

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2019CLE/gen/00150

BETWEEN

JUDY COX

Plaintiff

AND

THE BANK OF NOVA SCOTIA TRUST COMPANY (BAHAMAS) LIMITED

(a.k.a SCOTIA WEALTH MANAGEMENT)

(a.k.a. SCOTIA TRUST)

Defendant

Before: The Honorable Madam J. Denise Lewis-Johnson MBE

Appearances: Mr. Aurthur Minns of Counsel for the Plaintiff

Mrs. Christina Davis-Justin of Counsel for the Defendant

Hearing Dates: 21st June 2021, 29th March 2022, 4th April 2022, 19th May 2022, 21st June 2022, 14th July 2022, 22nd August 2022, 14th February 2023, 21st February 2023, 23rd February 2023, 28th March 2023, 12th April 2023, 13th April 2023, 17th April 2023, 18th April 2023, 10th October 2023, 5th February 2024, 7th February 2024, 20th March 2024

Negligence-Personal Injuries-Occupiers Liability-Health and Safety at Work Act-Duty of Care-Liability of employer-Contributory Negligence-Exemplary Damages-Wrongful Dismissal-Redundancy-Pleadings

Introduction

1. By a Generally Indorsed Writ of Summons filed on 11 February 2019 and Statement of Claim filed on 14 June 2021, the Plaintiff (“Ms. Cox”) claims against her employer, the Defendant, (“Scotiabank”) damages resulting from personal injuries from a slip and fall accident which occurred on the 18 March 2016, wrongful dismissal and exemplary damages. At the time of the accident Ms. Cox was in the commission of her daily duties.

2. The Plaintiff alleges that the Defendant breached its duty of care by failing to provide a safe place of work for its employees in accordance with the Health and Safety at Work Act. The Defendant denied this breach alleging that it provided a safe place of work for its employees and should the court deem so that the Plaintiff contributed to her slip and fall.
3. The Plaintiff further alleges that having been terminated by the Defendant on the 17 January 2019, the Defendant failed to pay her severance in accordance with Section 26 of the Employment Act “the Act”. The Defendant avers that the Plaintiff was rightfully compensated in accordance with the Employment Act.

Background

4. The Plaintiff’s claim is for:
 - a. Negligence;
 - b. Statutory breach of duty – Health & Safety at Work Act;
 - c. Occupier’s liability at common law;
 - d. Wrongful dismissal;
 - e. Statutory breach of duty – Section 26 of The Employment Act;
 - f. General losses and expenses as identified on page 359 of the Agreed Bundle;
 - g. Exemplary damages.
5. In her Statement of Claim, the Plaintiff stated that Scotiabank breached their duty of care by:
 - a. Failure to ensure as far as reasonably practicable the absence of risk to the Plaintiff’s health and safety in connection with the se and transport of articles and substance in the Defendant’s premises;
 - b. Failure to provide adequate and/or any signage and/or supervision as is necessary to ensure that persons using the aforesaid staircase were safe in using the same;
 - c. Failure to provide any reasonable information, instruction, training or supervision as is necessary to ensure so far as reasonably practicable the health and safety aspects of navigating the said staircase and thus the health and safety at work of its employees;
 - d. Failure to maintain, as far as reasonably practicable, a condition that is safe and without risks to health and safety of its employees;
 - e. Failure to provide a working environment for its employee that is so far as reasonably practicable safe, without risk to health, and adequate as regards facilities and arrangements for their welfare at work.
6. The Statement of Claim further outlined the particulars or negligence and/or occupiers liability stating that the Defendant:

