

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim No. BVIHCV 2020/0264

BETWEEN

ICIS MALONE

CLAIMANT

AND

ROAD TOWN WHOLESALE LIMITED

DEFENDANT

Appearances: Dancia Penn K.C. and Khyra Powell for the Claimant
Terrance Neale, Elizabeth Ryan and Laurence Neale for the Defendant

**2024: February 26th
May 29th**

JUDGMENT

- [1] **YOUNG J:** A most unfortunate incident. Mrs. Malone was doing her shopping at her usual supermarket in Road Town, the Riteway Supermarket (the Supermarket) owned by the Defendant. She said she slipped and fell close to a bank of freezers and was injured. She insists that her fall was caused by water on the floor present there in breach of the Defendant's duty of care to her as a visitor. She seeks compensation in the form of general and special damages with interest and costs.
- [2] The Defendant admits a duty of care to Mrs. Malone but vehemently denies any negligence. They say not only was the floor in Aisle 8 dry but Mrs. Malone stumbled and fell on her own and their video footage of the incident shows this. They ask that the Claim be dismissed with costs.

The Issues:

1. Did the Defendant owe a duty of care to the Claimant to ensure that the floor was dry and kept dry and safe
2. Did the Defendant breach its duty to the Claimant:
3. Is the doctrine of res ipsa loquitor applicable
4. Is the Claimant entitled to damages and if so in what quantum

Did the Defendant owe a duty of care to the Claimant to ensure that the floor was dry and kept dry and safe

The Law:

- [3] In **Ian Seymour Smith v British Virgin Islands Port Authority and Tortola Pier Park Limited**¹ this Court explained that:

“The duty of care owed by an occupier is to use reasonable care to prevent damage from any unusual danger on the premises which he knows or ought to have known of. The burden of proof lay always with the Claimant who must also prove that the breach caused loss.

An unusual danger was described in **London Graving Dock Ltd v Horton**² Lord Porter stated:

“I think ‘unusual’ is used in an objective sense and means such danger as is not usually found in carrying out tasks or 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.”

- [4] At page 13 Lord Oaksley described the duty of care to an invitee:

“The duty of an invitor to an invitee is to give him a fair warning of any danger on the premises which he cannot be expected to foresee. Premises inevitably contain a great variety of dangers, some great, some slight, some usual, some unusual and it is a question of fact whether the danger is too slight or so usual that no warning is needed, or so great or so unusual that the invitee, with the actual knowledge of the premises which he is known by the invitor to possess, ought, in the opinion of an ordinarily careful invitor to be warned of it.”

- [5] The Defendant has never denied that it owed a duty of care to Mrs. Malone, an invitee on their premises. Their assertion has always been that they did not breach their duty in any way.

¹ BVIHCV 2022/0211

² [1951] 2 ALL ER 1 at 6

[6] The Claimant particularised the breaches as follows:

1. Failing to ensure that the floor of Aisle 8 was dry and free from dampness, moisture or slippery substances and materials of any kind.
2. Failing to place and have in place a Notice or Warning Sign of any kind to alert the Claimant and customers and patrons of the Supermarket of moisture and or dampness of any kind in Aisle 8; and to warn the Claimant and other patrons of the hazard which the area presented.
3. Failing to maintain and keep maintained the freezers installed in Aisle 8 of the Supermarket.
4. Failing to repair or repair properly and keep repaired a known, notorious and long standing problem with water draining from the freezers installed in Aisle 8, and seeping and running on the floor in Aisle 8;
5. The Defendant in breach of its duty of care failed to have in place in the area where the Claimant fell or indicated at any place in Aisle 8 any sign or warning the Claimant and others of the fact well known to the Defendant that there was a problem with leaking freezers and a persistent wet and damp floor.
6. Failing to do all that was necessary to avoid placing the Claimant in peril. In particular, failed to keep the floor and surfaces of the Supermarket in a way that would limit the likelihood of the Claimant slipping, falling and sustaining injuries as she did.

Did the Defendant breach its duty to the Claimant:

[7] To make such a determination the Court must scrutinize the evidence most rigorously.

