damp or wet.

[51] Under cross-examination, Mr. Simpson accepted that the accident had happened before his employment at Sandals but he could speak to what is in her file. He stated that he does not prepare documents such as the Sandals Injury Incident Report.

[52] Learned Counsel, Mrs. Thompson appearing as Counsel for Ms. Thompson challenged the value of the witness' evidence since, according to her, he was not employed with Sandals at the time of the accident.

[53] Under re-examination, Mr. Simpson confirmed that it was Sandals' practice to place incident reports on employees' files and that Ms. Thompson's incident report was put on her file. He also confirmed that the policies and procedures which existed at the commencement of his employment at Sandals also existed at the time of the accident.

Dr. David Barnett

[54] Dr. Barnett filed a witness statement on 21 February 2018 which stood as his evidence in chief at trial. He was deemed an expert witness in orthopaedic surgery by the Court. As with the other expert witnesses, most of his evidence was concerned with Ms. Thompson's injuries.

[55] The main purpose of Dr. Barnett's evidence was to establish that Ms. Thompson had a pre-existing condition and that the accident aggravated, rather than caused, some of her injuries. He did not dispute that Ms. Thompson sustained new injuries as a result of the accident.

Analysis and findings

[56] This is a civil case wherein the standard of proof is based on the preponderance of evidence. Having had the opportunity to hear, see and observe the demeanour of the witnesses as they testified and, having analysed all of the evidence including the documentary evidence, I found all of the witnesses, with the exception of Ms. Thompson, to be credible.

[57] With respect to Ms. Thompson's account of how the accident occurred, I found it to be incompatible with the account as contained in the Employee Voluntary Statement and the Incident Injury Report. Since both reports are identical and were made contemporaneously, I prefer them to Ms. Thompson's evidence. I concluded that Ms. Thompson fell upon re-entering the room with the vaccum cleaner. In falling, she hit her head on the tub. I observed that the explanation given by Ms. Thompson for her differing accounts was that she had lost consciousness after the accident and that she may have forgotten some things initially. However, she had not mentioned any loss of consciousness in the reports to Sandals. Furthermore, the differences in the accounts do not involve omitted information but rather differences with respect to where and what she was doing when she fell. I believe that, at that time, Ms. Thompson was less concerned about what facts might have been favourable or unfavourable to a successful trial. Additionally, she challenged the validity of the Employee Voluntary Report, which challenge I do not accept. I have scrutinised the report and I do not find cross-outs or that the signature was not hers, as she alleged. If she was going for the vacuum cleaner after having mopped the floor, as I have accepted, then she did not follow the hotel's cleaning sequence policy.

[58] Further, I am satisfied that Sandals provided Ms. Thompson with more than sufficient training and safety warnings to allow her to carry out her duties safely. I also accept Ms. Thompson's evidence that she did not make the floor soaking wet, but only damp with the help of the ringer in the bucket provided by Sandals.

[59] In addition, I do not believe Ms. Thompson's evidence that the guest may have dropped something on the floor after she had mopped it. This was mentioned for the first time in cross-examination at trial; a few years after the accident. Had this been a true suspicion of hers, I think that she would have mentioned this to a member of staff or to Ms. McKenzie who walked with her on her way to the Nurse's Station. She would have also included it in the Sandals report(s) or, at the very least, in her witness statement.

[60] The evidence that the surface of the bathroom and hallway tiles were matte and pitted was uncontroverted. I also concluded that the tiles offered good resistance against slipping when wet relative to high gloss tiles. I also accepted that there have not been any complaints about the quality of the tiles.

Discussion

[61] The critical issue in this action is whether Sandals took all reasonable steps that it could have to prevent the accident.

[62] Learned Counsel Mrs. Thompson submitted that, by virtue of the neighbourhood principle in the landmark case of **Donoghue v Stevenson** [1932] AC 562, Sandals owed a duty of care to Ms. Thompson. According to her, this duty of care obligated them to ensure Ms. Thompson's safety by avoiding the injury. In support, she cited **Indermaur v Dames** (1866) L.R. 1 C.P. 274 which affirmed that the employer was under a duty to use "reasonable precautions" to avoid danger. Mrs. Thompson also relied on **Blyth v Birmingham Water Works** [1856] 11 Exch. 781 at 784. Anderson B said:

> **"Negligence is 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 and reasonable man would not do."**

[63] The principle derived from **Blyth** is that whether the defendant's conduct has been negligent is determined by the risk factor which takes into account (i) the likelihood

of harm; (ii) the seriousness of that; (iii) the importance and utility of the defendant's conduct; and (iv) the practicability of taking precautions.

[64] According to learned Counsel Mrs. Thompson, Sandals failed to discharge its duty of care and it had not taken sufficient steps to ensure Ms. Thompson's safety. She submitted that they ought to have kept a record of what complaints had been made. While she advanced the relevance of the length of time that the guest had been in the room before requesting it to be cleaned, she led no evidence to this effect. She also submitted that Sandals was negligent by failing to have housekeeping supervisors inspect the room that required cleaning before sending Ms. Thompson to clean it. She asserted this would have constituted the reasonable standard of prevention in the circumstances.