- a. Failed to take any or any reasonable care to see that the Plaintiff would be reasonably safe in using the aforesaid premises which was occupied by the Defendant;
 - b. Caused or permitted the said defective staircase to remain in use and unsupervised and a danger to employees lawfully using the premises;
 - c. Failed to warn the Plaintiff adequately or at all of the dangers of the aforesaid defective staircase;
 - d. Failed to place a slip proof surface on the said staircase;
 - e. Failed to put a warning signage adequately or at all, at the said staircase so as to enable the Plaintiff to appreciate the dangers of using the said staircase;
 - f. Failed to provide a safe place of work for its employees; and
 - g. Failed to adjust, alter or remove the staircase
7. In its Amended Defence, Scotiabank admitted that it has a statutory duty to ensure the health and safety of its employees at work and wholly denied that they breached its statutory duty. It is their position that Ms. Cox caused and/or contributed to the industrial accident by:
- a. Failing to descend the staircase at an adequate or safe pace;
 - b. Failing to use the handrails located on either side of the staircase while descending same;
 - c. Failing to have any adequate or reasonable regard for where she placed her feet while descending the staircase;
 - d. Failing to descend the staircase in a manner which would have allowed her to traverse the same safely;
 - e. Descending the staircase without having any due regard for her own safety
 - f. Failing to take any reasonable care in all the circumstances for her own safety while descending the staircase.
8. That Ms. Cox commenced employment with Scotiabank in 2010 on a contractual basis, she had as many as 45 temporary non-consecutive contracts prior to her being permanently employed by them in 2012. That on the 18 March 2016 Ms. Cox slipped on the rear staircase located in Scotiabank building where she claimed to have suffered multiple injuries. On the 17 January 2019, Scotiabank terminated the employment of Ms. Cox by way of redundancy.

The Evidence

Judy Cox

9. Ms. Cox filed a witness statement on 28 March 2022 stating that she commenced employment with Scotiabank in 2010 and on the 18th March 2016 while using a defective

staircase she slipped and fell sustaining injuries. She averred that she is still receiving treatments for the injuries and has undergone numerous surgeries to assist her with getting back to normalcy.

10. On or about 18th March 2016, she reported that during work hours while descending the rear staircase she slid and held on to the handrails to prevent her fall. This, she explained resulted in the twisting of her leg and ankle. There were no witnesses present at the time.
11. Ms. Cox averred that she used the staircase over the years and there was never any incidents to which she could recall and that most of the medical bills were handled by her medical insurance which she had as an employee of Scotiabank.
12. Under cross examination Ms. Cox admitted that she had not used the term “fall” in any of her medical forms.
13. Ms. Cox further gave evidence of not being paid correctly under statutory law and being terminated wrongfully by the Defendant.
14. Under cross examination it was accepted by Ms. Cox that she was over paid in the sum of \$24,004.48 and that she repaid to the Defendant the sums of \$8,814.80 in clearing off the balance.

Robert Gibson

15. Due to medical issues Dr. Gibson was unable to give evidence.

Miriam Bernadette Lewis

16. Ms. Lewis was employed with the Defendant from August 4th 1981 to October 31st 2016 and was employed at the Defendant during the time of the accident involving Ms. Cox.
17. She averred that there was no railing to the left hand side of the staircase depicted in the photograph attached and exhibited ML-#1 and avers that the railing was placed there after the incident involving Ms. Cox.

Karen Harvey

18. Ms. Harvey is a Janitress with Scotiabank and has the responsibility of cleaning the bank including the staircases. She averred that she was aware of the accident involving Ms. Cox. While carrying out her duties and to the date of giving her evidence she never noticed a defect in the rear staircase. She further attested that there has not been any change or renovation to the rear staircase and that the staircase has always been spacious, with good lighting with non-slip stair grip and a handrail.

Rufus Nathaniel Bain

19. Mr. Bain is a license contractor and has the responsibility of management of all building and renovations of Nova Scotia buildings including the building at 404 East Bay Street for over 11 years. He attested that while performing numerous projects he nor any of his employees have suffered any accidents while using the rear staircase and there has been no change or renovation to the rear staircase and that the staircase has always been spacious, with good lighting with non-slip stair grip and a handrail.

Ian Darville

20. Mr. Darville is a licensed contractor and his company was hired to perform renovations to the restrooms of Scotiabank located on 404 East Bay Street in 2020. He avers that there has not been any accidents as a result of any defects in the stairs while in the performance of their duties.

21. That all times during the performance of their work he observed the rear staircase to be in proper operational condition in accordance with the Bahamas Building Code. He made certain to inspect the stairs case as his workers had to use the rear staircase for carrying material and tools. He stated that the staircase was equipped with adequate lighting, non-slip stairs, a firm handrail, and a non-slippery surface.

Lisa Carey

22. Ms. Carey is the Assistant Manager of Facilities at the Defendant, she has the responsibility of monitoring and evaluating the Defendant's building and upkeep of its premises.