The Claimant's Evidence:

[8] The Claimant's pleaded case could be adequately distilled into the Defendant failed to keep the floor in Aisle 8 dry and devoid of any liquid causing her to fall and sustain injuries. The liquid on the floor was as a result of water seeping and running from the freezers which were not repaired or properly repaired and this problem had been occurring for some time. Yet there were no wet floor signs or warnings that the freezers in Aisle 8 were leaking.

[9] **Mrs. Malone** herself testified that she "slipped in water which was draining onto an already wet and slippery floor despite the caution I took in walking in Aisles 8." She continued: "Other customers in the Supermarket witnessed my fall on the wet floor and assisted me to get up from the hard concrete

as well..... The floor in Aisle 8 was wet and slippery at the time that I slipped and fell. The condition of the floor was the reason I slipped and fell.... My fall had nothing to do with my footwear. The factual position is that the floor was wet and unsafe in a public establishment.”

[10] In her second witness statement she explained that on numerous occasions since the incident she has worn the footwear in the Supermarket (even in Aisle 8) and did not fall. She assured that her footwear was of good quality, sturdy and well constructed, safe and comfortable. On the particular day she had not fallen until she gotten to that specific area of Aisle 8 “where the freezers were leaking and where water springs from the ground and where the floor was wet and slippery, that I slipped and fell. The floor in Aisle 8 is tiled. The tiles are light colour and I did not see the water on the floor as it appeared similar to the tiles.”

[11] The Claimant emphasised her footwear and its quality because of the Defendant’s allegation that it may have been the cause of her fall. The Court can make no more of that allegation than it could make of the quality of the shoes themselves. As submitted by the Defendant a person can stumble in any type of shoe. This inquiry must first address not so much the shoe but whether water was on that floor.

[12] **Jacqueline Christopher** also testified for the Claimant. She was not in the Supermarket on the date and at the time Mrs. Malone fell. She informed that she shopped regularly at the Supermarket and had often seen water springing onto the floor where customers walk in Aisle 8. More specifically she placed this phenomena at the midway point in Aisle 8 on the side where the freezers with doors are located. She added that the floor of that aisle is tiled and the tiles are light in colour so the water is not clearly visible.

[13] In cross examination only she mentioned that she had reported this matter to the employees or cashiers there on more than one occasion. She had never seen anything being done to the water by staff and she had never slipped and fallen in the water. It was surprising that she would have omitted to state in her witness statement that she had reported such an issue to the employees before, especially as she had allegedly done this repeatedly. Although Ms. Christopher was a forceful witness I was cautious with her evidence.

- [14] It has not gone unnoticed that the Claimant's second witness statement and that of Jacqueline Christopher are dated the same day 14th January, 2022 or that they both introduced two new pieces of information. For the first time they both referred to the light colored tiles on the floor which made the water difficult to see and that water was springing up from the floor of Aisle 8. This could not simply be coincidental.
- [15] Nowhere in the Claimant's pleadings or first witness statement dated 19th October, 2021 was there ever any reference to water doing anything other than draining onto the floor or being present on the floor. In fact her first witness statement spoke of the hard concrete floor only but never mentioned the tiles.
- [16] It has not gone unnoticed either that the Claimant made no reference in her witness statement to leaking freezers or water draining from the freezers and seeping and running on the floor in Aisle 8. It is difficult to believe that water could be springing up from the floor or draining from the freezers and would have gone unnoticed by the staff and the many other persons who are seen traversing that aisle on the day in question. A description of draining, seeping, running and springing up (Mrs. Malone) definitely gives the impression of a greater quantity of water being present than the word damp, or even wet (Ms. Edmund), would.
- [17] To strengthen her allegation the Claimant added that many persons had fallen in aisle 8 and sustained injuries. She brought none, named none or provided any particulars of these incidents. More importantly, she claimed that she had visited the Supermarket since the incident and observed the same area with water and tiles protruding. It would indeed have been very helpful to have taken and produced photographs of this.
- [18] Although the Claimant testified that other customers witnessed her fall there was in fact only **Ms. Andrea Edmund**. Ms. Edmund explained early that she had no personal relationship with Mrs. Malone. She was the only other person in Aisle 8 and the "floor in front of the freezers which is a tiled concrete floor was slippery and wet, and I saw when the Claimant slipped and fell on the concrete floor."

