

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Commercial Law & Equity Division
Claim No. 2025/CLE/gen/00017**

B E T W E E N

HUDSON MCCLEAN

Claimant

AND

**DEVON SAWYER
(dba DADDY D'S NIGHTCLUB)**

Defendant

Before: Her Ladyship The Honourable Madam Justice Cheryl Bazard KC
Appearances: Mr. Quintin Percentie for the Claimant
Mr. Devard Francis for the Defendant

Hearing Dates: 11 November 2025

**Civil – Personal Injury - Negligence - Assault – Special Damages – General Damages –
Exemplary Damages**

RULING

BAZARD KC, J:

[1.] This is my ruling on a trial concerning a claim for personal injuries resulting from an assault by the employees of the Defendant. Mr. Hudson McClean (“**the Claimant**”) alleged that on 19 February 2022, he was assaulted by two security officers at Daddy D’s Nightclub, and that he suffered severe injuries to his hip. Mr. Devon Sawyer (“**the Defendant**”), proprietor, denied the claim.

[2.] In the absence of any competing evidence, the Court finds the Defendant vicariously liable for his employees’ assault on the Claimant. The Claimant failed to prove part of his claim for special damages. The Court therefore awards Judgment for the Claimant with special damages and general damages to be assessed by the Registrar; together with costs to be taxed if not agreed.

[3.] The hearing occurred on 11 November 2025. It should be pointed out that on the day of the hearing, Mr. Francis, Counsel for the Defendant, appeared without the Defendant or witnesses. Mr. Francis further informed the Court that he had not prepared skeleton arguments as per the case management Order dated 25 August, 2025 and exited the Court after being advised that the Court would continue with the trial on a date agreed by him. The matter proceeded in the absence of Mr. Francis.

[4.] As a consequence, the Claimant's witnesses gave their evidence without cross-examination, and no evidence was adduced on behalf of the Defendant.

Background

[5.] The Claimant commenced this action against the Defendant by filing a Standard Claim Form on 13 January 2023, seeking the following reliefs:

- i. General Damages \$400,000.00**
- ii. Special Damages \$290,000.00**
- iii. Exemplary Damages \$50,000.00**
- iv. Legal practitioner’s fixed costs on issue \$88,000.00**

[6.] On 13 January 2023, the Claimant also filed a Statement of Claim with evidence to support his claim, alleging the following:

PARTICULARS OF NEGLIGENCE OF THE DEFENDANT

- (i) Failing to provide a safe recreation area for the enjoyment of his patrons, who were paying customers to the establishment.**
- (ii) Failing to make a suitable, sufficient and timely interest of the risks to the health of the Claimant when dealing with his medical condition claim and failing to assist with his medical care.**
- (iii) Failing to take appropriate steps to reduce the risk of any further injury to the Claimant or take any and/or all adequate action for rendering harmless any attendant risks and to provide for the reasonable medical treatment of the Claimant.**
- (iv) Failure in all circumstances to discharge the common law duty of care owed towards all patrons.**

PARTICULARS OF ASSAULT

- (i) The Defendant is responsible for overseeing and managing its employees, staff and/or agents.
- (ii) The Claimant while conversing with the Defendant was violently assaulted and struck in the back of his head by two security guards who were employed by the Defendant as staff, employees and/or agents.
- (iii) The claimant reported being unable to move his lower limb and experiencing pain in his right rib.
- (iv) He sustained severe injuries to the hip and lower back.
- (v) The assault carried out by the Defendant's employees, staff, and/or agents was unlawful, unjustified and not in line with their responsibilities.
- (vi) The purpose of the Defendant's security officers, employees, staff, and/or agent's activities was to injure and humiliate the Claimant.

