[2020] JMSC Civ 241

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION
CLAIM NO. 2016HCV01506

BETWEEN	**CLOVER SMITH**	**CLAIMANT**
AND	**SOUTH EAST REGIONAL HEALTH AUTHORITY**	**1ST DEFENDANT**
AND	**ATTORNEY GENERAL OF JAMAICA**	**2ND DEFENDANT**

IN OPEN COURT

Mr. Everol McLeod instructed by Kinghorn & Kinghorn for the Claimant.

Mrs. Carian Freckleton-Cousins instructed by the Director of State Proceedings for the Defendants.

Heard: October 12, 13 and December 17, 2020.

Negligence – Breach of contract – Employer's Liability – Occupier's Liability – *Res Ipsa Loquitor* – Slip and fall on floor during post-hurricane clean up – Whether inference of negligence can be drawn – Whether the defendants breached a duty owed to the claimant under the Occupier's Liability Act – Whether the defendants had provided a safe place and system of work.

N. HART-HINES, J (Ag.)

[1] On December 17, 2020 I delivered an oral judgment in this matter and promised to put my reasons in writing. I now do so.

[2] On or about October 23, 2012, the operations of the St. Jago Health Centre in St. Catherine ("the Health Centre") were affected by the passage of Hurricane

Sandy over the island. On October 26, 2012, the claimant, a Clinic Attendant employed by the St. Catherine Health Department and assigned to work at the Health Centre, reported for work, to clean the Health Centre. The claimant alleges that while in the lawful execution of her duties, she slipped and fell on the floor in the registration area of the Health Centre, and that she sustained personal injury, suffered loss and damage. She has brought this claim against her employer seeking damages for negligence, and/or breach of the Occupier's Liability Act ("the Act") and/or breach of contract.

[3] The 1st defendant is a body corporate established under the National Health Services Act with responsibility for employing medical and non-medical personnel in the parish of St. Catherine, and it is responsible for the delivery of health care services at the St. Catherine Health Department. The claim is brought against the 2nd defendant, pursuant to the Crown Proceedings Act.

[4] In her statement of case filed on April 14, 2016, the claimant alleges that her employer was negligent in failing to provide a safe place and system of work, and breached its statutory duty under the Act to ensure that she would be reasonably safe when using the premises of the Health Centre. Specifically, she claims that her fall was due to the application of a floor stripping chemical to the floor of the Health Centre, and the failure of her employer to display a sign warning of the danger and/or to cordon off the said area while the said chemical was being used. The claimant further claims that her employer failed to provide her with the necessary safety gear in light of the slippery and dangerous state of the floor.

[5] In the defence filed, the defendants deny that the claimant fell at the Health Centre, and deny that a floor stripping chemical was applied to the floor of the Health Centre on October 26, 2012.

THE ISSUES

[6] The issues for the determination of this court are:

1. Whether the 1st defendant owed a duty of care to the claimant.

2. Whether the claimant's account that she fell as a result of the application of floor stripper to the floor, is credible.
3. Whether the claimant has established a *prima facie* case from which an inference of negligence on the part of the 1st defendant can be drawn.
4. Whether the claimant has shown that the 1st defendant did not take all reasonable precautions in the circumstances to discharge that duty of care.
5. Whether the claimant has shown that the 1st defendant, as her employer, had failed to fulfil its duty to a provide a safe system of work.
6. Whether there is sufficient evidence that negligence or other breach of a duty caused or materially contributed to the claimant's fall and injuries.

THE TRIAL AND THE EVIDENCE

[7] On the first day of the trial, October 12, 2020, the court was informed that efforts to reach the defendants' witness, Mrs. Lorna Bowes, Retired Operations Officer at the St. Catherine Health Department, had proved futile. Counsel for the claimant opposed an oral application for Mrs. Bowes' witness statement to be admitted into evidence pursuant to the Evidence Amendment Act. The court refused the defendants' application but afforded the defendants the opportunity to make further efforts to reach their witness by October 13, 2020. The court heard the sworn testimony of the claimant. On the second day of the trial, October 13, 2020, Mrs. Bowes was still absent and therefore the defendants called no witness in support of its defence.

[8] I will briefly summarise the claimant's evidence and will provide a more detailed account of the evidence when I provide my analysis of this case.