[65] On the other hand, Mrs. Sands submitted that Sandals did not breach the duty it owed to Ms. Thompson. She correctly contended that the duty owed by employers to employees was not a duty of guaranteeing safety but a lesser duty of taking all reasonable steps to avoid injury. She next argued that the danger which the occupier is obligated to prevent the invitee from, is unusual danger, as opposed to all inherent risks. She emphasised that although the employer undertakes to take reasonable precautions to protect the employee against accidents, the law acknowledges that the employer does not warrant the employee's safety and the reasonable precautions do not negate the existence of inherent risks where a person undertakes work that is intrinsically dangerous. This is an accurate exposition of the law.

[66] Mrs. Sands referred to a litany of cases from England as well as this jurisdiction which deals with employers' liability for slip and fall accidents suffered by their employees. I shall confine myself to the Bahamian cases as, in my judgment, they adequately expound the law.

[67] The first, which bears close similarity to the present case, is **Hall** [supra]. The plaintiff, a maid, then employed at the Nassau Beach Hotel, slipped and fell during

the course of her employment while mopping the wet floor of a bathroom in one of the guest rooms of the hotel. As a maid, she was in charge of cleaning 14 rooms per day assigned on a floor in the defendant's hotel. Her duties included cleaning floors, bathrooms, dusting, vacuuming and the like. The plaintiff had cleaned the room in question for about three years. Upon entering the room, the plaintiff saw a considerable amount of water on the bathroom floor. She used the bed sheets and towels to soak up the water. After soaking up so much of the water, in her judgment, to make it safe for her to enter, the plaintiff then entered the bathroom with a mop to take up the residue of water in the corners when she slipped and fell hitting and injuring her right shoulder. At the time of the fall, the plaintiff was wearing rubber gloves and her own rubber soled shoes not supplied by the defendant. The claim of the plaintiff was considered under the common law of negligence and the common law of occupier's liability.

[68] In his Judgment, Adderley J stated, at paras 30-35:

> **"30 On the evidence of this case when she slipped and fell the plaintiff was wearing rubber soled-shoes similar to the ones nurses wear, although not provided by the defendant, and rubber gloves provided by the defendant. When asked what else the defendant could have done, she stated that she had no answer.**
>
> **31 In giving evidence of her job description the plaintiff said she had been employed for about 20 years as a maid with the hotel and responsible for cleaning the 14 rooms on that floor for about 3 years, and she had seen water on the bathroom floors on many occasions although not as much as was on the floor in the instant case.**
>
> **32 Counsel for the defendant submitted that it was part of the plaintiff's job description and duty as a maid that she would come into contact with wet surfaces in guest bedrooms in the process of cleaning the bathtubs, toilets and mopping the floors. Furthermore, in this case she took the precaution that she thought adequate. It is common ground that the floor was left wet by a guest of the hotel not by any breach of duty by the defendant.**
>
> **34… there is no evidence that any staff of the defendant or the defendant itself was responsible for the slip; no evidence was led about what materials ought to have been supplied to the employee, so it was impossible for the court to decide whether the defendant was in breach of supplying the same. Similarly reviewing such evidence as there was of a system of work there was no evidence that there was a breach of**

> **the same which led to the accident. There was no evidence of lack of supervision which led to her slipping on the floor. So there is no evidence that the obligations of the defendant to the plaintiff at common law were in any way breached, before or after the accident.**
>
> **35 <u>It is the duty of the plaintiff to prove on the balance of probability that the defendant was negligent. This must be done by evidence and on the evidence the plaintiff has fallen far short of the mark. Such evidence as there was of the defendant's provision of staff, materials, and a system of work and the other evidence do not support the claim that the defendant was guilty of negligence or breach of its common law duty under the head of occupier's liability in accordance with principles laid down in Donaghue, Lochgelly, Wilsons & Clyde Coal Company and Smith v. Baker."</u>**

[69] Adderley J found the defendant was not liable either under the head of negligence or occupiers liability. He dismissed the action and awarded costs to the defendant to be taxed if not agreed.