PARTICULARS OF INJURY

The Plaintiff suffered:

- a. Right trans cervical neck of femur fracture
- b. Shock and severe pain
- c. Post traumatic osteoarthritis
- d. Serious back and nerve injury
- e. Partial impairment of 15%

PARTICULARS OF SPECIAL DAMAGES

Air ambulances:	\$ 5,000.00
Medical Notes:	\$ 607.00
Physiotherapy	\$ 300.00
Cost to and from hospital	\$ 1,920.00
Home Care	\$ 45,500.00
Cost of transportation to and from Eleuthera	\$ 1,673.00
Hip Replacement Surgery	\$ 80,000.00 (Estimated)
Loss of Earnings	\$155,000.00

Defendant's Response

[7.] The Defendant filed a Defence on 5 March 2025, denying the allegations and asserting that he was the initial victim of an assault and that he acted in self-defence. The Defendant maintained that his establishment is safe and well-maintained, and claimed that the Claimant had pre-existing medical conditions. The Defence also stated that the security personnel did not physically attack the Claimant and that their only aim was to separate the parties and prevent escalation. Paragraphs 5 and 6 of the Defendant stated the following:

"5. RESPONSE TO PARTICULARS OF NEGLIGENCE

5.1 The Defendant asserts that his establishment is well built, structurally sound, and maintained with the highest safety standards to ensure the security and

comfort of all patrons. Adequate safety measures have been put in place to promote a safe and enjoyable environment for everyone who enters the nightclub.

5.2 Additionally, the Claimant approached the Defendant following the incident and proposed a monetary settlement of Forty Thousand Dollars (\$40,000.00). The Defendant rejected this demand, as he was aware that the Claimant had preexisting medical conditions before entering the nightclub and was attempting to exploit the above-mentioned incident for financial gain.

6. RESPONSE TO PARTICULARS OF ASSAULT

6.1 The Defendant firmly contends that he was the initial victim of assault in this matter. The Claimant initiated the physical altercation by wielding a weapon in an attempt to strike the Defendant. In response to this unprovoked attack, the Defendant acted in self-defense to protect himself from harm.

6.2. At no point did security personnel physically attack the Claimant. Their sole objective was to separate the Claimant and the Defendant in order to prevent further escalation. The altercation was a direct result of the Claimant's aggressive behaviour, fueled by excessive alcohol consumption, and his unwarranted attack on the Defendant. Given the circumstances, the Defendant's actions were solely in self-defense against a highly intoxicated and belligerent individual.

[8.] On 8 April 2025, the Claimant filed a Reply denying the Defendant's claims. The Claimant further submitted the Certificate of Conviction in case number 1-22-020621: Commissioner of Police v. Devon Sawyer D.O.B. 18/9/1974. The Charge was Causing harm contrary to section 266 Penal Code Chapter 84. The Certificate is under the signature of Magistrate Kara G. Turnquest Deveaux. The Certificate of Conviction reads:

The above-named Defendant, Devon Sawyer was arraigned in this Court on the 4th April 2022 on the above-mentioned count. He pleaded not guilty to the said count and the matter was set for trial.

On the 27th October 2022 the Defendant appeared with Attorney Devard Francis and elected a summary trial and plead guilty to Causing Harm. The Court accepted his unequivocal plea of guilt and convicted him on the said count.

The Court fined Defendant Devon Sawyer as to the count fined sum of \$500 in lieu of payment the Defendant was to serve or (sic) six (6) months imprisonment at the Bahamas Department of Correctional Services. Defendant paid fine by way of receipt S973104 and #254582. The matter was completed.

Issues

[9.]. The issue for determination is:

- 1. Whether the Defendant is vicariously liable for his employee's assault on the Claimant.**
- 2. What damages, if any, have been proven and are recoverable?**

Evidence and Finding of Facts

[10.] The Court heard from three witnesses, two witnesses of fact and an expert witness who provided witness statements and gave sworn evidence. The witnesses were Hudson McClean, Christine Rolle and Dr. Carlton Chambers, a Consultant Orthopedic Surgeon within the Division of Orthopedics in the Department of Surgery in the Princess Margaret Hospital . No cross-examination occurred, as the Defendant did not participate. As such, the evidence for the Claimant was not challenged.

[11.] The Defendant's decision not to participate further in the proceedings meant that the Claimant's witnesses were not subjected to cross-examination and no evidence was called on the Defendant's behalf. While the absence of any challenge to the Claimant's evidence is a relevant consideration, it does not relieve the Court of its duty to scrutinize the evidence carefully. The burden of proving the claim remained throughout on the Claimant, who was required to establish his case on a balance of probabilities.

Claimant's evidence

[12.] The Claimant's evidence is contained in his witness statement which was signed on 2nd September 2025. I have set out below the relevant parts of his statement:

“3. I was a patron at the Defendant's Night Club on or about 19th day of February, A.D., 2022.