[9] The claimant gave evidence that on October 26, 2012, she was cleaning the immunisation room at the Health Centre when she was called by her supervisor Ms. Bowes. She left the immunisation room and went to Ms. Bowes who gave her instructions to wipe water from the benches in the sunken registration area, which is also referred to as the "waiting area". The claimant stated that she slid and fell as she stepped down into the waiting area. She further stated that she lost consciousness and recalls the scent of the floor

stripper in her nostrils when she regained consciousness. The claimant added that she saw floor stripper on her uniform when she got up. She said that a few of her colleagues were around her at that point and she saw Ms. Bowes still sitting on a bench in the elevated area. Ms. Bowes did not offer her assistance. The claimant stated that she went home that day and returned to work on October 27 and 28, 2012. However, she said that she felt pain in her left shoulder and neck shortly after the fall. She further stated that she reported the incident to Ms. Bowes on October 29, 2012. After seeing a doctor at the Health Centre, she was given seven (7) days' sick leave. She said that she had an X-ray and saw a private doctor, as well as some at the Health Centre, including Dr. Rodriques, Dr. Findlayson, Dr. Wright and Dr. Frederickson.

[10] The medical report dated January 21, 2014 signed by Dr. Sangappa indicates that when the claimant was first seen on November 21, 2012, the doctor's assessment was that she had a cervical strain with soft tissue injury to her left arm. The claimant had six (6) sessions of physiotherapy, and when she was reviewed by Dr. Sangappa on January 21, 2013, she reported that the pain in her neck and her left arm had subsided completely. Despite this indication by Dr. Sangappa, the claimant maintains that she still continues to endure pain.

[11] The claimant alleged that her fall was due to the application of floor stripper to the area where she slipped and fell. However, she stated that she did not see anyone applying it to the floor, and neither did she notice its scent until she fell. During cross examination, the claimant was asked questions about her observations on October 26, 2012, and about the system of work utilized when floor stripper is applied to the floor. The court asked her questions regarding the general condition of the floor of the waiting area following the hurricane.

SUBMISSIONS

Submissions on behalf of the claimant

[12] Mr. McLeod submitted that the claimant ought to have been provided with adequate safety equipment. Counsel Mr. McLeod cited several authorities including ***Walter Dunn v Glencore Alumina Jamaica Ltd. (t/a West Indies***

Alumina Company (Windalco)) Claim No. 2005HCV1810 (unreported) judgment delivered on April 9, 2008 and ***Ray McCalla v Atlas Protection Limited and Ringo Company Ltd*.** Claim No. 2006HCV04117 (unreported) judgment delivered May 6, 2011. In the ***Walter Dunn*** case, Brooks J (as the then was) found that even though Windalco provided the proper equipment and an explanation for the requirement to wear the correct footwear, there was a sub-standard approach to supervising Mr. Dunn and ensuring compliance with the requirement to wear it. Windalco was therefore liable for not providing a safe system of work. In the ***Ray McCalla*** case, McDonald-Bishop J (as she then was) discussed the obligation of the employer to provide and maintain a proper plant and equipment.

[13] Mr. McLeod submitted that it was reasonable for the claimant to be provided with protective clothing such as non-slip shoes, and appropriate warnings in respect of wet or slippery floors. Further, it was submitted that adequate supervision was required and that instructions ought to have been given against the use of floor stripper on October 26, 2012.

[14] Mr. McLeod further submitted that a *prima facie* case was made out for breach of **section 3(1)** of the **Occupier's Liability Act** by the very fact that the claimant fell and suffered an injury, and that the onus was on the 1st defendant to show that it took all necessary steps to prevent what he regarded as "*the foreseeable risk to the claimant*".

Submissions on behalf of the defendants

[15] Counsel Mrs. Freckleton-Cousins submitted that the claimant has not proven that she fell at the Health Centre and that her injuries were caused by the negligence of the defendants. It was submitted that the claimant embellished her testimony in court in relation to seeing floor stripper on her uniform and in relation to a deep cleaning exercise being done monthly on a fourth Friday. Mrs. Freckleton-Cousins drew the court's attention to the fact that no mention was made in her witness statement of seeing floor stripper on her uniform, and it was submitted that this was a material discrepancy in her account. Further,

Mrs. Freckleton-Cousins submitted that there would be no basis to "deep clean" the floor of the Health Centre immediately after the passing of the hurricane, since rainwater was on the floor of the waiting area and floor stripper could not be applied to wet surfaces. Counsel submitted that the claimant was not a witness of truth.