23. She was aware of an accident involving Ms. Cox, where she allegedly fell on the rear staircase of the Bank's building. She stated that she never noticed any defects that presented a risk to safety.

24. That she can confirm that there has been no renovations or changes to the rear staircase from the Bank moved into the building in 2002.

25. She participated in a video which shows the angles of the rear staircase and confirms that there has been no other accidents reported as a result of the use of the staircase.

26. That the rear staircase is sufficiently spacious, well-lit and equipped with non-slip stair grip along with a sturdy handrail.

Shantel Rodriquez

27. Ms. Rodriquez is currently the Senior Manager of Human Resource Business Partner with the Bank of Nova Scotia and my duties include among other things providing strategic

human resource guidance to the Bank including regulations, employee health concerns, leadership, people development and talent search.

28. That I have been employed with the Bank for over 20 years and I am aware of an alleged accident in March 2016 involving Judy Cox. It was reported that Ms. Cox suffered injuries as a result of the rear staircase of the Bank's building.
29. That at the time of the alleged accident I was employed as the Senior Manager and ensured that employees were enrolled in benefit programs, completing the requisite National Insurance Board Forms in the event that an employee was involved in an accident at work and recording statements from any witness or witnesses to the accident.
30. That Ms. Cox was responsible for obtaining sign offs from various officers for controlled packages in the trust department for the Bank management reports, ensuring that those reports were distributed to the other relevant departments in the bank.
31. Ms. Cox duties required her to move between the ground and upper floor of the Bank's building and the rear staircase was the nearest staircase in the building in proximity to her desk which would allow her to move between floors. Ms. Cox never reported that the rear staircase had any defects prior to the accident.
32. That the performance of my duties also require the use of the rear staircase. In 2014, I sustained an injury to my spine. As a result I experienced severe back pain and have difficulty using the stairs sometimes. I normally used the rear staircase to travel between floors because it has adequate lighting, non-slip stair grip and sturdy handrail. I have never noticed any defects in the rear staircase which would present a safety concern.
33. That there has been no changes to the rear staircase since the bank moved to 404 East Bay Street in 2002.
34. That Ms. Cox's employment was terminated on the 17th January, 2019 on the ground of redundancy and the position of Administrative Assistant in the department of Finance is no longer held by anyone in the Bank.
35. That at the time Ms. Cox was terminated she was presented with a severance package consisting of \$967.26 representing two (2) weeks basic pay in lieu of notice, \$6,287.19 representing a sum equivalent to two (2) weeks basic pay for each year of six (6) years and six (6) months of continuous employment and an ex gratia offer of \$3,869.04 representing a sum equivalent to 8 weeks basic pay. Ms. Cox did not accept the ex gratia payment.
36. That the Bank's Dental and Vision Plan is administered through Atlantic Medical & Life Insurance Ltd but is only made available to employees. That once the individual is no longer employed with the Bank their coverage is immediately terminated.

37. That between 21st March 2016 and the 31st March 2017, the Bank compensated Ms. Cox 100% of her salary throughout the periods where she was entitled to a lesser percentage of her basic monthly earnings based on the Bank's Benefits Guidelines. That Ms. Cox pay slips between the period of September 2016 and March 2017 were not recorded digitally as they were issued prior to the Bank's transition to a new pay roll system.
38. That the overpayments made to Ms. Cox included advanced payments of portions of her salary which were eventually covered by both the National Insurance Board and the bank and should have been repaid to the Bank.
39. That the money owed to the Bank by Ms. Cox was approximately \$24,004.48 and the sum partially repaid to the Bank by Ms. Cox stands at \$8,814.80.00.
40. That the Bank has exhausted every available option to retain Ms. Cox as a member of its staff. The avenues pursued included the substitution of Ms. Cox tasks to limit the need for movement of lifting items and the purchasing of several items such as an Uncaged Ergonomics Adjustable Height/Angle Reading Stand, a Kensington Sole Foot Rest, a 24" Computer Privacy and Anti-Glare Screen, a Fellows Memory Foam Wrist Rest, a Leitner Corded Office Telephone Headset-single ear, and an Ergonomics Chair with specifications as prescribed in an Ergonomics Assessment provided by Simone A. Rolle Graham of Physio Care.
41. That within a month of the accident I was present at Goodman's Bay for an afternoon walk after work when I observed Ms. Cox jogging around the Park's track as she quickly passed me by. Her movements was noticeably different from her movement at times when she visited the Bank's building.