4. On or about the 19th day of February, A.D., 2022, I received an invitation to the Defendant's nightclub from two American visitors that had befriended me at the Harbour Island Vichum Club located on Harbour Island earlier that evening.

5. That after accepting the American visitors' offer, I went to the Vichum Club. The American visitors paid for both their and my admission to the nightclub, which included a drink and a wristband as per the establishment's policy.

6. That I recall sitting at the bar and having amicable conversations with the two American visitors and other patrons.

7. That sometime later I went to the bar counter of the Defendant's establishment, to enquire about the complimentary drinks with the bartender.

8. That the Defendant enquired as to how I came to be in possession of the wristband; and the I expressly explained that I acquired the same by virtue of being a paying patron.

9. That while standing and having conversation with the Defendant, I observed two security guards, one known to me and the other a Haitian national that I recognized from being in the local community approaching me from the rear.

10. That I vividly recalled being struck from behind by one of the approaching security guards.

11. That I must have fainted apparently as I recalled being on the ground outside of the night club sometime later and in grave pain about my body and head.

...

17. The following day I was transported to the Accident and Emergency Section of the Princess Margaret Hospital once arriving to New Providence.

18. That I was assessed at Princess Margaret Hospital on or about the 22nd February A.D., 2022 and received an X-ray of the pelvis which revealed a Right trans cervical neck of femur fracture.

19. That I continued to suffer pain to the right hip and was assessed to have decreased range of motion secondary to pain.”

[13.] Dr. Carlton Chambers’ witness statement was filed on 31 October 2025 and serves as his evidence in chief. Dr Chambers testified that he was the attending physician who saw the Claimant in February 2022 at Princess Margaret Hospital. He stated that the recommended treatment for the Claimant was a total hip replacement. He explained that the surface of the socket is worn out and that without hip replacement surgery, the Claimant will not have a functional joint without pain and optimal function.

[14.] The witness statement of Christine Rolle was filed on 17 October 2025. Ms. Rolle, the Claimant’s grand aunt, confirmed that she cared for the Claimant while he convalesced at her residence. She confirmed that she cared for the Claimant during his recovery and transported him to and from the hospital. She stated that he was readmitted to hospital due to complications arising from the injury and that upon release, he stayed with her and relied on her for assistance due to his limited mobility.

Law and Analysis

Vicarious Liability

[15.] The first issue for consideration is not whether the employees committed an intentional tort, but whether the assault was so closely connected with the duties entrusted to them that it would be fair and just to hold the Defendant vicariously liable.

[16.] When assessing whether the Defendant is vicariously liable for his employees’ actions, the general principle is that employers are generally liable for wrongful acts committed by employees during their employment. In **Lister v Hesley Hall Ltd [2002] 1 AC 215**, Lord Millett appropriately set out the test on page 249:

“Employers have long been held vicariously liable in appropriate circumstances for assaults committed by their employees. Clearly, an employer is liable where he has placed the employee in a situation where he may be expected on occasions to have to resort to personal violence: see **Dyer v Munday [1895] 1 QB 742**, where the employer was held vicariously liable for a criminal assault committed by his employee while attempting to repossess his employer’s property.

[17.] In support of its contention that the Defendant is vicariously liable for the employee’s conduct, the Claimant relied on the case of **Bayley v The Manchester, Sheffield and Lincolnshire Railway (1872) L. R. 7 C. P. 415** at p. 420, where Willes J stated the following:

“...A person who puts another in his place to do a class of acts in his absence, necessarily leaves him to determine, according to the circumstances that arise, when an act of that class is to be done, and trusts him for the manner in which it is done; and consequently he is held answerable for the wrong of the person so entrusted either in the manner of

doing such an act, or in doing such an act under circumstances in which it ought not to have been done; provided that what was done was done, not form any caprice of the servant, but in the course of the employment...”

[18.] The Claimant's counsel, Mr. Percentie, argued that the Defendant is vicariously liable for the wrongful acts of his employees. He pointed out that the Claimant was assaulted by security guards employed by the Defendant, emphasizing that the Defendant has a non-delegable duty to provide a safe environment for patrons. Counsel referenced the following cases *Lister v Hesley Hall* [2002] 1 A. C. 215, *Wilson's and Clyde Coal Co Ltd v English* [1938] A. C. 57, and *Bayley v The Manchester, Sheffield and Lincolnshire Railway* (1872) L. R. 7 C.P. 415.