[16] Counsel submitted that the claimant had not discharged the burden of proving negligence or breach of an employer's common law duty to ensure the safety of its employees. It was further submitted that it was improper for the claimant to seek to rely on the doctrine of *res ipsa loquitor*, as a fall is something which could happen without the negligence of the defendants. Finally, submitted that the claimant did not establish that there had been a breach of contract, or breach of the common duty of care owed by an occupier to a lawful visitor.

THE LAW

Burden and standard of proof

[17] The claimant bears the burden of proving, on a balance of probabilities, that she fell at the Health Centre, that a floor stripping chemical was applied to the floor, and that this caused her fall. This means that the claimant must provide cogent evidence to satisfy the court that the alleged particular event was more likely to have occurred than not.

[18] In assessing whether or not a claimant has proved his or her case on the balance of probabilities, a court is not expected to compare the claimant's case with the defendant's case to see whether it is more probable than the explanation advanced by the defendant. The court is simply to determine whether the claimant has proven that the facts relied on. If the claimant fails to prove any element of her claim, the defendants will be entitled to judgment. The defendants bear no legal burden of proof by merely denying the claim, but do bear the legal burden of proving any defence relied on.

[19] The decision of the House of Lords in ***Rhesa Shipping CO SA v Edmunds*** [1985] 1 WLR 948 is instructive. There, ship-owners filed suit against their

underwriters to recover sums for the loss of the ship at sea. The parties disputed the cause of the loss of the ship. The plaintiff contended that the loss was caused by crew negligence, or, by a peril of the sea in that it was hit by a moving submerged submarine. The defendants (underwriters) contended that the plaintiff failed to exercise due diligence and advanced a hypothesis that the vessel became unseaworthy through wear and tear.

[20] The House of Lords reviewed the decision of the court at first instance. Justice Bingham (as he then was) felt that the plaintiff's explanation that the ship became damaged by a submerged submarine was "extremely improbable". However, the learned judge also felt that the defendants had not provided an acceptable explanation to rebut the plaintiff's claim. Their Lordships held that Bingham J was not entitled to choose between two competing theories, merely because the defendants had put forward an explanation for the loss which their Lordships said that he regarded "*not as impossible, but as one in respect of which any mechanism by which it could have operated was in doubt*". Their Lordships said that Bingham J was wrong "*to accept the shipowners' submarine theory, even though he regarded it, for seven cogent reasons, as extremely improbable*". The House of Lords held that the only inference which could be drawn from the learned judge's findings of the facts was that the true reason for the loss was in doubt. As causation remained in doubt, the plaintiff had not discharged the burden of proof which rested on it to prove loss by perils of the sea. The defendants were under no obligation to suggest an alternative cause of loss and, if they chose to do so, they were under no obligation to prove, even on the balance of probabilities, the truth of their alternative cause.

[21] I am also guided by dictum in the Privy Council decision in ***Ng Chun Pui and Ng Wang King v Lee Chuen Tat and another*** PC Appeal No. 1/1988. Lord Griffiths delivered the judgment of the Board and stated as follows:

> *"The burden of proving negligence rests throughout the case on the plaintiff. Where the plaintiff has suffered injuries as a result of an accident which ought not to have happened if the defendant had taken due care, it will often be possible for the plaintiff to discharge the burden of proof by inviting the court to draw the inference that on the balance of probabilities the defendant must have failed to exercise due care,*

> *even though the plaintiff does not know in what particular respects the failure occurred…*
>
> ***So in an appropriate case, the plaintiff establishes a prima facie case by relying upon the fact of the accident. If the defendant adduces no evidence there is, nothing to rebut the inference of negligence and the plaintiff will have proved his case.*** *But if the defendant does adduce evidence that evidence must be evaluated to see if it is still reasonable to draw the inference of negligence from the mere fact of the accident. Loosely speaking this may be referred to as a burden on the defendant to show he was not negligent, but that only means that faced with a prima facie case of negligence the defendant will be found negligent unless he produces evidence that is capable of rebutting the prima facie case… it is the duty of the judge to examine all the evidence at the end of the case and decide whether on the facts he finds to have been proven and on the inferences he is prepared to draw he is satisfied that negligence has been established."* (Emphasis added).

[22] The burden is on the claimant to establish a *prima facie* case by showing that the accident occurred, and she might ask the court to draw the inference of negligence on the part of the 1st defendant. However, to establish a *prima facie* case, the claimant must give credible evidence on which the court can rely. Her account must satisfy the court that the accident was more likely to have occurred than not. The claimant must be able to demonstrate the cause or likely cause of the accident.

