

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2020/CLE/gen/00667

BETWEEN

PAULETTE MAJOR

Plaintiff

AND

XTRAVALU FOOD STORES LTD.

Defendant

Before Hon. Chief Justice Sir Ian R. Winder

**Appearances: Sydney Campbell and Cyril Ebong for the Plaintiff
Audley Hanna Jr. with Oluwafolakemi Swain for the Defendant**

6 October 2022, 7 October 2022. 7 December 2022 and 17 February 2023

JUDGMENT

WINDER, CJ

This is the plaintiff's personal injury claim arising from a slip and fall at the defendant's premises on 2 September 2018 in Oakes Field, New Providence.

[1.] The plaintiff's case is that she fell at the defendant's premises upon which it operated a food store. The plaintiff was shopping for groceries at the time of the incident and says that she slipped and fell after stepping on a wet patch on the floor in the store. The plaintiff says that she hyperextended her left leg, fell onto her knees, both hands and her hip. The defendant has denied liability.

[2.] The plaintiff's claim is encapsulated in her Statement of Claim, which provides at paragraphs 4-9 as follows:

4. On 2 September 2018 at about 11:30 am the Plaintiff was shopping for grocery in the said food store and was walking through the dairy aisle where the freezers are located, towards the cashier check-out counter when without warning she slipped, hyperextended her leg and fell on her knees before landing heavily on her buttocks after stepping on a wet patch on the floor thereby sustaining certain injuries which are hereafter more particularly set forth.
5. The Plaintiff was assisted back up by another shopper who gave her name as Ms. Sargent.
6. The Plaintiff went to the floor Manager to report the incident but was referred to Ms. Campbell who took the Plaintiff's name, asked where she fell and if water was on the floor.
7. The Plaintiff responded that she did not see water on the floor but she could see her shoe print on the floor where she fell.
8. By 5 September 2018 the Plaintiff was experiencing severe pain in her lower back, neck and shoulders whereupon she decided to seek medical attention.
9. The mishap was caused due to the negligence of the Defendant, its servants and/or agents.

PARTICULARS OF NEGLIGENCE

- 9.1 The Defendant its servants and/or agents allowed the said wet patch/spot to remain on the floor of the store when the Defendant knew or ought to have known that such a condition was hazardous or unsafe to persons traversing the area.
- 9.2 The Defendant failed to warn the Plaintiff sufficiently or at all that it was hazardous and unsafe to walk on the wet surface.
- 9.3 The Defendant its servants and/or agents were negligent in not indicating by posted sign or otherwise that it has hazardous to traverse the said area.
- 9.4 Failing to maintain the said area in a condition that would protect and safeguard persons lawfully entering the area.
- 9.5 Failing to have the area inspected at reasonable intervals in order to determine its condition.

- 9.6 Disregarding the rights and safety of the Plaintiff, Mrs. Paulette Major at the time she was traversing the said area.
The Plaintiff will rely on the maxim Res ipsa loquitur

[3.] The defendant settled a Defence to the claim which provided at paragraphs 7-9 as follows:

7. Save that it is admitted that the Plaintiff did confirm to Mrs. Campbell that no water was on the floor where the incident occurred, paragraph 7 of the Statement of Claim is denied. After communicating with the Plaintiff regarding the alleged incident, Mrs. Campbell immediately checked the floor where the alleged incident occurred and did not see any trace of water, liquid or wet shoe prints on the floor.
8. The Defendant does not admit paragraph 8 of the Statement of Claim and puts the Plaintiff to strict proof thereof.
9. The Defendant denies that the alleged incident resulted from the negligence of the Defendant, its servants and/or agents as alleged in Paragraph 9 of the Statement of Claim and as particularized under the heading "Particulars of Negligence;" the Plaintiff is therefore put to strict proof thereof. Further the Defendant avers that at all material times it acted lawfully and reasonably to ensure that its premises were safe for its lawful invitees.

[4.] At trial the plaintiff gave evidence and called Dr Alphaeus Allick, the attending physician, as a witness to the claim. The defendant called Jenniemae Campbell and Dr David Barnett as witnesses for the defence.

