

IN THE EASTERN CARIBBEAN SUPREME COURT:

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

SAINT LUCIA

Claim Number: SLUHCV2020/0540

BETWEEN:

NORMAN PHILLIP

Claimant

-and-

ERROL EDMOND

Defendant

Before the Honourable Mr. Justice Alvin Pariagsingh

Appearances: Mr. Horace Fraser for the Claimant
Mrs. Maureen John – Xavier for the Defendant.

2024: January 22 – Trial
February 05 – Closing submissions in writing
March 01.

JUDGMENT

Claim for damages in Negligence – Employer's liability – Personal Injuries

[1] **PARIAGSINGH, J:** - This is a claim in negligence brought by an employee against his employer. Both parties are electricians. On November 29, 2017, at about 1:15 pm, while the Claimant was working at Sandals Grande St Lucia Spa and Beach Resort owned by Jairo Management Ltd (Sandals) and using scaffolding which he alleges was under the control of the Defendant, he fell and suffered personal injuries. The Claimant suffered severe injuries that required prolonged medical treatment, including surgical intervention.

[2] Sandals was initially named as the First Defendant in this claim. The Claimant's initial claim was that Sandals was under a duty to inspect and monitor the scaffold before allowing its use by employees or persons hired by them. It was initially pleaded that

Sandals had a duty to ensure the scaffold was safe for use, and the Defendant in this claim now (originally named as the Second Defendant when the claim was filed) had a duty to ensure the equipment he was authorised by Sandals to use was safe.

[3] In his amended claim, the Claimant has removed Sandals as the First Defendant and maintained the same allegations against the Defendant. In paragraph 10 of the amended claim, it is pleaded that on or about November 30, or December 01, 2017, shortly after the Claimant came out of the operating theatre, he was visited by an Attorney at Law. He contends that he was encouraged to sign a release and discharge document in favor of Sandals and the Defendant to receive an ex-gratia payment of \$20,000.00. That document was never disclosed in these proceedings.

[4] The Defendant denies liability for the damages suffered by the Claimant. He contends that, at no time, was the scaffolding under his control. He argues that this fact was known to the Claimant. The Defendant asserts that the scaffolding was not owned by him and was used by persons other than the parties who were doing renovation works for Sandals. The Defendant further contends that he was not responsible for the care, maintenance, or upkeep of the scaffold.

[5] His defence is that, prior to each use by his employees, including the Claimant, he would inspect the scaffolding to ensure it was properly installed and braced for safe use. The Defendant contends that the scaffolding broke because the Claimant and another employee did not use it properly by standing too close to one end. Due to the excess weight, the platform slanted, causing it to break at the end where the Claimant was, resulting in them falling off the scaffold. The Defendant contends that he discharged his duty to provide a safe system of work by doing everything reasonably possible to ensure the safety of the Claimant and other employees.

ISSUES OF FACT:

[6] The following are the relevant issues of fact to be resolved:

1. Who was in control of the scaffold?
2. Was safety equipment provided by the Defendant?
3. Was the accident caused by the scaffold breaking, as the Claimant alleges?

ISSUES OF LAW:

[2] The following are the relevant issues of law to be resolved:

1. Was the Defendant in breach of his common law duty to ensure a safe system of work was in place, in breach of the implied term of the contract of employment between the parties?
2. Whether the Claimant's pleadings are sufficient to put specific factual alleged failures to the Defendant in cross-examination, with no such particulars having been pleaded?

EVIDENCE OF THE CLAIMANT:

[3] At the trial, the Claimant gave evidence and was cross-examined. His evidence was largely consistent with his pleaded case, except there appear to have been introduced new facts in the witness statement. In particular, at paragraph 8, he contends that he was never taught how to use the scaffold; at paragraph 12, the Claimant contends that had the scaffold been equipped with guard rails, the rails would have prevented him from falling.