[23] In the instant case, the defendants deny that the accident occurred and are under no obligation to suggest an alternative cause of the claimant's injuries. Applying a principle enunciated in the ***Ng Chun Pui*** case, if there is an inference of negligence to be drawn, the defendants would be required to adduce evidence to rebut that inference. However, the claimant must first adduce sufficient evidence to merit the drawing of an inference of negligence.

Breach of contract

[24] The claimant alleges in her pleadings that the 1st defendant, her employer, has breached an expressed or implied term of the contract of employment that the 1st defendant "*would take all reasonable care to execute its operations in the course of its trade in such a manner so as not to subject the Claimant to reasonably foreseeable risk of injury*". This allegation is intertwined with the allegation of negligence and breach of the employer's common law duties to employees.

Negligence

[25] The tripartite structure of the tort of negligence requires that the claimant must establish these three (3) matters:

(1) that the 1st defendant owed her a duty of care;

(2) that the 1st defendant breached the duty of care in that its conduct fell below the standards that the law requires; and

(3) that as a result of the breach she suffered damage of a kind that the law deems worthy of compensation.

[26] In the instant case, it is accepted by the parties that there is sufficient proximity between the parties, and that a duty was owed by the 1st defendant to the claimant as its employee. What remains to be determined in this case is whether the 1st defendant breached its duty and whether the claimant's injury was caused by that breach. Whether the conduct of a defendant fell below what is expected is question of fact to be determined based on an objective standard. The court is expected to apply the test of what a "reasonable man" would have done in the defendant's position. If a defendant is found to have acted contrary to what the reasonable or prudent man would have done, and if his failing caused the harm alleged, he will be liable.

[27] The claimant must show that the breach resulted in, caused or materially contributed to the injury and that the injury is sufficiently closely connected to the breach. The risk of injury must be reasonably foreseeable. As Lord Denning said in ***Cork v Kirby Maclean Ltd*** [1952] 2 All ER 402 at page 406 "*[i]f you can say that the damage would not have happened but for a particular fault, then that fault is in fact a cause of the damage*".

Res Ipsa Loquitor

[28] The term *res ipsa loquitor* means "*the facts speak for themselves*", that is to say, carelessness may be inferred from the facts. Once the circumstances causing the injury are patently clear, the doctrine of *res ipsa loquitor* applies. The doctrine permits a reasonable person to surmise, from the evidence of the

circumstances, that the most probable cause of the accident was the defendant's negligence. The accident must be one which ordinarily does not occur in the absence of negligence, and the circumstances must be in the defendant's exclusive control and must have caused the injury alleged. The presumption or inference that the defendant was negligent is rebuttable, but to do so, the defendant would need to adduce evidence giving a reasonable explanation for the accident. The effect is that the evidential burden is shifted to the defendant to show that the accident was not due to his negligence.

Occupier's Liability

[29] Section 3 of the Occupier's Liability Act sets out the duty of an occupier and provides:

> *"1. An occupier of premises owes the same duty (in this Act referred to as the "common duty of care") to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor by agreement or otherwise.*
> *2. The common duty of care is the duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.*
> *3. The circumstances relevant for the present purpose include the degree of care and of want of care, which would ordinarily be looked for in such a visitor and so, in proper cases, and without prejudice to the generality of the foregoing-*
> *(a) an occupier must be prepared for children to be less careful than adults;*
> *(b) an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.*
> *4. In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances.*
> *5. Where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe."*

[30] An occupier is required to take reasonable care to ensure that his visitors were reasonably safe, but he is not required to guarantee their safety (see ***Laverton v Kiapasha (trading as Takeaway Supreme)*** [2002] All ER (D) 261). What the law requires is that the occupier exercise reasonable care to protect his visitor from danger which he knows of, or ought to know of. However, it is settled law that regard must be had to the particular circumstances of the case and what is reasonable to expect of the occupier.

[31] In the case of ***Ward v Tesco Stores Ltd*** [1976] 1 All ER 219, the House of Lords held that the risk of spillages was known to a supermarket, and that it was reasonable to expect that an occupier would address spillages as soon as they occurred. If spillages were not dealt with reasonably promptly, the occupier would have failed to carry out is common duty of care to the visitor.