- [19] She ran for help and alerted the Supermarket employees that “a customer had slipped and fallen on the wet floor in front of the frozen foods freezers.” Ms. Edmund never said she saw water draining onto or springing up from the floor.
- [20] Although Ms. Edmund also claimed to shop at the Supermarket regularly, she never spoke of ever noticing water draining from the freezers, springing up from the floor or generally being on the floor in Aisle 8. If this was indeed a long standing problem as pleaded she would more than likely have noticed it too.
- [21] Under cross examination Ms. Edmund moved between a wet and slippery floor and a damp floor but she never testified of water draining or springing up. Would she not have noticed this at that time?
- [22] She, however, said that after Mrs. Malone fell she, Ms. Edmund walked carefully in the area. In the video she is certainly not seen running for help as she had said but walking away. This Court scrutinized that footage many times and nowhere did it show Ms. Edmund doing anything which looked like a careful walk. In fact she seemed to walk in a usual way and did not even look down when she left to get help. She did seem to avoid the area where the Claimant had slipped.
- [23] After she returned she is seen among a group of persons who seem to be staff of the Supermarket, and at least one other customer, all standing over Mrs. Malone. Ms. Edmund is seen pointing towards the area where the slip and fall occurred. Even and after then there was no one attempting to mop the area as Mrs. Malone had testified.
- [24] That one other customer in the group was a woman who arrived on the scene soon after Ms. Edmund left. After pausing momentarily to check on Mrs. Malone, she too stood in the group then simply walked on exactly where Mrs. Malone had slipped. There was no indication from her action or the way she walked that there was water on the floor whether draining, springing up or otherwise.
- [25] There was another inconsistency which this Court found troubling. Mrs. Malone said she had to drag herself out of the water and Ms. Edmund helped her. That appears nowhere on the footage. In fact Ms. Edmund never seemed even to have touched Mrs. Malone.

- [26] This is borne out not only by the footage, but by Ms. Edmund who never testified to having done any such thing. She was seen gathering Mrs. Malone's fallen items and leaning over as if to speak with her. She even seemed to have taken and spoken into Mrs. Malone's phone just as she had testified. Mrs. Malone barely moved if ever from the time she fell until she was assisted up from the floor.
- [27] **Ms. Beverly Hodge** recalled an occasion when she fell and was injured at the cashier's counter in the Supermarket in 2021. While she was falling she heard one of the cashiers "shouting in a panic that there was water on the floor." She looked "on the floor and saw clear water on the floor where I fell. Another cashier then came and wiped the water from the floor with paper towel."
- [28] While this incident may prove that a fall in a supermarket is not an isolated occurrence, it proves nothing which could assist the Claimant's case. It occurred years after the Claimant's incident, in the Supermarket but at a completely different location. It must not be forgotten that the Claimant's case is that the freezer was draining water onto or water was springing up from the floor.
- [29] That could certainly not have been the same reason water was on the floor at the cashier's counter. Perhaps it was meant to show that spills are not attended to with immediacy but what it proved instead was that as soon as the issue was noticed the worker sought to dry the area. This is definitely not what had occurred in Mrs. Malone's case according to what was shown in the footage.

The Expert Report:

- [30] The Claimant had been granted permission to put in the report of an expert. That expert report was prepared and served. It stated as follows:

Objective:

"To determine whether the defendant was aware at all material times of the long standing and prevailing problem of the leaking of freezers installed in Aisle 8, which resulted in the floors in the area being wet, damp and slippery, but failed to take any or any reasonable, sufficient and appropriate steps to remedy the situation."

Methodology:

The findings of this report were compiled based on the examination of prior inspection reports carried on at the defendant's establishment. Those reports were from prior 2019 and during 2019.

Findings:

Based on the review of inspection reports prior to 2019 and during 2019, I have found that there is no evidence or indication of water being present on the floor from the leaking of the freezers installed in Aisle 8; which resulted in the floors in that area being wet, damp and slippery.

Therefore, I cannot determine whether the defendant was aware at all material times of the long standing and prevailing problem of the leaking of freezers installed in Aisle 8, which resulted in the floors in the area being wet, damp and slippery, but failed to take any reasonable, sufficient and appropriate steps to remedy the situation.

Conclusion:

I understand my duty to the court in accordance with rules 32.3 and 32.4; and I complied with that duty to the best of my knowledge.”