[5.] The plaintiff's evidence was contained in her witness statement upon which she was subject to cross examination. According to the witness statement:

2. I arrived at Xtra Value Food Store at about 11:10 a.m. on September 02, 2018 to grocery shop. Upon entering the store, I picked up one of the shopping baskets and proceeded through the aisles to shop.
3. I was in the store for about twenty (20) minutes having spent most of that time waiting for meat at the meat counter.
4. After I completed my shopping, I proceeded to the Cashier through the aisle where the dairy freezers are located. I had the basket in my right hand, and a foil pan in the left.
5. When I got about halfway through the aisle, I began to slide.
6. I tried to stop but continued sliding. I then held my upper body up to prevent me from falling forward or backward.
7. I was wearing low kitten heel sling back shoes at the time. The shoes are slip resistant.
8. The basket was in my right hand and it was swinging out of control as I tried to contain my posture.
9. The basket then came loose in my hand. One of the handles came off. The basket then fell to the floor. The item in my left hand fell to the floor as well.

10. I then fell to the floor on both my knees and hands as I tried to break my fall before falling hard on my buttocks. My body was shaking all this time.
11. I began to pull my dress down as my undergarments were exposed. My undergarments felt wet and cold.
12. I noticed a gentleman looking towards me with a smile on his face. I was embarrassed.
13. I then tried to get up (still shaking).
14. A lady customer came towards me and assisted me up on my legs. She told me her name was Ms. Sargeant.
15. As I looked down, I noticed the area appeared shiny and felt wet. I could see my shoe prints on the floor. There were no Caution signs.
16. I left the basket and its contents and went to the front of the store aided by Ms. Sargeant.
17. Once at the front counter, I asked to see the manager so that I could report the accident. I was asked to hold on for Ms. Campbell.
18. Ms. Campbell came out and I told her what had happened. She asked me if water was on the floor. I told her no, I did not see water. She then asked if I was ok. I told her that I was shaken up and would assess myself later. She said they will take care of my medical bills. Ms. Sargeant then told Ms. Campbell she had witnessed the matter. Ms. Sargeant and I gave our names to Ms. Campbell. Ms. Campbell wrote them down on a piece of paper.
19. I then went back to where I had fallen and gathered my groceries and I then proceeded to the cashier and checked out the store.
20. When I got into the vehicle, I sat there for a few minutes; my body was still shaking. I called my son and told him what had happened. He was sorry and asked if I was okay.
21. I went immediately home. I placed the items on the kitchen counter and went to lay down.
22. I was still shaken up and felt pain in my lower back and ankle a short time later.
23. I then asked my son to go and purchase some aspirin/pain killers. I took two and just relaxed.
24. The following morning as I got up for work, the pain was getting stronger. I got to work and informed my manager that I had a slip and fall yesterday. He said to take it easy today and watch how I feel. My job requires me to use the staircase. This was challenging for me.
25. By Wednesday, September 6, the pains were unbearable. I was experiencing severe pains in my neck, shoulder, back, left ankle, knees and my left wrist was sore.
26. I sought medical attention at Doctors Hospital Emergency room, where I was initially attended to by Dr. Iferenta.
27. He diagnosed my condition as Fall (multiple soft tissue contusion) and Whiplash. I immediately received intravenous drugs and an injection for pain.
28. I was discharged with biofreeze, cataflam and muscle relaxants and was asked to keep the legs elevated to reduce the swelling in my ankle, and with

instructions to rest, limit exertion, take medications as prescribed and to follow up at Specialty Clinic with Dr. Allick.

29. Dr. Iferenta issued me a five (5) day sick leave (6/9/18 to 10/09/18). My blood pressure was elevated. I was asked if I was on medication for it. I told them no, and that I did not have that condition.

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Under cross examination the plaintiff stated that:

- (1) She is a claims adjuster for JS Johnson Insurance Co.
- (2) She fell mid-way through the aisle. She was headed towards the cashier at the time of the fall.
- (3) Two other persons were in the aisle, coming towards her, pushing shopping carts. She had a basket in one hand and a foil container in the other. The basket was not full and the foil pan was not in the basket because she did not want it to get mashed.
- (4) She described kitten heels as being half an inch in height.
- (5) She said that there was some kind of liquid on the ground.
- (6) She admits that she did not tell Campbell about her undergarment being damp. She confirmed that Campbell asked her if water was on the floor and she told her no. (page 51 lines 21 and 32)
- (7) She accepted that she alerted Ms Campbell as she wanted them to investigate and that in order for them to investigate she would have to give them as much information as she could. She did not tell Ms Campbell that she felt water on the floor because she did not ask her. She said that wanted them to investigate the incident for her wellbeing, but if something happens there, it is the defendant's duty to get full information, not hers.
- (8) She said that when she looked at the floor it appeared muddy and darkened but did not observe any water on the floor.
- (9) She did not see any liquid whatsoever.
- (10) She fell at home twice before. In 2016 she tripped over her puppy whilst going outside.
- (11) She never contacted the store again.