[32] In the case of ***Wayne Ann Holdings Limited (T/A SuperPlus Food Stores) v Sandra Morgan*** [2011] JMCA Civ 44, the Court of Appeal found that Williams J (as she then was) was correct in finding the appellant liable for injuries sustained by the respondent as a result of the failure of the appellant to clean up a spillage in the supermarket. Harris JA reiterated that once there was sufficient evidence before the court to permit an inference of negligence to be drawn, the appellant would have to adduce evidence not only of the existence of a system of dealing with spills, but also evidence about what happened that particular day, including evidence about the length of time that the spillage was on the floor.

[33] At paragraphs 33 to 35 of the judgment, the Court of Appeal in the ***Wayne Ann Holdings*** case also briefly considered two cases concerning risks which were incidental to the calling of the claimant, which naturally arise or were inevitable in the performance of the job, such as slipping on wet floors. Harris JA said that the occupier was required to establish a system which was appropriate to address the common occurrence of the hazard. Whether the occupier had taken all reasonable precautions is a question of fact for a judge to decide.

Employer's Liability

[34] An employer has duty at common law to ensure that its employees are safe while carrying out their duties at work. It has been established by case law that an employer owes four duties to his employees, namely to provide:

(1) a competent staff of employees,

(2) adequate plant and equipment,

(3) a safe place of work and

(4) a safe system of work with effective supervision.

[35] The law requires an employer to introduce measures designed to keep its employees safe and reduce the risk of injury from reasonably foreseeable acts of carelessness or omissions. As workmen are sometimes prone to be careless, the employer is also required to monitor the system of work to ensure compliance with safety standards and rules. However, the law does not require the employer to protect the employee from every eventuality, but rather, to do what is reasonable to ensure the safety of the employee.

[36] It must be noted at the outset that it is settled law that the duty to provide a safe system of work with effective supervision includes the provision of personal protective equipment ("PPE") and appropriate warning signs and guard rails. In determining whether or not an employer breached its duty of care to its employee, regard should be had to whether the risk of injury was reasonably foreseeable, what the employer reasonably had to do to minimize that risk and whether that had been done.

[37] When reporting for work to clean up after a hurricane, the claimant would have been fully aware of the danger of slipping on water and falling at the Health Centre. However, prior to her fall, she was not aware that the floor stripper had been applied to the floor, and, if that evidence is accepted, it would have been an unknown or concealed danger. Here, the onus is on the claimant to prove, on a balance of probabilities:

(1) the foreseeability of the risk of falling due to the floor stripper,

(2) that her employer failed to take a precaution which was reasonable in providing a safe place of work and safe system of work, and

(3) that she fell as a result of the floor stripper and the breach of duty of care owed to her to provide PPE and/or warning signs.

ANALYSIS

Whether the 1st defendant owed a duty to the claimant to ensure her safety.

[38] It is accepted that the 1st defendant owed a duty of care to the claimant and a duty to a provide a safe system of work.

[39] In this case, the claimant alleges that the hazard was the floor stripper which she alleges was applied to the floor. She told the court that when applied, the stripper was "soapy" and slippery. The danger of slipping on a soapy substance is obvious. It is accepted that the 1st defendant, as the occupier of the premises, would owe a duty to the claimant to take such steps as were reasonable to ensure her safety.

[40] This court must determine whether it is more probable than not that the stripper was applied to the floor on October 26, 2012, and whether this caused the claimant to fall as alleged. I have to assess the claimant's evidence and determine her credibility and whether the account given makes sense.

Is the claimant's account credible?

[41] I have assessed the claimant's account and I examined her demeanour while testifying. I assessed her evidence for internal inconsistency. Applying a common sense approach, I have to consider whether the evidence given is improbable or whether it is reasonable. I assessed the claimant's ability to recall the events, and her ability and opportunity to observe her surroundings at the time of the accident.

[42] The claimant portrayed herself as a mature and intelligent witness. However, when her evidence is considered with care, it becomes apparent that there are some glaring inconsistencies in her account and she has embellished her account in relation to material matters. When I assess the totality of the claimant's evidence, it is apparent that there is a deficiency in her account in relation to how the accident occurred. I find that her account in relation to material matters is not believable or credible.

[43] Having regard to the medical report of Dr. Sangappa which indicated that he first saw the claimant on November 21, 2012, less than four weeks after the incident, I accept that the claimant sustained an injury to her left shoulder and neck sometime before her visit to the doctor. However, I do not accept her

account that the injury was sustained at the Health Centre on October 26, 2012. Below, I will indicate my reasons for rejecting her account as being untruthful or unreliable.