[19.] The evidence establishes that the individuals who assaulted the Claimant were employed as security officers at the Defendant's nightclub. Their duties necessarily included maintaining order, controlling patrons and intervening in disturbances.

[20.] The Claimant's evidence, which was unchallenged at trial, was that while he was speaking with the Defendant he was struck from behind by two security officers employed by the Defendant.

[21.] Although the Defendant pleaded that the security officers merely attempted to separate the parties, he elected not to give evidence in support of that allegation. I therefore accept the Claimant's evidence.

[22.] Applying the close connection test in *Lister*, I conclude that the wrongful assault was sufficiently connected with the employee's assigned duties that the Defendant is vicariously liable.

[23.] I find on the balance of probabilities that the Claimant was unlawfully assaulted by the Defendant's security personnel.

[24.] Having found that the assault was committed by employees acting within the field of activities assigned to them, the Defendant is vicariously liable for their wrongful conduct.

Special Damages

[25.] It is well established that special damages are awarded to compensate a Claimant for actual out-of-pocket expenses and quantifiable losses incurred as a direct consequence of a defendant's wrongful conduct. The law requires that a Claimant specifically plead each item of special damage and adduce cogent evidence in support of the losses claimed. It is trite law that special damages must not only be specifically pleaded but must also be strictly proven.

[26.] The Claimant is claiming the following as special damages:

- a. Air Ambulances: \$5000.00
- b. Medical Notes: \$607.00
- c. Physiotherapy: \$300.00
- d. Cost to and from hospital: \$1,920.00. (\$40 for a 3-month period – 4 times per week)

e. Home care:	\$45,500.00 (\$350.00 per week times 52 weeks for 2.5 years)
f. Cost of transportation to and from Eleuthera to New Providence:	\$1673.00 (\$239 x 7)
g. Hip replacement surgery:	\$80,000.00 (estimated cost)
h. Loss of earnings:	\$155,000.00 (\$400.00 per week times 52 weeks x 2.5 years)
TOTAL	\$290,000.00

[27.] It is the Claimant's responsibility to prove, with credible and admissible evidence, that each expense was reasonably incurred directly due to the Defendant's actions, and that the claimed amounts are correctly calculated and supported by the evidence presented to the Court. I examined each head of damage individually.

[28.] The general rule when assessing special and general damages was laid down by Lord Goddard in *British Transport Commission v Gourley* [1956] AC 185 where at page 206 he stated:

"In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as special damage, which had to be specially pleaded and proved. This consists of out of pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. Secondly, there is general damage which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future."

[29.] In *Felix Thomspson & Thomas Bowe v Fenton Strachan et al* 2014/CLE/gen/00303, consolidated with 2015/CLE/gen/00141, Charles J (as she then was) cited Sir Michael Barnett's dicta from *Michelle Russell v (1) Ethylyn Simms and (2) Darren Smith* [2008/CLE/gen/00440], which states:

"It is settled law that special damages must be pleaded and proven. The Court of Appeal in *Lubin v Major* [No.6 of 1990] said:

43. "From the above reasoning, it is clear that what the learned Registrar is saying, correctly in our view, is that a person who alleges special damage must prove the same. It is not in general sufficient for him merely to plead special damage and thereafter recite in oath the same facts, or give evidence in an affidavit without any supporting credible evidence aliunde, and sit back expecting the tribunal of fact to accept his evidence is not controverted, even though the particular damage in the sense of a loss having been incurred appears reasonably improbable and or the money value attributed to the said loss or damage appears unlikely and or unreasonable viewed in the context of the susceptibility of human beings in general to overestimate and exaggerate loss, damage, and suffering without any intention whatsoever of being deliberately dishonest...."

[30.] This position was also endorsed by Sawyer, CJ (as she then was) in *Shutt v. Island Construction Co.* [1997] BHS J. No. 104, when she said:

“Special damages must not only be specially pleaded but must be strictly proved (or agreed). Here, while the cost of nursing care has been pleaded, for obvious reasons, it cannot be proved.

It will be noted however, that the Court of Appeal indicated that it should be dealt with by way of general damages for loss of amenity - i.e. for the period between the accident and the trial.”