[70] **Sturrup v. Resorts International (Bahamas) 1984 Ltd.** [1991] BHS J. No. 103 is another Bahamian case which considered similar issues raised as in the case at bar. The facts are that the plaintiff was employed by the defendant at one of its hotel properties on Paradise Island, the Britannia Towers Hotel, as a 'Food Checker'. Her duties were to receive orders by guests of the hotel who had ordered meals by room service and to convey those orders to the kitchen, which adjoined her work station. Ordinarily, she would pass the order to a waiter or bus boy but if none of them was immediately available she would have to go into the kitchen herself, read the order off and pass it to the cook. While she was not a part of the staff who worked in the kitchen, at some date before the incident giving rise to this action, she and persons with similar responsibilities had been instructed to satisfy themselves that what was on the printed menu was in fact available in the kitchen. It appeared that guests had complained of placing orders only to be told later that the item ordered was not available. The plaintiff, therefore, on reporting for duty at 3:00 p.m. each day, would immediately make a circuit of the kitchen and inspect the pastries, the contents of the freezer and the soups on the stove and then go to her own work station. The area in front of the stove - in fact between the stove and an arrangement of sinks and shelves in the middle of the kitchen - had a certain

type of mat, and, on 7 November 1983, as she was completing her check of the kitchen, the heel of her shoes caught in the mat and she fell.

[71] Hall J (as he then was), in dismissing the plaintiff's claim, stated at paras 53-55 of his Judgment that:

> **"53.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. <u>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</u>.**
>
> **54.<u>Each person, even while performing his duty as an employee, has to assume a measure of responsibility for his own safety</u> and, by way of example, the plaintiff upon her daily circuit of the kitchen would have to be alert to several potential hazards – not from any breach of duty on the part of the defendant – but because such hazards would exist in the kitchen as would not exist at the Plaintiff's work station or in other parts of the hotel and only from the mere fact that it is a hotel kitchen.**
>
> **55.In my judgment, the plaintiff has failed to show that her injury was caused other than by the style of shoe she chose to wear having became caught in a mat properly placed by the Defendant for the safety of its workers."**[Emphasis added]

[72] Another case from this jurisdiction that I refer to is **McKenzie v. Kerzner International and Another** [2013] 1 BHS J. No. 226. In that case, the plaintiff was employed by the defendants as a waitress in the Bimini Road Restaurant in the Atlantis Resort. As the plaintiff walked away from the cashier in the kitchen area towards the main dining room, she fell to the ground when she walked on a mat which gathered under her foot and which was allegedly soaked with grease and water.

[73] Evans J (as he then was) held that the defendants had recognised the potential dangers and had taken reasonable steps to avoid the same. The plaintiff's claim was dismissed with costs to the defendants. <u>The learned judge accepted that the duty of the employer is not to guarantee the complete safety of an employee or to eliminate the danger completely. The test is whether the safety measures that were implemented by the defendant were reasonable. He stated that it has to be</u>

recognised that there are inherent dangers in certain work places and that notwithstanding best efforts accidents will occur.

[74] His Lordship referred to the dicta of Hall J in **Sturrup** that the mere fact that an injury is sustained by a person on the premises of another, even in the work place, does not, without more, establish negligence. Each person while performing his duty as an employee has to assume a measure of responsibility for his own safety and has to be alert to hazards which exist in the workplace.

[75] Applying the law to the facts of the present case, in my judgment, Sandals had taken all the reasonable steps to ensure Ms. Thompson's safety by providing her with theoretical and practical training which included instruction on cleaning products, the sequence of cleaning, safety measures and proper clothing and footwear. In addition, the matte, pitted tiles, which did not lend themselves as easily to slipping as glossy tiles, was also a precautionary measure taken by Sandals.

[76] In those circumstances, I cannot say that Sandals was negligent in their efforts to safeguard their premises. On the contrary, Ms. Thompson has failed to demonstrate that her injuries was caused by Sandals. Each person, while performing his/her duty as an employee, has to assume a measure of responsibility for his/her own safety and, I am afraid, Ms. Thompson did not.

[77] Accordingly, I will dismiss her claim.

Costs

[78] In civil proceedings, costs are always discretionary. A good starting point is Order 59, rule 3(2) of the Rules of the Supreme Court ("RSC") which states:

> "**If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.**"

[79] Then, section 30(1) of the Supreme Court Act provides:

> "**Subject to this or any other Act and to rules of court, the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid.**"

[80] Order 59, rule 2(2) of the RSC similarly reads:

> "**<u>The costs of and incidental to proceedings in the Supreme Court shall be in the discretion of the Court and that Court shall have full power to determine by whom and to what extent the costs are to be paid</u>, and such powers and discretion shall be exercised subject to and in accordance with this order.**"[Emphasis added]

[81] As a general rule, the successful party, as in this case, Sandals, is entitled to its costs. But that does not preclude a judge from departing from this normal practice. However, I am duty bound to give reasons for any departure: see **Eagil Trust Co Ltd v Pigott-Brown and Another** [1985] 3 All ER 119 at 122 - per Griffiths LJ.

[82] I am of the considered opinion that since Ms. Thompson suffered serious injuries at work, the claim was not frivolous or vexatious. She brought it in good faith. I should not condemn her in costs. At the time of this trial, she was unemployed and may still be so today. In addition, she is 4 months shy of 62 years. Job prospects for her may be non-existent given her disabilities.

Conclusion

[83] My order shall be that the action is dismissed. Each party shall bear their own costs.

Dated this 23rd day of February 2022

Indra H. Charles
Justice