(1) Evidence regarding damage to the premises by the hurricane

[44] In response to a question from counsel for the defendants, the claimant stated:

> "*The Friday was not the day that much debris was in the place. About 2 sheets of zinc came off the roof in waiting area, but there was not much debris. There was no debris sent down to where the incident took place. There was no debris. There may be splashes of water where the benches are but not down to the immunisation section".*

[45] When asked what she meant by "debris", the claimant indicated that water was on the floor near the benches. She stated this:

> "*leaves or rotten strip of wood. But there was no debris at all on corridor or waiting area. There would be some splash of water up the top but based on how the place was built, there was no water down this side where immunisation room was*".

[46] When asked by the court whether she could see the sky where the zinc came off the roof, she replied "*yes*". The court then asked whether there was water in the area where the zinc came off the roof, and she replied "*yes, up the registration area*". The court sought to clarify what was meant by "*how the place was built*" and the claimant stated "*it has gutter and pipe to lead water off the roof and run into the pipe and drainage down the bottom*". She stated that the floor was "level" from immunisation section to the waiting area., her account changed when asked by the court whether she saw water on the floor as well as the benches. She stated "*I did not reach the bench. No I was not noticing. I did not see water on the floor up where the benches were*". Her responses to the court conflicts with her earlier answers that *"[t]here may be splashes of water where the benches are"* and *"[t]here would be some splash of water up the top".*

(2) Evidence regarding the cleaning system between October 26 and October 28, 2012

[47] The claimant's account that floor stripper was applied to the waiting area floor on October 26, 2012 seems highly improbable when compared to the rest of

her evidence regarding when the floor was actually cleaned. She stated:

> "*the waiting area would be the last thing to do. There was no cleaning of the waiting area at that time [on October 26, 2012]. The waiting area would be the centre of the work to be done the next day, Saturday"*.

[48] I have observed inconsistencies in her account regarding how floor stripper would be applied. She accepted that it would not be applied to wet floors, and based on her experience, she would not apply it to wet floors. However, she admitted that part of the floor in the waiting area was wet on October 26, 2012. Further, she said that when applying the stripper, they would "*remove the benches and anything that was built up on [the floor] would be thoroughly cleaned"*. Yet she said that the benches were still in the waiting area, as she had been asked to clear the water off the benches to avoid damage to the benches. It would clearly be very difficult to deep clean the floor of the waiting area, or to properly prepare the floor for stripping, with furniture still on it.

[49] Having regard to the damage to the roof of the waiting area, which was yet to be repaired, it would make no sense to apply floor stripper to the area when more rain and debris could enter the waiting area via the roof which was missing two sheets of zinc. It seems more probable that the cleaning of the floor of the waiting area was left until Sunday October 28, 2012 (as she stated), after the hurricane clean up exercise would have been completed, to facilitate the reopening of the Health Centre on October 29, 2012.

[50] The claimant's account of the cleaning system which was in operation on October 26, 2012 is somewhat vague in that she could not state what work was being done along the corridors or in the waiting area, though she surmises that stripper was applied in that area. Even after falling in the area she said that she did not observe what work was done in the area until October 29, 2012, when she and other staff cleaned the floors. I find it peculiar that she did not take note of when the floor stripper was removed from the area after October 26, 2012. When asked during cross-examination whether she saw anyone removing stripper on Saturday October 27, 2012, she responded:

> "*on Saturday morning when I returned to work, I was not in the area. On Sunday*

we were washing out waiting area, scrubbing with broom and wiping with mops, so I don't know what took place before".

(3) Evidence regarding the floor stripper

[51] During cross-examination the claimant gave evidence that she first became aware of the floor stripper being used when she "*got conscious*" after her fall. She went on to say "*the scent of stripper was strongly in my nostrils. When I got up, it was also on my uniform*". She was asked why she had not indicated in her witness statement filed on June 5, 2020 that she saw the floor stripper on her uniform. She stated that the reason for not referring to it in her earlier account, was that no one had asked her about it. When her account in cross-examination is compared to her witness statement, I do not find her evidence that the chemical was seen on her uniform to be a minor inconsistency. Neither do I find her explanation for the inconsistency to be satisfactory or credible. I have noted that at paragraph 7 of her witness statement, she gave an account of what she heard and smelt once she regained consciousness. She could likewise have indicated what she observed, but did not do so even though this is relevant information. I find that by referring to seeing floor stripper on her uniform, the claimant was seeking to embellish her evidence in order to appear more convincing.