Air ambulance

[31.] As it concerns air ambulance service, on the evidence it is stated that the Claimant travelled from Eleuthera to Nassau on an emergency flight. Further, the Claimant travelled from Eleuthera to Nassau and had made a subsequent return trip to Nassau from Eleuthera. The Claimant has produced no record of payment. It is my determination that the figure pleaded is not recoverable.

Medical notes and physiotherapy and travel expense

[32.] Regarding the payment for medical notes and physiotherapy, I acknowledge that the medical records support the Claimant's claim. I also accept that the Claimant traveled from Eleuthera to Nassau for hospital visits and follow-ups, which were due to the injury sustained at Daddy O's nightclub.

[33.] The Claimant provided no evidence verifying the claimed amounts for the Court's review. Without supporting evidence, the sums claimed cannot be recovered.

Home care

[34.] Regarding the claim for home care, I accept the Claimant convalesced at his grand aunt's residence after his release from hospital. I also accept that she took care of him. No receipts, invoices, or payment records have been provided for review or recovery. It is insufficient to provide only a quantum figure to the court. The amount claim is not recoverable.

Loss of earnings

[35.] In the Statement of Claim, the Claimant claimed a loss of \$155,000.00. He testified that he was unemployed before the accident and that his work involved building cabinets and installing tiles.

[36.] I accept that the Claimant's earning capacity has been adversely affected, but his claim for past loss of earnings was unsupported by documentary evidence identifying his actual earnings before the assault. Accordingly, this specific amount was not proven. The Court however awards damages for loss of future earnings to be assessed by the Registrar.

Replacement surgery

[37.] The principal evidence the Claimant relied on includes a PMH letter signed by Dr. Chambers, Department of Orthopaedics Admission Note, Operative notes and nursing records, which I accept as objective evidence that the Claimant needs surgery. During his testimony,

Dr. Chambers confirmed that he had not given a quote to the Claimant for the cost of the procedure as it could only be determined closer to the time of the surgery.

[38.] Accordingly, having found a causal link between the assault on Mr. McClean and his injuries, which resulted in the need for hip replacement damages are awarded for the cost of the future surgery.

[39.] In the present matter, the Claimant endured a significant injury to his right hip. According to Dr. Chambers, the Claimant requires a total hip replacement for functional joint movement without pain and optimal function, and that it is advisable that the procedure be undertaken at the earliest opportunity, as the Claimant exhibits symptoms of osteoarthritis in the joint.

[40.] The Court observes that the Claimant was unemployed before the incident and continues to be unable to work as a cabinet builder and tile layer, roles that require high mobility. Consequently, his earning capacity is considered reduced, given the uncertainty of employment due to his declining range of motion.

[41.] Despite the Defendant's absence from the trial, I am obliged to consider the principles of limitation and their potential implications in this case. The limitation period is not a concern, as the claim was lodged on 13 January 2023, which falls well within the three-year statutory limitation. Although the Claimant sought immediate medical assistance, he has not had his hip replacement surgery. There is no evidence suggesting that the Claimant caused the injury. I am convinced that the assault was the cause of the Claimant's injuries.

Res judicata

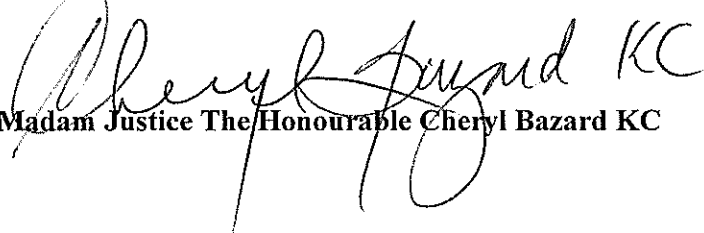
[42.] The Defendant's criminal conviction does not render the present proceedings res judicata because the criminal prosecution and this civil claim involve different causes of action and different legal issues. The conviction may have evidential significance, but it does not determine the civil claim. Liability in these proceedings has been determined upon the evidence adduced before this Court.

Conclusion

[43.] Accordingly, judgment is granted to the Claimant with damages to be assessed by the Registrar.

[44.] Costs is awarded to the Claimant to be taxed, if not agreed.

Dated the 18th day of August, A.D., 2026


Madam Justice The Honourable Cheryl Bazard KC