The Issues

42. The Plaintiff's issues are as follows:
 - (i) Was the Plaintiff an employee and lawful visitor of the Defendant at the material time?
 - (ii) Was the Plaintiff's slip and fall caused by the Defendant?
 - (iii) Did the Defendant have a duty of care to the Plaintiff?
 - (iv) Did the Defendant breach its duty of care to the Plaintiff?
 - (v) Did the Plaintiff sustained injuries, damages & losses.
 - (vi) What is the extent of the Plaintiff's injuries, damages and losses?
 - (vii) Did the Defendant remove the Plaintiff's group plan medical insurance during the time the Plaintiff was recovering from the injuries and receiving treatment?
 - (viii) Is the Plaintiff entitled to exemplary damages due to the conduct of the Defendant? If so, how much?

- (ix) Was the Plaintiff wrongfully dismissed by the Defendant and what funds are owed to the Plaintiff if so found.

43. The Defendant's issues are as follows:

- (i) Whether the Plaintiff was an employee and lawful visitor of the Defendant on 18th March 2016.
- (ii) Whether the Plaintiff slipped and fell on a staircase located at the rear of the Defendants' premises ("the staircase")
- (iii) Whether the staircase was defective.
- (iv) If so, whether the alleged incident was a result of the staircase being defective.
- (v) Whether the Defendant failed to ensure, so far as reasonably practicable, the health safety and welfare of the Plaintiff at work.
- (vi) Whether the Plaintiff took reasonable care for her own safety in the workplace
- (vii) Did the Defendant owe a Duty of Care to the Plaintiff?
- (viii) If so without any admission being made as to the particulars below, whether the Defendant breached a duty of care or statutory duty owed to the Plaintiff by:
 - a) Failing to ensure as far as reasonably practicable the absence of risk to the Plaintiff's health and safety in connection with the use and transport of articles and substance in the Defendant's premises
 - b) Failing to provide adequate and or any signage and or supervision as is necessary to ensure that persons using the staircase were safe in using the same.
 - c) Failing to provide any reasonable information, instruction, training, or supervision as is necessary to ensure so far as reasonably practicable the health and safety aspects of navigating the said staircase and this the health and safety at work of its employees;
 - d) Failing to maintain as far as reasonably practicable, a condition that is safe and without risks to health and safety of its employees; and
 - e) Failing to provide a working environment for its employees that is so far as reasonably practicable and arrangements for their welfare at work.

44. Further, without any admission being made as to the particulars below, whether the Defendant was negligent and/or breached a duty of care owed to the Plaintiff by:

- a) Failing to take any reasonable care to see that the Plaintiff would be reasonably safe using the staircase;
- b) Causing or permitting the alleged defective staircase to remain in use and unsupervised and a danger to employees lawfully using the premises;
- c) Failing to warn the Plaintiff adequately or at all of the dangers of the staircase;

- d) Failing to place a slip proof surface on the staircase;
 - e) Failing to put warning signage adequately or at all at the staircase so as to enable the Plaintiff to appreciate the dangers of using the said staircase;
 - f) Failing to provide a safe place of work for its employees; and
 - g) Failing to adjust alter or remove the staircase.
45. Did the Plaintiff sustain injuries, damages and losses as a result of the Defendant's alleged breach/negligence?
46. Whether the Plaintiff by her own act, omission, caused or contributed to the alleged incident by:
- a. Failing to descend the staircase at an adequate or safe pace;
 - b. Failing to use the handrails located on either side of the staircase while descending the same;
 - c. Failing to have any or any adequate or reasonable regard for where she placed her feet while descending the staircase;
 - d. Failing to descend the staircase in a manner which would have allowed her to traverse the same safely;
 - e. Descending the staircase without having any due regard for her own safety; and
 - f. Failing to take any reasonable care in all circumstances for her own safety while descending the staircase.
47. What is the extent of the Plaintiff's injuries, damages and losses?
48. Did the Defendant breach Section 26 of the Employment Act?
49. Is the Plaintiff entitled to exemplary damages as a result of being made redundant by the Defendant?
50. Was the Plaintiff wrongfully dismissed by the Defendant and, if so, what compensation is owed to the Plaintiff?
51. If the Defendant is liable to the Plaintiff for wrongful dismissal, whether the Defendant is entitled to set-off the Plaintiff's claim with funds owed to the Defendant as a result of overpayment of benefits/salary.