[52] In her pleadings it is alleged that the floor stripper was applied to the corridors of the Health Centre. However, in her witness statement and during her evidence in court the claimant was silent as regards precisely where the stripper had been applied. The court is asked to accept that she slid at the point of stepping down from the corridor area into the waiting area. It is not entirely clear whether or not the claimant is alleging in her evidence that the floor stripper was applied to the corridors up to the point where she would step down into the waiting area, or, whether it was applied in the waiting area only, or applied to both the corridors and waiting area. I have to assess whether the claimant has put forward supposition, or whether she has given cogent evidence on which I can rely and infer that the occupier failed to take reasonable steps to ensure the claimant's safety on the premises.

[53] The claimant gave evidence that the step which she had to negotiate was twelve (12) inches high. She described it as a step down into the waiting area, which in essence was a sunken area surrounded by corridors. The claimant has not suggested that there was anything inherently dangerous about the design of the sunken floor area or the step itself.

[54] The claimant stated that she slipped and fell on stepping down into the waiting area, because of the application of floor stripper in that area. She did not state that the walkway leading to the waiting area was wet, slippery or otherwise unsafe, nor that the step down itself was unsafe.

[55] It is noteworthy that the claimant stated that she did not notice floor stripper being applied to the floor of waiting area and that she did not notice the scent of the floor stripper until after she fell. The claimant stated:

> "*for me to smell it, I would have to go close to it. I was just coming out of the room when I stepped out of the room and stepped down on the corridor, that is when I was sliding. I did not have time to. I would not have time to smell when I am in a difficult situation and trying to save myself*".

[56] However, it is not correct to say that she simply stepped from the immunisation room into waiting area. She gave evidence that after leaving the immunisation room, she stopped to speak with Ms. Bowes, and she received instructions, and then proceeded to the waiting area where she fell. During this period of walking and pausing to talk to Ms. Bowes, she alleged that she did not smell the scent of the floor stripper. Her explanation was that the scent would have been noticeable in an enclosed area but not an open and ventilated area like the waiting area. However, I have to bear in mind that she admitted that the floor stripper has a "*strong*" scent.

[57] By stating that she "*stepped down*", the claimant seems to ask the court to find that floor stripper was applied to the floor in the sunken waiting area. However, her evidence that floor stripper had been applied to the floor in the waiting area conflicts materially with her evidence that (1) there was water in some areas of the waiting area, (2) stripper is not normally applied to wet floors, and that (3) cleaning of the floor of the sunken waiting area took place two days later.

[58] In light of the rest of her evidence, it does not seem plausible that floor stripper would have been left on the floor for forty-eight (48) hours. While no expert evidence was presented to guide the court regarding the process of applying the chemical, the claimant's account in re-examination that floor stripper would be applied and allowed to sit overnight seems illogical. Why would the cleaners allow the soapy chemical to dry overnight with the likely result that it would stick to the floor surface? If the aim of applying it is to remove or loosen substances stuck to the floor surface, then there would seem to be no point in allowing the chemical to dry as an added layer of film on top of the substances stuck to the floor surface. Further, there is a real possibility that floor stripper might stain or discolour the terrazzo tile if allowed to dry on it. That method of application would not seem prudent or make sense.

[59] I find it hard to fathom why stripper would have been applied to the floor two days before the floor was actually cleaned. I am mindful that there is no evidence before this court to contradict her account. Neither is there evidence before this court to suggest that there was any momentary inattention or misjudgement by the claimant as she stepped down into the waiting area. Nonetheless, the onus is on her to give cogent and credible evidence. However, having regard to the inconsistencies in her account, the claimant has not discharged the burden of proving that the floor was slippery due to the application of the stripper and that it caused her to fall.

(4) Evidence regarding the general condition of the floor of the waiting area

[60] The claimant referred to "splashes" of water being in the waiting area. However, throughout her evidence, the claimant was clear to indicate that there was no water in the area where she fell and that the cause of her fall was the floor stripper.

[61] I have already indicated that I do not accept that she fell as a result of floor stripper being applied to the floor on October 26, 2012. Nonetheless, it seems appropriate to consider her evidence generally, regarding any other possible

cause of her fall. Having regard to the fact that the roof of the waiting area was damaged by the hurricane, it must be accepted that there was some water in the waiting area. I have to assess whether there was water or other substance on the floor to cause its surface to be dangerous or slippery.