CROSS-EXAMINATION OF THE CLAIMANT:

[4] The Claimant admitted in cross-examination that there were several employers who were doing work for Sandals on the same site at the time of the accident. He said that

the ones present at the time of the accident were him and the Defendant's nephew. His evidence was that he could work independently, and when he worked with the Defendant, no NIC or Income Tax deductions were made.

[5] The Claimant evidence is that the scaffold he fell from was a different one used throughout the project. His evidence was that the scaffold he fell from was used for the first time on the day of the accident. His evidence was that he had no idea who placed that scaffold there. He said it was there when he arrived. When asked whether he knew who owned the scaffold, he said no. When shown paragraph 5 of his witness statement in which he said the scaffold belonged to Sandals, he said he was told this by the Defendant.

[6] The Claimant accepted that he had used the scaffold from morning to his lunch break with no issue. When it was suggested to him that there was safety harness available for use, he did not accept this suggestion and instead retorted by saying that he had asked for a harness.

[7] The Claimant admitted that the Defendant was on site before him and on the scaffold when he arrived to work on the day of the accident. He said that he could not say that the Defendant did not check the scaffold.

[8] In relation to inspecting the scaffold to determine where and how it broke, the Claimant admitted after the accident he did not inspect the scaffold nor did he see anyone do so in the 25 minutes he waited for an ambulance to arrive. The Claimant eventually admitted that he could not say what caused the scaffold to break.

[9] The Claimant was evasive when asked whether Sandals accepted responsibility and said they would pay his medical bills. He immediately said 'he never talked with Sandals'. When probed, he admitted that he has a sister Andrea who was in communication with Sandals regarding the accident and his medical bills.

[10] In cross-examination, the Claimant contradicted his pleaded cases on the issue of signing the release and discharge. He admitted that he signed it before he had his surgery, and a signature was missing on one copy which he signed after this surgery. He admitted that Tapion Hospital where he had his surgery, required the signed document regarding the payment to cover the surgery before it was conducted. He admitted that Sandals paid for his two surgeries and took responsibility for his bills.

[11] When asked about discontinuing his claim against Sandals, he contends that he never saw them in Court, so he did not sue them and 'I had signed a paper already so he had to withdraw the case'. When pressed about not disclosing the release and discharge, the Claimant's answer was quite telling. When asked why he had not disclosed the document, he answered, 'why do you all need that?' When it was suggested to him that the release also discharged the Defendant from liability, his answer was 'I can't remember what it says'.

[12] Even more interesting was that the Claimant could not remember the name of the nurse his family allegedly hired to take care of him. Neither could he remember her name. He also could not say who signed the receipts for the nurse. Similarly, he could not explain why a nurse was being paid to take care of him during periods of time when he was hospitalised.

[13] The Claimant also presented a bill in support of his claim for special damages which his Counsel quite admirably concedes ought not to be considered as it was not dated, signed or indicated what the substantial sum was for.

[14] Overall, the Court did not find the Claimant to be a very credible witness. His testimony on central facts was unreliable. The Court did not accept him as a witness of the truth.

EVIDENCE OF THE DEFENDANT:

[15] The Defendant's evidence was consistent with his witness statement. His evidence was that when he arrived at the site on the day of the accident, the scaffold was already mounted. In cross-examination, his evidence was that he employed responsible employees who, in the case of the Claimant, had 30 years' experience and was expected to conduct himself on the job. He denied that on the day in question he was in possession or control of the scaffold.

[16] His evidence was that, on the day of the accident, other persons on site had access to the scaffold and could have used it, but during the period 9:30 am to the time of the accident, his employees alone used it. He admitted that he did not advise the Claimant how to use the scaffold nor was he aware of any report done to ascertain the cause of the scaffold breaking. His evidence was that he conducted a visual test to make sure the braces were securely fastened to the 'H' frame.

[17] He also did a visual inspection of the bench which was approximately 16 feet above. He also stood on it. His evidence was that although he did not give a harness to the Claimant, they were available on site. He also stated that his system of supervision was that in his absence, the most senior employee was in charge. On the day of the accident, the most senior employee on site was the Claimant.