[6.] Dr Allick's evidence was contained in his witness statement upon which he was subject to cross examination. According to Dr Allick's report:

The medical record revealed that Ms. Major had an MRI of the cervical spine performed on September 13, 2018. Radiology report noted that all cervical discs under review were desiccated with marginal loss of height. There was also a diffuse disc bulge seen at all levels, being most prominent at the level of C3-C4, which indented the thecal sac, and C5-C6, which indented the ventral cervical cord with encroachment on the ventral traversing C6 nerve root.

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Based on information from the medical record, Ms. Major would have suffered whiplash injury to the neck, with strain to the lumbar region, and left ankle, and blunt trauma with soft tissue injury to the left hip. It is evident that there was aggravation of underlying degenerative changes, leading to radicular signs being noted on examination. These conditions are usually associated with a period of pain ranging from weeks to months, and would require follow-up, and a course of pain medications, and may or may not require muscle relaxants and or a course of physiotherapy. In some cases, the sensory deficits may persist permanently, and may later require spinal surgery or other specialist intervention.

[7.] Campbell's evidence was contained in her witness statement upon which she was subject to cross examination. According to Campbell's witness statement:

3. I am an employee of the Defendant. I am the Head Cashier in the Defendant's store located on Oakes Field Shopping Plaza, Nassau, The Bahamas (the "Store"). At the time of the events relevant to the content of this Witness Statement, I was employed in this capacity and have been since October 2012.
4. My duties with the Defendant include overseeing the cashier staff and overall functions of the Store. My functions also include: addressing all employee and customer complaints or requests; ensuring all registers have the correct amount of cash at all times; and resolving price checks for customers.
5. I am aware that the Plaintiff is alleging that on 2nd September 2018 while shopping for groceries in the Store that she slipped and fell after stepping on a wet patch on the floor, thereby sustaining injuries. As a consequence, the Plaintiff is seeking special and general damages, with interest.
6. On Sunday 2nd September 2018, while I was on duty, I was approached by the Plaintiff who claimed that she slipped and fell in the dairy aisle of our Store. I spoke to her in front of our designated office and enquired as to how the alleged incident unfolded.
7. Upon speaking with the Plaintiff, she alleged that she was just walking through the dairy aisle and slipped. However, she stressed that she did not see any liquid on the floor and did not believe there to be any water or liquid of any kind on the floor. In an effort to determine what transpired, I walked to the section of the floor where the Plaintiff alleged that she slipped. I examined the floor in that area carefully but could not find any water or any liquid of any kind on the floor, nor could I find any shoeprint as alleged or at all.
8. I also noticed that the Plaintiff was walking normally and without any issues. Throughout my interaction with the Plaintiff, I asked her whether she sustained any injuries and whether she was in pain. She said no unequivocally and said that she felt fine and had not sustained any injuries. From my observation, the Plaintiff did not appear to be experiencing any pain, suffering or discomfort.

9. Since I have been employed at the Store, I am aware that it is standard practice and procedure to erect a warning sign where there is any liquid on the floor. Additionally, it is standard practice within the Store, to check periodically that all areas of the floor are safe and clean. If a customer alleges that they have injured themselves on the Store property, we will ask them to complete an Incident Report. Once an Incident Report is prepared, the same would be forwarded to our Head Office and, thereafter, we will contact the customer with our determination and the appropriate next steps.
10. Having regard to the Store's protocols, it is standard practice and procedure to ask the complainant to fill out an Incident Report. The purpose of the Incident Report is to have a record of any complaints made, on file, for our purposes. However, after I spoke to the Plaintiff, she immediately walked away from me. As a result, I was not provided with the opportunity to ask her to fill out an Incident Report.
11. Consequently, the Plaintiff decided to buy the few items that she had in her shopping basket and left the Store.
12. I was not contacted by the Plaintiff at any time after that day.
13. I am surprised by this action considering the events that occurred on the day in question.