[62] In ***Wayne Ann Holdings*** Harris JA reiterated that an occupier would not be liable if a hazard was incidental to the job, provided that the occupier had established a system which was appropriate to address the common occurrence of the hazard. In the instant case, the claimant alleged that a decision had been taken to leave the cleaning of the waiting area until last. If this meant that there was water in that area throughout the day on October 26, 2012, and if staff were required to work in that area, or to traverse the area *en route* to other areas which required cleaning, then in such circumstances it would have been prudent to supply staff with anti-slip shoes to minimise the risk of injury. As in ***Ward v Tesco Stores***, leaving water on the floor for a long period of time would be patently dangerous, and some explanation would be required from the defendants if the claimant slipped on water. However, the claimant was adamant that there was no water, leaves or other debris where she fell, and that there were only "splashes" of water by the benches in the waiting area, 15 feet away from where she fell.

[63] The claimant maintained that she did not slip on water. I accept her account that there was no water where she fell and that water did not contribute to her fall. I therefore cannot find the defendants liable on that basis.

(5) Evidence relating to the report about the fall

[64] I accept the claimant's account that she made a verbal report of the fall on Monday October 29, 2012. The claimant stated that she did not make a written report because whenever she made reports in the past, they "*die there*" in the supervisor's office, and she felt that she needed the supervisor's permission to make the written report. However, having previously made a written report in relation to an incident with a security guard, it would have been apparent to her that no permission was needed to make a written report.

[65] Her alleged belief that a written report in relation to an injury would "*die there*" is not a reasonable basis for failing to make the written report. The very allegation that reports "die" in the supervisor's office suggests that the claimant knew that there was a system in place for written reports to be investigated. However, she elected not to make the written report even though her injury was far more serious than any complaint in relation to a security guard. I find the reason for her failure to make a written report about the fall, and her account that she needed permission to file such a report, to be incredible.

(6) Evidence relating to Mrs. Bowes witnessing the fall

[66] Although the claimant has indicated that she was dissatisfied with the approach of Mrs. Bowes in relation to complaints, she did not state that there was any malice or ill will held by Mrs. Bowes towards her. At best, she portrayed Mrs. Bowes as someone who said that the staff complained too much and "should do their work", but she was not portrayed as someone who bore the claimant any malice or ill will. Therefore, it seems incredible that Mrs. Bowes would have witnessed the claimant fall and observed her lying unconscious on the floor, yet not enquire whether or not she was seriously injured or offer her any assistance.

[67] Additionally, it would be unnecessary for the claimant to make a verbal report of the fall to Mrs. Bowes three days later, since she alleged that Mrs. Bowes witnessed the fall. No good purpose would be served by doing this.

Other issues

[68] The claimant has been discredited in relation to material matters concerning her alleged fall. I do not find her to be a truthful witness. Consequently, I need not address the other issues identified at paragraph [6] above.

CONCLUSION

[69] Having given careful consideration to the claimant's evidence, and having particular regard to the inconsistencies in her account, I can only conclude that

the claimant is not a forthright or credible witness. The evidence adduced is insufficient to enable me to draw a reasonable inference of negligence on the part of the 1st defendant and the doctrine of *res ipsa loquitor* is not applicable in this case. Neither do I find that the claimant has established negligence, or that 1st defendant breached its duty of care owed to her as an employee, or the common duty of care owed to her as a visitor.

[70] It is accepted that without a witness giving evidence of the system of work and what occurred on October 26, 2012, the defendants cannot establish that all reasonable precautions had been taken to ensure the safety of those tasked with cleaning the Health Centre after the hurricane. However, I find that the claimant did not give credible evidence to merit the drawing of an inference of negligence, or to cause the defendants to provide evidence to rebut the claimant's assertions.

[71] Causation remains in doubt in this case, and the claimant has failed to discharge the burden of proof. She has failed to show on a balance of probabilities that the 1st defendant failed to ensure that the premises were reasonably safe, or failed to take a precaution which was reasonable in providing a safe place of work and safe system of work. The claimant has not established that the 1st defendant breached an expressed or implied term of the contract of employment that it would execute its operations in such a manner so as not to cause injury to her. Nor has she established negligence on the part of the defendant. I do not accept that she fell at the Health Centre any at all, or as a result of floor stripper being applied to the floor. My reasons for not accepting the claimant's account in relation to the alleged accident are due to the incongruities or inconsistencies in her account.

DECISION AND ORDERS

[72] My orders are as follows:

1. Judgment for the defendants.
2. No order as to costs.
3. Attorney for the defendants to prepare file and serve this order.