- [31] The report formed part of the trial bundle but the Claimant insisted even in their closing submissions that it was never entered into evidence nor was the expert called. Therefore the Court ought not to consider its contents.
- [32] However, the permission which Rule 32.6 gives is to call an expert or put in a report. It would seem to me that where the court gives such permission it is no longer up to the party to decide whether or not they would put such evidence in. The report is prepared to help the court impartially on the relevant matters - Rule 32.3, it is an independent product - Rule 32.4.
- [33] It is therefore difficult to understand how an expert report which is addressed to the court in a matter (Rule 32.13) could be withheld at the inclination of the party to whom permission had been granted. The parties had jointly prepared the terms of reference. There had been no objection to the report forming part of the evidence before the Court. The report had been put to witnesses by the Defendant. There was nothing which led the Court to believe that the Report did not form part of the evidence until the submissions were made.
- [34] There had been no application to cross examine the expert so there really was no reason for the expert to attend since the evidence is given in written form in a report unless the Court directs otherwise (Rule 32.7(1)).

- [35] The Court also reminds that unlike a witness statement where (outside of consent by all parties) a party must call a witness for whom a witness statement has been served if the party intends to rely on that evidence (Rule 29.8), there is no similar provision in relation to an expert under Part 32.
- [36] For these reasons the expert report prepared by the Chief Environmental Officer, Mr. Lionel Michael would be considered by the Court. The expert in his report said he did not do a site visit because the incident had occurred in 2019 and the joint instructions to him were issued in 2022. He therefore only considered prior inspection reports carried on at the defendant's establishment prior to 2019 and during 2019.
- [37] There is no indication of how much prior to 2019 the reports go and there is no clear provenance of these reports. Perhaps a fair assumption could be made that they are reports from his department since he explained that his department is responsible for the management and administration of environment health services including food safety (supermarkets, grocery stores, restaurants and other food businesses).
- [38] He does not say how often these inspections were conducted or the reports were generated. He, however, concluded that he had found no evidence of water being present on the floor of the supermarket from the leaking of the freezers installed on aisle 8. He was unable to say that the Defendant would have known of a long standing and prevailing problem and failed to take reasonable steps.
- [39] The evidence, even without the expert report, simply did not support the allegation that there was water draining from the freezer or springing up from the floor.

The Defendant's Evidence:

- [40] The main thrust of the Defendant's case was that there was no water on the floor and perhaps Mrs. Malone's footwear caused her to fall. The footwear had never been inspected or examined by anyone who testified for the Defence.

- [41] The assumption was made by **Mr. Ramphal**, the Loss Prevention Manager at the Supermarket. His duties include reviewing the security cameras' footage and reporting any incidents of theft or accident. Where there have been complaints from customers he would also review and report his findings where he would try to determine the reason for the complaint. Mr. Ramphal offered no indication of his training but had held the post since September, 2017.
- [42] This Court remains uncertain of his expertise in footwear and falls, but without more, his assumption is as useful to this matter as that of any other body who has had an opportunity in these proceedings to view the footage. Even he agreed under cross examination that it was mere speculation.
- [43] Under cross examination Mr. Ramphal also informed with some nonchalance that the freezers have moisture both inside and out because they're freezers. This bit of evidence has to be considered within the context of all the other evidence before the Court. There was no evidence that this moisture drained on to or sprung up from the floor. There was no indication of how much moisture this was or that it made its way to the floor.
- [44] **Angela Alexander** an employee of the Defendant testified that she had walked Aisle 8 on several occasions that day sometime before the fall. She had not fallen or noticed water on the floor. She did not witness the incident and in her ten years working there, she did not know of any similar incidents occurring.
- [45] **Anelda Green**, another employee of the Defendant's, testified that she had worked on the morning of the fall, had traversed Aisle 8 without incident and had not noticed any water on the floor. She had not witnessed the incident.
- [46] **Shekera Wheatley**, the Defendant's director of Human Resources said she was fully aware of the Defendant's policies and procedure. She assured that there was a system in place where the cleaners would walk through the aisles "on a regular basis during working hours to make sure there was no moisture or other liquid on the floor or other hazard which may pose a danger to customers or employees." She did not indicate what a regular basis actually meant.