The Law

52. The **Health and Safety at Work Act** provides:

4. (1) 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.

(2) Without prejudice to the generality of an employer's duty under subsection (1) the matters to which that duty extends include in particular

(a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;

(b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;

(c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;

(d) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;

(e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

5. (1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

53. The **Employment (Amendment) Act Section 26A Chapter 321A** ("the Act") provides:

(2) Where it is contemplated by an employer that less than twenty employees are to be dismissed because of redundancy, the employer shall –

(a) comply with the provisions of paragraphs (a) and (b) of subsection (1); and

(b) consult with and notify the Minister in writing no later than one week prior to any employee being dismissed.

(3) Where an employer fails to give notice to the Minister in accordance with subsection (1) (c), the employer shall be liable to pay each affected employee thirty days basic pay in addition to any pay that the employee is entitled to under this Act.

54. Section 26 of the Act provides:

(1) Where an employee who has been continuously employed for one year or more is dismissed by his employer because of redundancy, his employer is, subject to the provisions of this Part, liable to pay to him a sum (in this Act referred to as a

“redundancy payment” or “redundancy pay”) calculated in accordance with subsection (2).

(2) Subject to subsection (3), the amount of the redundancy payment shall be calculated by reference to the date of the employee’s redundancy by starting on that date and reckoning backwards the number of complete years of employment and allowing —

(a) where the employee has been employed for twelve months or more —

(i) two weeks’ notice or two weeks’ basic pay in lieu of notice; and

(ii) two weeks’ basic pay (or a part thereof on a pro rata basis) for each year up to twenty-four weeks;

(3) Notwithstanding subsection (1), the employer shall have the right to appropriate any monies owing to him by the employee from any monies payable under subsection (1).

Decision

Employment of the Plaintiff

55. It is not in dispute that the Plaintiff was an employee of the Defendant at the time of the accident. The evidence reflect that the Plaintiff commenced temporary employment with the Plaintiff in 2010 on a contractual basis. These contracts were dispersed over a two year period for the performance of different job descriptions.

56. In 2012, the Plaintiff was offered a permanent contract with the Defendant which provided to her all the benefits that came with the permanent employment which would subsist until she was no longer employed with the Defendant.

57. The Plaintiff was an employee of the Defendant and the Defendant was obligated to provide a safe work environment.

Occupiers Liability & Negligence

58. The occupier of a premises must ensure that he takes reasonable care to ensure the safety of persons entering its premises and that it is reasonably safe. As *Michael Barnett JA*, outlined in **Bahamas Ferries v Charlene Rahming** SCCivApp & CAIS No. 122, the Bahamas does not have legislation with regards occupiers “liability and as such we are to be guided with caution by the common law principles from various jurisdiction on this cause of action.”

59. The Defendant’s obligation to the Plaintiff is grounded in statute by Section 4 (1) of the Health and Safety at Work Act 2002 which 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,” and at Common law the employer has a duty of care to provide a reasonably safe work premises for the purpose it is to be used.

60. In the case of **Adrianna Thompson V Clearview Management Ltd. [2021] 1 BHS J No. 13**, Charles J stated:

“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. 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] 1 All ER 191) to ground liability for injuries so sustained.

54. Each person, even while performing his duty as an employee, has to assume a measure of responsibility for his own safety 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.”

61. In **Turner v Arding & Hobbs Ltd. [1949] 2 All ER 911**, relied upon by the Claimant, *Goddard CJ* expressed the duty of occupiers of establishments stating:

“It may be said to be a duty to use reasonable care to see that the shop floor, on which people are invited, is kept reasonably safe, and if an “unusual danger” is present of which the injured person is unaware, and the danger is one which would not be expected and ought not to be present, the onus of proof is on the defendants to explain how it was that the accident happened.”

62. The learned Judge made it clear, it is not the duty of the employer to prevent every mishap that may occur on its premises, but to ensure that the employer takes reasonable care to ensure that there exists no unusual danger. This duty is one which obliges the occupier of the premises to prevent danger.

