

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv2023/0039

BETWEEN:

SHERRY ANN THOMAS

Claimant

And

FINANCIAL SERVICES REGULATORY COMMISSION

Defendant

Appearances:

Mr. Loy Weste and Ms. Tiwana Martin for the Claimant

Mrs. B. Lauralee Riley and Ms. E Deniscia Thomas for the Defendant

2025: June 23rd

July 7th (Submissions)

September 1st

JUDGMENT

- [1] **BYER, J.:** This claim concerns the obligations between an employee and their employer.
- [2] The claimant is an employee of the defendant. She commenced working with the defendant over twelve years ago when she was engaged as part of the Regulatory Team support staff.
- [3] Part of the duties of the claimant (a fact not disputed by the defendant), was that the claimant would be responsible for certain files which meant that she had day to day dealings with the files, including the filing of documents on the same. Up until 2016, these files were stored in physical cabinets and thereafter the defendant introduced an e-filing system where files and related

material were electronically stored. Between 2016 and 2019 the claimant worked in the Registry department where the e-filing system was first implemented but in 2019, the claimant was transferred to the Insurance department, still as a support staff member, however this department, as adamantly stated by the claimant, by and large in 2019 still had a large number of paper files in use which the claimant was required to access during her workday.

- [4] On 13th February 2020 (the first incident), during the currency of the employment of the claimant and while undertaking her duties, she visited the filing room of the defendant where fire proof filing cabinets were kept and accessed a filing cabinet by pulling one of the drawers to put a file back into the cabinet. The claimant alleged that she sustained injury to her back when she bent over and pulled the drawer. She sought and received medical attention for the same including physiotherapy and chiropractic care.
- [5] Thereafter on 11th June 2021 (the second incident), just over a year later the claimant alleged that she slipped on a puddle of water that was on the floor close to her workstation causing her to fall on her knees and aggravate her back injury from the previous year.
- [6] The claimant therefore instituted these proceedings on 13th February 2023 seeking damages for the injuries, some three years and two years respectively since the alleged incidents.
- [7] At the further pre-trial review of the matter before this court as presently constituted, this court considered that the trial of the matter should be bifurcated and the trial on 23rd June 2025 therefore proceeded on that basis.
- [8] In response to the claim the defendant, pleaded that in relation to the first incident that there was nothing in the cabinets that should have caused any injury to the claimant and that further any injury suffered by the claimant was an aggravation of a pre-existing injury which was not caused by any negligence on the part of the defendant. In relation to the second incident, the defendant categorically stated that there was no puddle of water on the floor that could have caused the claimant to fall, and if there was one which they deny) it was there as a result of actions by the claimant herself and as such if any injury did in fact occur as a result of her falling that the claimant had wholly contributed to such injury.
- [9] Upon considering the evidence that was led at trial, the pleadings and the closing submissions filed, it is clear to the court that the issue that this court has to consider and determine is as follows:

- a. Whether the defendant is liable in negligence as the employer of the claimant for the injuries suffered by the claimant at the first and second incidents separately.
- b. If the answer is yes to either or both of the identified incidents, was there any contributory negligence on the part of the claimant, and if so to what extent?

Issue #1: Is the defendant as employer of the claimant liable to the claimant in negligence for the injuries suffered?-

First Incident

[10] The claimant claimed against the defendant the following particulars of negligence in relation to the first incident

- a. Failing to take any or any reasonable care to see that the claimant would be reasonably safe at work
- b. Failing to take any or any reasonable care to prevent injury or damage to the claimant from unusual dangers on the premises of which the defendant knew or ought to have known
- c. Failing to provide a safe place of work

[11] Having assessed these particulars of negligence this court must first consider whether there was any duty owed by the defendant to the claimant and whether they breached that duty in the manner as averred by the claimant.

[12] At common law, the test as to an employer's liability has long been settled. In **Stokes v GKN (Bolts and Nuts) Ltd**¹ Swanwick J put it this way,

“ ..the overall test is still the conduct of the reasonable and prudent employer, taking positive thought for the safety of his workers in light of what he knows or ought to know.....He must weigh up the risk in terms of the likelihood of injury occurring and the potential consequences if it does and he must balance against this the probable effectiveness of the precautions that can be taken to meet it and the expense and inconvenience they involve. If he is found to have fallen below the standard to be properly expected as a reasonable and prudent employer in these respects he is negligent.”