- [47] What seems very odd is that Ms. Wheatley admitted that Ms. Malone made a report of the incident to the store manager that very day. According to Ms. Wheatley she reported that “she slipped and fell due to moisture on the floor while shopping and sustained certain injuries.” Ms. Wheatley also volunteered that another worker (now deceased) assisted Ms. Malone to complete her shopping.
- [48] But there is no indication whatsoever of when the report had been made or what, if any, investigation had been carried out and by whom. There are no investigation reports or photographs taken of the scene as would be expected. What she hastened to add is that no other customer complained of a wet floor on that day (Ms. Edmund said she reported to employee’s about a wet floor in relation to Mrs. Malone’s fall and they came to assist) and the video showed no mopping up after the incident (the video is discussed in detail below).
- [49] In cross examination she admitted that small slips and falls have occurred over the ten years she has worked at the Supermarket but they have never been as extensive as the Claimant’s.
- [50] **Elvet Myers**, much like Jacqueline Christopher, claimed to be a regular customer at the supermarket (10 times per month for over 30 years). He did not witness the incident and had not been in the Supermarket on the day in question either.
- [51] He had “never observed water freely flowing “or water that in (sic) springing up onto the floor where customers walk” in any of the supermarket aisle and in particular aisle 8..... On the few occasions when I have observed water or other liquid on the floor of the supermarket there have always been a caution sign and/or cardboard or other similar material placed over the saturated area to alert and warn customers and employees of the possible danger.”
- [52] There was no testimony from any of the workers who responded to the incident and save from the one, who was said to be now deceased, there was no explanation offered for this absence. Rather, the Defendant seemed to rely most confidently on the video.

The Video:

- [53] A huge part of the Defendant's case rests on their assertion that there was no mopping or drying of water after the incident and people were seen moving through that aisle easily and carefreely both before and after the incident. They submitted that the video was the best evidence of what transpired that day.
- [54] Now the video is 20 minutes and 39 seconds long. The incident occurs at about 13:14 and the Claimant is removed from the area of the fall on a wheelchair at around the 20.06 mark. The video continues for a mere 33 seconds more while Mrs. Malone is wheeled away. There are a few persons left in the area who disperse as the footage ends.
- [55] This means that there is no indication of what transpired afterwards. It also means that whoever prepared the excerpt of the recording felt there was importance in showing what had happened for 13 minutes before the incident but there was no relevance in what had transpired for even a full minute after Ms. Malone was removed from the area. Unfortunately, it also means that the Court remains uncertain as to whether there was any wiping up done outside of the limited 33 second mark.
- [56] Be that as it may, no one is seen mopping or drying the floor in the full 7 or so minutes while Mrs. Malone was on the ground, while she was being assisted from the floor, placed in the wheelchair or wheeled away. It also shows that the persons dispersed from the area and no worker remained to secure or dry the area.
- [57] The Court would definitely have been in a better position had the footage continued for longer.
- [58] The camera is positioned above the aisle and directed straight ahead but the area of the incident is fairly far away. It is impossible for this Court to say whether or not there was moisture on the floor. It is also impossible for the Court to find, as the King's Counsel for Claimant submitted, that the floor seemed uneven in part and it appeared that tiles were lifting up in the area where the Claimant slipped or tripped and fell.

- [59] In fact, a possible tripping had never been an allegation pleaded or proved. But on a closer scrutiny of the footage the Claimant's left foot seems to stumble before she actually began to slide. The reason for this stumble remains even now unexplained but seemed to have put the fall into motion.
- [60] The Court can not agree either that much of the view is blocked by Ms. Edmund's shopping cart. The cart certainly obscured the Claimant's body as she lay on the floor after the fall. Her head remains visible as does the area where she slid and fell.
- [61] In the 13 minutes leading up to the fall persons of varying ages, both male and female, are seen traversing the aisle. They walk in different areas of the aisle but there are some who definitely walk past the particular area where Mrs. Malone slipped and fell and they do so without visible issue or incident. They do not react as if there is water draining or springing up on the floor.
- [62] The persons who pass by do not seem to be aware or to have noticed anything at all on the floor and none of them seem to be avoiding anything there either. Even Mrs. Malone who walked over the area to reach into the freezer itself, did not seem to notice that there was anything on the floor at that time. She explained that the light colour of the tile made it difficult to see the water. This may explain why before the incident no one else seemed aware. But what about after the fall? If indeed there was water, then there is expected to be a certain reaction by those moving around in that area.
- [63] Mrs. Malone is seen clearly to slip and fall. It is painful to watch. Ms. Edmund said she saw a skid mark on the floor after Mrs. Malone slipped. It would seem reasonable to me that if her report to the staff had been that someone fell on a wet floor, the urgency would be dual. There would be a need to get to the person to render assistance immediately but there would also be the need to dry that floor quickly so there would be no recurrence or no possible lingering danger for anyone else. This is normal and natural.
- [64] But while assistance is quickly rendered, there is no mopping up. All focus is on Mrs. Malone until she is helped up and even after she is wheeled away there is no drying up seen in the few seconds for which the recording continues. Ms. Edmund surmises under cross examination that this must