63. In **London Graving Dock Co. V Horton HL 1951** the learned judge considered the meaning of “unusual danger” stating:

“I am not conscious that it has been stated in plain terms, but it is noticeable that what is declared to be the duty is not to prevent unusual danger but to prevent damage from

unusual danger... I think 'unusual' is used in an objective sense and means such danger as is not usually found in carrying out the task of fulfilling the function which the invitee has in hand, though what is unusual will, of course, vary with the reasons for which the invitee enters the premises..."

64. In **Adrianna Thompson V Clearview Management Ltd.**, the court quoted Evans J., "*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 recognized that there are inherent dangers in certain work places and that notwithstanding best efforts accidents will occur.*" I accept this as the test whether reasonable safety measures were taken by an employer.
65. It is the Plaintiff's burden to prove that the Defendant was negligent or breached its obligation as an occupier on the preponderance of evidence. The Court will therefore consider the evidence lead by the Plaintiff to determine if that standard was met. As was further stated in the case of **Adrianna Thompson** "*the mere fact that an injury is sustained by a person on the premises of another, even in the workplace, 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.
66. The Plaintiff alleges that she used the staircase and was injured before but did not report it. That event placed an obligation on the Plaintiff, armed with the knowledge of a potential risk to take care when traversing the staircase. She must take "a measure of responsibility for his (her) own safety" knowing of the risk.
67. Having accepted that the Plaintiff fell while at work it must be determined if the Defendant breached its duty to provide a safe work environment by not putting in place reasonable safety measures for employees. Specifically in this case, were measures taken to make certain the rear stairs were safe for employees to use.
68. The Defendant witnesses provided much evidence which suggested that a hand rail was erected to the right of the stair way. It was clear that this stairway was consistently used by employees of the Defendant and persons performing contractual work on their behalf. The Plaintiff said she held the rail to try to prevent her fall. I accept this evidence.
69. The following elements must be proved in negligence:
- a. There was a duty of care owed to the Plaintiff;
 - b. The duty owed to the Plaintiff was breached by the Defendant; and
 - c. The Plaintiff suffered damage as a result of the Defendant's breach.

70. In the privy council judgement of **The Attorney General v Craig Hartwell** [2004] UKPC 12 Lord Nicholls puts the concept of negligence into context stating:

“Negligence as a basis of liability is founded on the impersonal ("objective") standard of how a reasonable person should have acted in the circumstances. Shortfall from this standard of conduct does not always give rise to legal liability. In order to elucidate the circumstances in which shortfall will give rise to liability the courts have fashioned several concepts, such as "duty of care". This familiar phrase is legal shorthand. Expressed more fully, a duty of care is a duty owed in law by one person or class of persons to another particular person or class of persons. The duty comprises an obligation to take reasonable care to ensure that the person or persons to whom the duty is owed do not suffer a particular type or types of damage. Thus drivers of cars owe, among other duties, a duty to other road users to take reasonable care to avoid inflicting personal injury on the latter.

71. As such, there must exist some real foreseeable risk which an employer cannot ignore. It must also be satisfied that this likely risk was ignored by the person who owed the duty of care. The duty is breached when the risk is ignored by the defendant which then inflicts damage and or injury on the Plaintiff. The standard of proving this breach goes to what a reasonable thinking person/employer would do in the situation.
72. It is accepted that the standard is the Plaintiff's to prove on a balance of probabilities that the injury was caused by the Defendant's negligence. The Court must therefore determine if the Plaintiff met that standard. In **Mackey v. Island Hotel Company Limited** [2005] 5 BHS J No. 549 when considering meeting the burden of proof in negligence cases, the Court quoted Lord Macmillan in **Jones v. Great Western Railway Co.** 1930 28 November [1930-31] TLR 39 at page 45:-

“If the evidence establishes only that the accident was possibly due to the negligence to which the plaintiff seeks to assign their case is not proved, to justify the verdict which they have obtained the evidence must be such that the attributions of the accident to that cause may reasonable be inferred. If a case such as this is left in the position that nothing has been proven to render more probably anyone of two or more theories of the accident, then the plaintiff has failed to discharge the burden of proof incumbent upon him. He has left the case in equilibrium and the court is not entitled to incline the balance one way or another.”