[8.] Under cross examination Campbell stated that:

- (1) She is the head cashier at Xtra Value Food Store.
- (2) She asked the plaintiff if water was on the floor and she said no. She then asked the plaintiff if she was okay, and she replied yes. She checked the floor and there was no sort of any liquid on the floor. The plaintiff stressed that she did not see any water, any liquid on the floor and did not believe there to be any water or liquid of any kind on the floor.
- (3) She asked the plaintiff if she had any injury, she said no and immediately she just walked away.
- (4) Immediately after the plaintiff reported the fall she went to the aisle to inspect. She walked the entire aisle. No incident report was made because the plaintiff said that she was ok. The plaintiff walked away normally, as if she was ok.

[9.] Dr. Barnett's evidence was contained in his witness statement and report upon which he was subject to cross examination. Dr. Barnett's report concluded at paragraph 19 as follows:

19 (a) (i) Ms. Major fell in the Store on the 2nd September 2018, when she sustained what was diagnosed as soft tissue contusions.

(ii) These injuries were superimposed on longstanding chronic degeneration in her spine & joints, as disclosed on her contemporaneous radiographs.

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(v) The acute injuries were treated conservatively & within 6-8 weeks she was deemed to have reached MMI.

(b) The course of events, highlighted by the circumstances at the time of the fall, her not presenting until 4 days later, her quick response to conservative treatment, with no evidence of a significant internal injury, along with her quick return to work & full function, meant her injuries fell to be classified as being minor, as defined.

(c) Since being discharged from therapy, in November 2018, Ms. Major's complaints have been in reference to the intermittent flare-up of her chronic disorders, to which the Index Accident, pathologically would have contributed a minor percentage to their ongoing presence.

Law analysis and disposition

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

“[I]t is clear from the decided cases, including *Indermaur v. Dames*, that the duty of care which a person like the defendant owes to a person like the plaintiff is not an absolute duty to prevent any damage to the plaintiff but is a lesser one of using reasonable care to prevent damage to the plaintiff from an unusual danger of which the defendant knew or ought to have known and, I may add, of which the plaintiff did not know or of which he could not have been aware. If it were otherwise then the slightest alleged breach of such a duty would lead to litigation and could, perhaps, hamper the progress of quite lawful and needful businesses.”

[11.] The plaintiff alleges that: the defendant allowed a wet patch/spot to remain on the floor of the store when the Defendant knew or ought to have known that such a condition was present; the defendant failed to warn the plaintiff sufficiently or at all that it was hazardous and unsafe to walk on the wet surface; and that the maxim of *res ipsa loquitur* applies. She contends that:

(a) The wet patch on the floor was an unusual danger of which she was unaware, and the danger was one of which would not be expected to be present, and therefore the onus of proof is on the Defendant to explain how it was that the accident happened. The evidence adduced at trial did not disclose that the Defendant had discharged that burden.

(b) The accident was due to the negligence and breach of the common law duty of the Defendant as the occupier in that it failed to take reasonable care to prevent

the damage caused to her from the unusual danger of the wet patch on the floor. The risk was one against which in all the circumstances of the case, the Defendant is reasonably expected to offer her some protection.

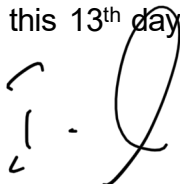
[12.] Having seen and heard the witnesses, and observed their demeanor as they gave their evidence, I have no hesitation in indicating that I prefer the evidence of the defendant's witness of fact. I did not find the plaintiff to be a reliable witness. I did not accept her evidence that her undergarments were damp or that there was some wet patch, dark spot or muddy areas on the floor. This is supported by the fact that when asked by Campbell about water on the floor, immediately after the fall, she reported none of these things. I find that there was no water, liquid, wet patch, dark spot or muddy areas as alleged in various accounts by the plaintiff in her pleading or evidence.

[13.] I accept Campbell's evidence that she checked the floor immediately after the report and that there was no liquid of any sort on the floor. It appear to me that the plaintiff was embarrassed having fell, having exposed her underwear in the process, and made the complaint to Campbell. I did not find that the plaintiff has demonstrated that there was any danger unusual or otherwise for the plaintiff to have been warned about.

[14.] In all the circumstances therefore, the duty of care not being an absolute one, I am not satisfied to the requisite standard of a balance of probabilities, that the defendant has breached its duty of care at common law.

[15.] In the circumstances the plaintiff's case is dismissed with costs to the defendant to be fixed by the Court.

Dated this 13th day of October, 2023

A handwritten signature in black ink, appearing to be 'I. Winder', written over the date line.

Sir Ian R. Winder
Chief Justice