[13] Thus, it is the duty of the employer to take reasonable care for the safety of its employees in all the circumstances so as not to expose the employee to an unnecessary risk. “An employer's duty is to take reasonable care to carry on his operations so as not to subject his employees to

¹ [1968] 1 WLR 1776 at 1783

unnecessary risks, is a single and continuing duty applicable in all circumstances and includes the duty to take reasonable care to provide and maintain a reasonably safe place of work..."²

[14] Therefore, what can be extrapolated from the duty owed is governed by the words 'reasonable care', "but what reasonable care demands in each case will no doubt vary"³ and the obligation is discharged once the employer has exercised due care and skill at the operative time.

[15] It is therefore clear that there is no absolute obligation on an employer at common law and the court is mandated to consider whether an employer has done all that is reasonable or that he took reasonable care for the safety of his employees. This therefore requires an assessment of the circumstances that operated at the time of the incident with the claimant. The evidence of the defendant was given by the Assistant Human Resources Manager, Janice Thomas.

[16] In relation to the first incident, Ms. Thomas told the court the following:

- i. That she was not aware of the first incident until the 14th of February (the day after the incident) but was not aware if the claimant had spoken to her manager one Mrs Richardson or the Director of Operations Mr. Williams on the actual day of the incident.
- ii. That she as the Assistant Human Resource manager was aware of the presence of the cabinets in the filing room but admitted on cross examination not in examination in chief, that she had no reason to access them on a regular basis. However she told the court that the cabinets were not overloaded or difficult to open as she tried it herself, even though she was not aware of the exact drawer that the claimant had in fact opened on the day of the incident.
- iii. That the claimant had never made a complaint in writing on any of the statements that were submitted to their insurance company that the cabinets were overloaded. However this witness once again indicated that she had not produced these written statements with this information to the court for use in evidence. Ms Thomas also told the court that she was not aware of whether the claimant had made complaints verbally to her manager or the Director of Operations, both who gave no evidence in the trial of the matter. Also, she also admitted that any overloaded cabinets or files on the premises were "unstuffed" by the employee who had conduct of the file and as such the claimant would have been responsible for so doing, although she further admitted that this was a task that an employee, including the claimant had to do in conjunction with the manager of the department.
- iv. In any event the defendant denied that any injury suffered by the claimant could have occurred as a result of the opening of the drawers as claimed by the claimant but rather

² **Cheryl Malone v AMS Financial Services Limited** BVIHCV2013/0241 per Ellis J at paragraph 51

³ **Wilson v Tyneside Window Cleaning Co.**[1958] QB 110 at 124

were due to a pre-existing injury she suffered in 2018 which has been documented on her personnel files.

[17] It is clear from the sole witness for the defendant that the position of the defendant is that no injury could have been suffered by the claimant in the use of these filing cabinets and that any injury suffered was because of prior issues the claimant had with her back.

[18] In this regard this court finds the contention of the defendant not made out for the following reasons:

- a. It was clear to the court upon the demonstration by the claimant as to how she opened the drawer that there would have had to have been some requisite bending that would have had to utilise the muscles in the back, however minimally.
- b. That the court accepts on a balance of probabilities that at the date in 2020 when the claimant accessed the filing cabinet, that the cabinets were fully functional as the main repository of the files for the department was still by and large using physical files.
- c. That the defendant brought no medical evidence to contradict the clear evidence of the claimant that the injury she suffered in 2018 was in fact in relation to her neck and shoulder and not her back as alleged.
- d. That the court is satisfied on a balance of probabilities that it is was solely due to the use of the filing cabinet by the claimant in February 2020 that resulted in her suffering injury to her back. That it was clear from the evidence that the defendant had not taken any reasonable care to ensure that the claimant had a safe place of work. They had in fact on the evidence shown that they had done nothing to alleviate or lessen the use and reliance on filing cabinets as the repository of records for clients of the defendant at the time of the incident save and except an ad hoc policy to reduce the size of files admittedly done at the discretion of an individual who was not presented to court to give evidence.

[19] That being said, this court is satisfied that the claimant has made out her claim of negligence against the defendant in relation to the first incident.