73. Additionally *“the burden of proof in a claim for damages for negligence rest primarily on the Claimant, who, to maintain the action, must show that he was injured by a negligent act or omission for which the defendant is in law responsible”* per Halsbury's Law of England, (Volume 78 (2018)).

74. The evidence reflect that there was a railing affixed to the left side of the rear staircase wall, that there was proper lighting and non-slip surface. The Court accepts the evidence that these were in place at the time of the accident, and as such the Defendant took reasonable steps to provide a safe work environment, and met its duty of care in taking steps that the Plaintiff and others in her class (other employees) and visitors would not suffer damage in using the rear staircase.
75. The Plaintiff admitted in her evidence that it was not her first time utilizing the rear staircase when the accident occurred. She had used it many times before. When asked under cross examination if she had ever reported any other accident prior to the one subject of this matter she indicated that she had an accident before, verbally reported it but does not remember if she reported it in writing. The Court does not accept this evidence.
76. There were also witnesses for the Defendant who testified as to their use of the rear staircase. Most notably was the evidence of Mr. Darville who spoke to the building code standard of the rear staircase as being up to standard, the Court accepts this evidence. The Court during its visit to the locus in quo found appropriate lighting, railing and skid proof stairs. While this does not mean with certainty they were there at the time of the accident, the court finds and accepts the evidence that they were.
77. By the Plaintiff's admission under cross-examination, she wrote as to the description of the accident that she "slipped on the staircase, frantically holding on the hand railing to prevent her fall at work today." This was written on the day of the accident and the Court accepts this as an accurate recount of what actually happened. It was fresh in her mind, this was the evidence from the Plaintiff. The Plaintiff further stated that "my left leg folded under my body." The Plaintiff acknowledged on the day of the accident there was a railing in place which she held onto.
78. Given the analysis above, the Court need not venture into the third limb of the negligence test as the Defendant did not breach its duty of care to the Plaintiff therefore the Plaintiff fails on the second limb. This covers the issue raised under Occupier's Liability. I find that a safe workplace was provided by the Defendants and that the Defendant was not negligent.
79. The Plaintiff raised the issue of the cancelation of her insurance coverage on the date of her termination of employment. The Court finds no irregularity or unlawful act with paragraph 5 of the Plaintiff's termination letter which states "*Benefits. Any and all benefits coverage under this Bank's program will cease effectively 17th January 2019. If applicable, medical expenses incurred up to and including the end of today will be reimbursed in accordance with the terms and conditions of the plans provided they are submitted within*

60 days.” This allows for existing claims under the insurance to be paid, thus the injury sustained by the Plaintiff from the fall on the job was covered.

80. The issue resulting from the Plaintiff’s claim of injury, the extent of the injury was disputed as the Defendant alleged that there were intervening factors, such as a car accident months after the slip and fall which caused some of the injury the Plaintiff sought to have the Defendant compensate her for. The Defendant alleged that the Plaintiff had significantly recovered to the point of full days back to work and it was the car accident that resulted in her additional injury. The Court accepts this submission based on the evidence of the timeline of the slip and fall and the car accident and the medical expert evidence.

Wrongful Dismissal

81. Wrongful dismissal is a claim based in common law principles which the remedy for a person claiming this cause of action is damages. A claim for wrongful dismissal can also be borne out of missed procedural statutory steps which an employer fails to carry out before the termination of an employee.

82. The Plaintiff claims damages for wrongful dismissal on two grounds. Firstly that she was made redundant and the Defendant failed to follow the redundancy procedure as outlined in the Act and secondly, she was not properly compensated for the periods which she was employed by the Defendant having been made redundant.

83. To put this into context, the relevant parts of the Claimants termination letter reads:

“Dear Judy...

The Bank has decided to continue to restructure and consolidate various roles throughout the region...

Further to our conversation today, we wish to confirm that your active employment with Scotiabank (“the Bank”) will end effective today. This is a business decision based on right-sizing the Bank’s operations and was not influenced in any way by your performance as in individual employee...

Any and all benefits coverage under the Bank’s programs will cease effective January 17, 2019. If applicable, medical and dental claims for expenses incurred up to and including the end of day, will be reimbursed in accordance with the terms and conditions of the plans provided they are submitted in 60 days...”