EVIDENCE OF TARGE EDMOND:

[18] The Court found Mr. Edmond to be a witness of the truth similar to the Defendant. His evidence was that when he arrived to work on the day of the accident, he saw the Defendant do certain things. Based on what he observed, he assumed that the Defendant was testing or inspecting the scaffold. His evidence in cross-examination was that safety equipment was provided, including goggles and harness. His evidence is that on the day of the accident, the Defendant did supply safety equipment, particularly a harness.

RESOLUTION OF FACTUAL ISSUES:

Who was in control of the scaffolding?

[19] On a balance of probabilities, I accept the evidence of the Defendant on this issue. I find that the scaffold was owned and/or provided and/or controlled by Sandals. I find that the scaffold was made available not exclusively to the Defendant but other contractors and employees who were also conducting renovation work simultaneously also had access and use of the scaffold.

Was safety equipment provided by the Defendant?

[20] I find that safety equipment was not provided directly by the Defendant but was available for use by the employees of the Defendant, including the Claimant. There was no probing of this safety equipment was provided by a third-party arrangement between the Sandals and the Defendant or by Sandals directly to the employees of its contractors working on the site.

[21] The Claimant as well as the other employee Mr. Edmond chose not to use the harness which was available on-site for their use.

Was the accident caused by a defect in the scaffold which caused it to break as the Claimant alleges?

[22] There is no evidence from the Claimant which can prove that there was a defect in the scaffold that caused it to break. It is common ground that neither party has seen any report or is aware of any investigation about the cause of the scaffold breaking. The Claimant has not discharged his evidential burden of proving that there was a defect in the scaffold. On a balance of probabilities, I accept the evidence of the Defendant on the cause of the scaffold breaking. Particularly, the evidence of Mr. Targe Edmond.

[23] I find that the accident happened as he says in his witness statement, that is, that they were both working on the scaffold, and the Claimant came toward the end that he was

working on. This caused the platform to slant and become unstable and to break at the end where they were standing. I accept the evidence of the Claimant that the scaffolding was in use on the day of the accident for hours before it broke without concern of the Claimant or incident. I find that the cause of the scaffold breaking was not a defect in the scaffold as alleged by the Claimant but rather the cause of the breaking was the improper use of the same by the Claimant.

RESOLUTION OF THE LEGAL ISSUE:

Did the Defendant breach his common law duty to provide a safe system of work?

[24] The Claimant's pleaded case is breach of common law duty. This is expressly stated in paragraph 7 of his amended statement of claim. In his closing submissions however, he delves into provisions of the Civil Code of Saint Lucia. This was not his pleaded case.

[25] The law on employer's liability at common law was comprehensively set out by Ellis J (as she then was) in **Malone v AMS Financial Services Limited**¹, at paragraphs 7 to 9 where it is stated:

'[7] In several English decisions, the broad outlines of the employer's duties have now become well defined. Singleton L. J. in **Latimer v A. E. C. Ltd.** summed up the position, in the following terms;

"The duty of the employer is to act reasonably towards his men; to take care, in the way that a prudent employer would, to see that his workmen are not exposed to unnecessary risks; and that obligation extends to the building in which they work, to the plant, and in some cases at least it covers the providing of a proper system of work."

[8] In light of this statement, an employer's duties have been generally classified as including:

- i. The duty to provide a competent staff;
- ii. The duty to provide a reasonably safe place of work;
- iii. The duty to provide reasonably safe plant, machinery, and materials; and
- iv. The duty to provide a reasonably safe system of work.

¹ BVIHCV2013/0241 (unreported)

[9] In respect of the duty to provide a reasonably safe system of work, this has been said to include "the physical lay-out of the job; the setting of the stage, so to speak; the sequence in which the work is to be carried out; the provisions in proper cases of warnings and notices, and the issue of special instructions. A system may be adequate for the whole course of the job, or it may have to be modified or improved to meet the circumstances which arise." (per Lord Greene MR in **Speed v Thomas Swift & Co. [1943] KB 557, 563-546**). An employer must, therefore, organize a safe system of work for his employees and must ensure as far as possible that the system is adhered to as far as possible."