Second Incident

[20] In relation to the second incident, the claimant pleaded the following at common law:

- a. Failing to give the claimant any adequate warning of the dangerous condition of the area or the presence of water on the floor
- b. Causing or permitting the wet floor to be or to become or to remain a danger to the claimant
- c. Causing or permitting water to remain on the floor

- d. Failing to keep the floor clean and free from spillage to avoid the claimant's accident
- e. Failing to provide a safe place of work
- f. Causing, permitting or requiring the claimant to walk in the wet floor when the defendant well knew or ought to have known of its dangerous condition

[21] The claimant also pleaded *res ipsa loquitur* and relied on the statutory breaches contained in the Antigua and Barbuda Labour Code⁴ (the Labour Code) at D10 in that, (a) the defendant failed to keep the workplace in a clean state and (f) that the defendant failed to provide effective means to drain the floors.⁵

[22] The case of the claimant is that having sat at her desk for more than half the day she had gotten up to utilise the rest room when she slipped in a "puddle of water" on the floor causing her to fall to her knees and rock back and striking her back on a power pack that lay on the floor.

[23] The witness for the defendant Ms. Janice Thomas told this court categorically that she did not believe that the claimant had fallen on that day of the second incident and that indeed she did not slip in any water that may have been on the floor. She however did admit that it had been reported to her by the claimant that she had fallen on the floor and that she was experiencing pain and that she advised the claimant to seek medical assistance.

[24] At trial in rigorous cross examination, she stated the following

- a. That the claimant had never told her in the telephone call she had the day of second incident or in subsequent reports on the said incident that she had ever hit her knees. She however admitted that she had not placed the written statements by the claimant into evidence.
- b. That she was aware that the claimant's co-worker one Sydney Christian had indicated that there had been water spots on the floor earlier that morning. Further that there as a water fountain and a coffee station in close proximity to the claimant's workstation which during covid only about 5 persons accessed.
- c. That after the report made by the claimant she came to the area and inspected the area herself. She did not see any water spots or marks. Did not see any leaks from the roof and that she herself did not see the claimant after the second incident to inspect her to observe her wet clothing or disarray.

⁴ Cap 27

⁵ Amended Statement of claim filed 28/7/2023 at paragraph 7

- [25] Ms Thomas was followed by Mr Sydney Christian who told the court that his statement which he gave to management on the day of the second incident was very bare as he did not want to get involved at the time. He however did agree that at about 8:15 am the morning of the second incident, he recalled that another co-worker had commented that there was water on the floor and when he inspected the same he saw 4 – 6 water spots on the floor. He did say that the same was never mopped up as it was not sufficiently significant to be mopped up and there was no warning sign displayed in the area. He did tell the court that the claimant was at her desk at the time of the observation being made and the water spots were closer to her desk than to his. This witness although admitting that he did hear the claimant falling to the floor and saw her there and assisted her to her feet he was not able to provide any definitive reason as to why she may have fallen.
- [26] This witness' uncontroverted evidence was that he however did not observe that the claimant's clothes were wet when she sat, that he did not see anything in which she could have slipped in and saw no skid marks to show any such event having occurred.
- [27] For this court to consider whether the defendant has breached its duty in relation to this second incident, it must be remembered that the obligation of the defendant in common law is to exercise reasonable care for the safety of their employee. Therefore "in order to discharge that duty properly an employer must make allowances for the imperfections of human nature...he must remember that men doing a routine task are often heedless of their own safety and may become slack about taking precautions."⁶
- [28] Be that as it may be, a safe place of work is still the necessary threshold and such a requirement is defined as ensuring that "the premises are maintained in as safe a condition as reasonable care by a prudent employer can make them and if the employer "has an efficient system to keep (the workplace) clean and free from obstruction that is all that can be reasonably demanded from him."⁷ Indeed in the case at bar the court is satisfied on a balance of probabilities that the defendant discharged its duty at common law to the claimant in providing reasonable care of a safe place of work for the following reasons:
- a. The area in which the claimant worked at the time of the second incident was clearly an area in which the claimant had worked previously. She had not made any allegation to state otherwise and was aware that in her vicinity there was not only a coffee station but

⁶Denning LJ in **Clifford v Charles H Challen & Son Ltd** [1951] 1 KB 495 at 497

⁷ Commonwealth Caribbean Tort Law Gilbert Kodilyne (5th ed) page 163

a water cooler. In fact on cross examination she told this court that a water fountain was in the general area but that persons would not have to walk past her to access it.