84. Section 26 (2) (b) of the Act provides for compensation of employees who are made redundant. The Plaintiff argues that she was employed with the Defendant from 2010 until her termination on 17 January 2019. The first consideration for the Court is whether the Plaintiff being hired in 2010 on a contractual basis satisfy the term “continuous employment” as stated in the Act when addressing redundancy and as such is entitled to a greater compensation from the Defendant.
85. The word continuous in the Black Law Dictionary 2nd edition is defined as “uninterrupted; unbroken; not intermittent or occasional; so persistently repeated at short intervals as to constitute virtually an unbroken series.”
86. The Plaintiff was employed with the Defendant from 2010 on a contractual basis, there were numerous short term contracts signed and accepted by both parties. The Plaintiff became a permanent employee in 2012. The period of employment for the purpose of a redundancy payout ought to only cover the period from 2012 representing the continuous employment as mandated by the Act. I do not accept the Plaintiff’s submission that the short term contracts, albeit numerous, amounted to continuous employment as contemplated by the Act.
87. The Court cannot grant further compensation for the time worked from 2010 until 2012 as this was not continuous employment.
88. The issue of failing to comply with the redundancy procedure in the Act was also addressed in the Plaintiff’s submissions. The Act provides for a procedure which must be adhered to by an employer when terminating an employee on the ground of redundancy. This procedure is mandatory, it requires prior notice to the Minister of Labour. The Act provides *“where less than 20 employees are to be dismissed because of redundancy, the employer shall: (b) consult with and notify the Minister in writing no later than one week prior to any employee being dismissed.”*
89. It is clear throughout the evidence produced during the trial that the proper consultative process as mandated by the Act did not occur.
90. The Court finds that the Defendant did not strictly comply with Section 26 A (2) of the Employment (Amendment) Act in notifying the Minister at least one week prior to the redundancy. The Defendant owes the Plaintiff 30 days pay with the statutory rate of interest from the date of redundancy to the date of payment as per **Kevin Lightbourn v. Island Hotel Company Limited** a case heard by the Industrial Tribunal.

Exemplary damages

91. The Plaintiff also seeks an award for exemplary damages alleging that the wrongful termination of the Plaintiff was in an effort to have financial gain and breach section 26 of the Employment Act.

92. Exemplary damages are awarded inter alia when the acts of the Defendant are so repugnant that they ought to pay for their wrong doing. **Rookes v Barnes** [1964] 1 ALL ER 367 expounds on the doctrine exemplary damages which was well articulated by the House of Lords stating:

“English law recognized the awarding of exemplary damages, that is, damages whose object was to punish or deter and which were distinct from aggravated damages (whereby the motives and conduct of the defendant aggravating the injury to the plaintiff would be taken into account in assessing compensatory damages); and there were two categories of cases in which an award of exemplary damages could serve a useful purpose, viz, in the case of oppressive, arbitrary or unconstitutional action by the servants of the government, and in the case where the defendant’s conduct had been calculated by him to make a profit for himself, which might well exceed the compensation payable to the plaintiff.”

93. In the present case, the Court does not find that the award of exemplary damages are applicable. Given the analysis provided throughout, I do not find that the acts of the Defendant were such that would justify the award of exemplary damages to the Plaintiff. The Defendant by all account sought to accommodate the Plaintiff after her injury by providing an “ergonomic chair”, assigned her to a job that required less walking and allowed her significant time off.

Conclusion

94. For all of the reasons stated above, the Court having heard the evidence, having observed the demeanor of the witnesses and having considered the relevant law finds as follows:-

- a. That the Plaintiff was an employee of the Defendant at the time of the accident;
- b. That the Defendant did not breach its obligation to ensure that the Plaintiff had a safe work environment;
- c. That the incident was not caused as a result of the Defendant’s negligence;
- d. That the Plaintiff is not entitled to damages for occupiers liability and negligence;
- e. That the Plaintiff is not entitled to exemplary damages; and
- f. The Defendant did not comply with the redundancy procedure and owes the Plaintiff thirty (30) days’ pay with interest at the statutory rate of 6.5% from the date of termination to the date of payment.

- g. The Plaintiff having been successful on one ground, Defendant to pay 1/5 of the Plaintiff's cost to be taxed if not agreed.

Dated this 13th day of May 2025, A.D.


The Honourable Madam J. Denise Lewis-Johnson MBE

Justice