[26] In my view, the Defendant has, on a balance of probabilities, proven that he acted reasonably towards his men. He took care in the way a prudent employer would. He ensured that safety equipment was available on site and personally inspected and tested the scaffold by mounting it before it was used by his employees. This, in my view, is the act of a prudent employer ensuring that his workmen were not exposed to unnecessary risk.

[27] I also find, on a balance of probabilities, that the Defendant's obligation to provide a safe system of work extending to the site and equipment has been discharged in this case, and a proper system of work was provided. The Court has particular regard for the Claimant's evidence that he had been an electrician for over 30 years, working with the Defendant for several years, and more importantly, working on the same site for a period before the accident using a scaffold.

[28] I also do not discount the fact that by the system of work implemented and used by the Defendant, the Claimant was the person in charge of the work operations when the Defendant was not there, him being the most senior employee. I agree with the submission of the Defendant that the Claimant's obligation extended to ensuring that he was conducting his work in a manner that had regard to his own personal safety, particularly in the way he used the scaffold.

[29] The Defendant's assertion that he was not given training on how to use a scaffold does not find favor with the Court. The Claimant's own evidence is that he had been using a scaffold for weeks on the site. While he attempted to make much of the fact that the

scaffold which he used on the day of the accident was not the one he was used to using, I find this to be immaterial to the issue of training, which he only introduced in his witness statement.

[30] It is my view that, on a balance of probabilities, the Defendant provided competent staff, including the Claimant, and a reasonably safe place of work. He also provided reasonably safe equipment, although the equipment was owned and managed by a third party.

[31] Accordingly, it is my view that the Claimant has not established liability, and his claim must fail. There is no need to go into the issue of quantum.

Whether the Claimant's pleadings are sufficient to put specific factual alleged failures to the Defendant in cross-examination, no such particulars having been pleaded?

[32] During the trial, an objection was taken to specific allegations of failure to provide a harness or training being put to the witness. There was an interlocutory decision of Innocent J given before the trial, which circumscribed the canvassing of certain issues. At the trial, the Court asked Counsel for the Claimant what his view on the pleadings advanced and questioning on specific failures was. Counsel submitted that the generality of the pleading that a safe system of work was not provided was sufficient for the purpose of pleading, and specific failures could be identified in the witness statement and put to the witness in cross-examination.

[33] This Court does not agree with the above proposition. The duty of the Claimant is to set out all material facts. A material fact is a fact central to the dispute. All material facts, which are specific failures, in my view, must be pleaded. In the absence of these failures being pleaded, the Defendant has no opportunity to put them in issue in the pleadings and consequently no opportunity to lead evidence to meet this allegation.

COSTS:

[34] The general rule is that costs follow the event. The Claimant has been unsuccessful in this claim and must pay the Defendant's costs. These costs fall to be quantified under the prescribed costs regime.

[35] The Claimant has quantified his special damages in his claim. In cross-examination, the integrity of his evidence on special damages was severely damaged. The Court attached little to no weight to his evidence on special damages. In my view, therefore, valuing the claim on the sum claimed for the purpose of costs would be unfair.

[36] More so, given the extensive injuries suffered by the Claimant, his evidence that he remains in debt, and the proportionality of the issues, the work done, and the time spent on the trial, I am prepared to treat the claim as a claim for an unspecified amount of damages having a value of \$50,000.00 and not consider the figure claimed in special damages.

[37] The Claimant shall pay the Defendant's costs of this claim on the prescribed scale, calculated on a claim with a value of \$50,000.00 in the sum of \$7,500.00.

ORDER:

[38] For the reasons set out above, I make the following orders:

1. The Claimant's claim is dismissed, and
2. The Claimant shall pay the Defendant's costs of the claim in the sum of \$7,500.00.

**Alvin Pariagsingh
Judge**

By the Court,

Registrar