- b. That despite stating that, the claimant also indicated that persons were using the water fountain but she assumed that they were not careful in doing so but she saw no water on the ground by her desk to report to anyone.
- c. The witness for the defendant, Mr. Christian although recognising there was water on the ground called them “water spots” and felt they were not sufficient to warrant them being mopped up.
- d. Further Mr Christian said that when he heard his co- worker talking about there being water on the floor, the spots were closer to the claimant than he was and that it had been some 4 hours after that, with inconsequential water spots that the claimant then fell.
- e. That there was in fact no evidence by the claimant or anyone else to the existence of a “puddle of water” or any substantial presence of water to which the defendant was alerted and did nothing about.

[29] This court is therefore satisfied that the defendant did not breach their common law duty. It must now be considered whether the further duty under the statutory regime was breached or even whether the claimant could rely on the rule of evidence of *res ipsa loquitur*.

[30] Under section D10 (a) and (f) of the Labour Code the defendant was mandated to keep the workplace in a clean state and provide effective means for draining floors respectively. Thus, the court looked to the assistance of counsel for the claimant whose pleadings these were, to clearly illustrate how these provisions had been breached and the evidence in support of the same. However, what the court discovered was that in submissions, counsel for the claimant referred to D11 of the Labour Code as having been breached. This having not been pleaded the court must completely disregard any submissions made on the same. There was also no assistance from counsel for the defendant in relation to the statutory duty.

[31] The court is of the considered opinion that the claimant has not made out the claim for breach of the pleaded statutory duties and in particular the court notes that the provisions relied on would have had to have been substantiated by evidence. The failure to mop up water spots on a floor some 4 hours prior to the claimant’s accident cannot in this court’s mind amount to a breach to keep a clean work place or a failure to have an effective floor drainage system as stated under the Labour Code.

- [32] The final area to consider with regard to the second incident is the rule of evidence relied upon by the claimant. It is not doubted that sometimes this rule assists claimants where it maybe that the cause of the accident is unknown and they seek to rely on the fact of the accident itself.
- [33] To rely on this the claimant must establish i) that the thing causing the damage was under the management or control of the defendant or its servants and ii) that the accident was of such a kind as would not, in the ordinary course of things have happened without negligence on the part of someone other than the claimant and in the circumstances point to the negligence of the defendant rather than anybody else. ⁸
- [34] In this regard the court accepts (and an issue not contended by the defendant) that the second incident occurred on the premises of the defendant. At all times the claimant was at her workplace the property of the defendant. However, this in and of itself is not sufficient. It is also necessary for the claimant to show that the only reason that she fell was due to negligence by someone other than her. In this regard the court also accepts the uncontroverted evidence of the claimant that she personally had no water on her workstation or in her environs at the time of the second incident, however the court does not accept that the second incident would not have happened **but for** a negligent act of another. That being said, it therefore stands to reason that if the court does not accept that the occurrence of the second incident is not inextricably linked to negligence that there can be no negligence attributed to the defendant themselves. The presence of something which may have caused the claimant to fall does not necessarily amount to a negligent act on the part of another but rather an ordinary risk of everyday life. As stated by Jamadar J (as he then was) in the case of **De Verteuil v The Bank of Nova Scotia** ⁹ relying on the dicta of Sommerrell LJ in **Davies v DeHavilland** ¹⁰ “slipping is quite a normal incident of life”. It is not the duty of an employer as the defendant to “prevent injury to their employees which arise out of the ordinary risks of normal daily life, ¹¹when not paying attention. I therefore do not find that the claimant has made out a claim in relation to the second incident under this rule either.
- [35] The court having found that the second incident was not made out it will not consider the incidence of contributory negligence as pleaded by the defendant since that was limited to the second incident only.

⁸ Commonwealth Caribbean Tort Law (5th ed) supra at page 99; Munkman on Employer's Liability (18th ed) 2025 at para 3.82

⁹ TT 2002 HC 85

¹⁰ [1950] 2 ALL E.R. 582

¹¹ **Thomas v Bristol Aeroplane CoLtd** [1954] 2 ALL E.R. 1

[36] The order of the court is therefore as follows:

1. The claimant's claim is granted as prayed in relation to the first incident and dismissed in relation to the second incident.
2. The claimant is to file an application for the assessment of damages within 45 days of the date of this order and the same is to be set down before a Master of the High Court for case management.
3. Costs to the partially successful claimant to be determined on the assessment.
4. Costs to the defendant on the portion of the claim that stands dismissed as 50% of an unvalued claim pursuant to Part 65.5 (2) (d) CPR 2023.

Nicola Byer

High Court Judge



By The Court

Registrar