have been because Mrs. Malone captured the focus at that time. But that would not be the expected reaction to such an incident.

[65] By the Claimant's own witness, Ms. Hodge's testimony the area would be dried up almost immediately. This is supported by the Defendant's witness Ms. Wheatley who explained the procedure in place.

[66] The staff and other persons who surrounded Mrs. Malone do not seem to pay the floor's condition any particular mind. No one seemed to be taking special care to avoid water or moisture or even to walk with caution. This struck me with significant force and led me to conclude that there had been no water on that floor.

[67] This finding assures that there could be no finding of negligence on the Defendant's part.

Is the doctrine of *res ipsa loquitur* applicable:

[68] *Res ipsa loquitur* is explained at paragraph 80 of **Bernard Pedrito Olando Grant v Tarris Hill Trading Limited**³:

"I doubt whether it is right to describe *res ipsa loquitur* as a 'doctrine'. I think that is no more than an exotic, although convenient, phrase to describe what is in essence no more than a common sense approach, not limited by technical rules, to the assessment of the effect of evidence in certain circumstances. It means that a plaintiff *prima facie* establishes negligence where (i) it is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident; but (ii) on the evidence as it stands at the relevant time it is more likely than not that the effective cause of the accident was some act or omission of the defendant or of someone for whom the defendant is responsible, which act or omission constitutes a failure to take proper care for the plaintiff's safety. I have used the words 'evidence as it stands at the relevant time'. I think that this can most conveniently be taken as being at the close of the plaintiff's case. On the assumption that a submission of no case is then made, would the evidence, as it then stands, enable the plaintiff to succeed because, although the precise cause of the accident cannot be established, the proper inference on the balance of probability is that that cause, whatever it may have been, involved a failure by the defendant to take due care for the plaintiff's safety? If so, *res ipsa loquitur*. If not, the question still falls to be tested by the same criterion, but evidence for the defendant, given thereafter, may rebut the inference. The *res*, which previously spoke for itself, may be silenced, or its voice may, on the whole of the evidence, become too weak or muted." Emphasis mine

³ BVIHCV 2015/0030

This doctrine therefore permits a court to draw an inference of negligence from circumstantial evidence. It is an aid to claimants who are unable to establish exactly how the accident occurred or what was the relevant act or omission which set in train the events leading to the accident.

- [69] This doctrine is of no aid to the Claimant in this case. She has pleaded how the incident occurred - the presence of water on the floor caused her to slip and fall.

Conclusion:

- [70] The Claimant slipped and fell in the supermarket and she was injured. She took quite a fall and the Court empathises for the pain she must certainly have suffered. But having carefully scrutinized all the evidence it cannot find that the Claimant has established that there was moisture on the floor where she slipped and fell. The Court considered the people passing freely by in that aisle before the fall with none seeming to recognise water draining or springing up; the way the Claimant's testimony shifted from water draining, to water springing up to just moisture on the floor; her own witness's testimony that shifted from the floor was wet and slippery to the floor was damp; the behavior of passersby and staff after the incident, some standing or walking right where the incident occurred without showing any particular caution or acknowledgement of the presence of water but most importantly there was no move at all to mop that floor.

- [71] For these reasons the Court must dismiss this claim with prescribed costs to the Defendant. The Court will rely on Kings Counsel on both sides to calculate this sum.

**Sonya Young
High Court Judge**

By the Court

Registrar