

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2018/0313

BETWEEN:

WHITNEY FRANCOIS

Claimant

and

**SABIUE TZOUVARAS
(T/A "By the Sea Restaurant & Bar")**

Defendant/Ancillary Claimant

DIAN MURRAY-AMBROSE

Ancillary Defendant

CONSOLIDATED WITH

GRENADA

CLAIM NO. GDAHCV2018/0314

BETWEEN:

GLENDON CHARLES

Claimant

and

**SABIUE TZOUVARAS
(T/A "By the Sea Restaurant & Bar")**

Defendant/Ancillary Claimant

DIAN MURRAY-AMBROSE

Ancillary Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Derick Sylvester for the Claimants in 0313 of 2018 and 0314 of 2018

Ms. Naeisha John-Diarra for the Defendant/Ancillary Claimant

Mr. Francis Paul for the Ancillary Defendant

2022: July 20;
August 3

JUDGMENT

- [1] **ACTIE J.:** This is a consolidated claim concerning the personal injury of Whitney Francois and Glendon Charles caused by the collapsing of one of the boards of a wooden staircase situate at the defendant/ancillary claimant's premises, during the wedding celebrations of the ancillary defendant.

The case of the Claimants

- [2] By claim forms filed on 30th July 2018, Whitney Francois (hereafter "the first claimant") and Glendon Charles ("hereafter "the second claimant") (hereafter collectively called "the claimants") claim damages for negligence and/or breach of statutory duty against Sabiue Tzouvaras (T/A "By The Sea Restaurant & Bar") the defendant/ancillary claimant (hereafter "the defendant").
- [3] The claimants state that on 22nd July 2017, the defendant permitted the premises known as "By the Sea Restaurant & Bar" situate at Simon in the parish of St. Andrew (hereafter "the premises") to be used to host a wedding ceremony and reception for which the first claimant was a bridesmaid, and the second claimant was a groomsman.
- [4] The claimants aver that on that occasion, as the bridal party was descending on wooden steps from the deck on which the wedding ceremony took place, to the lower floor, a step on which they stood collapsed, and they fell approximately 12ft. to the ground.
- [5] The first claimant landed on her lower back and was transported to the Princess Alice Hospital where she claims her right arm and hip were assessed, and a back slab was fitted on her. The following morning, she was transferred to the General

Hospital and was placed at the female surgical ward for 9 days from 23rd July 2017 to 1st August 2017.

- [6] On 28th July 2017, the first claimant underwent open reduction internal fixation during which steel rods and pins were inserted in her right arm. These were removed during surgery on 30th August 2019.
- [7] The second claimant landed on his left leg and was unable to move same. He was taken to the General Hospital and on 28th July 2017 underwent open reduction internal fixation during which steel rods and pins were inserted in his left femur. These wires remain in the second claimant's leg to date.
- [8] The claimants contend that the accident was caused solely by the negligence and/or breach of statutory duty of the defendant, her employees, and/or servants and/or agents acting in the course of their employment.
- [9] The particulars of negligence pleaded are:
 - (1) Failing to adequately or at all ensure that the staircase was fit for use at the said premises;
 - (2) Failing to take reasonable and adequate care for the claimants' safety whilst on the premises;
 - (3) Failing to devise, institute or operate, or ensure the institution or operation of an adequate system for identifying or dealing with haphazard or precarious steps in the staircase on the said premises;
 - (4) Exposing the claimants to a danger or a trap or other hazard and a foreseeable risk of injury;
 - (5) Failing by means of barriers or otherwise howsoever to prevent the claimants from walking in the vicinity of the said haphazard/precarious staircase;
 - (6) Permitting or suffering the claimants to walk in the vicinity of the said haphazard/precarious staircase when it was unsafe so to do;
 - (7) Allowing the claimants to enter an unsafe area of the said premises; and

(8) Failing to discharge the common duty of care to see that the claimants were safe in using the premises.

[10] The claimants contend that at all material times the defendant was the occupier of the said premises, and had a duty to ensure that all lawful invitees were safe while using the premises. The claimants thus aver that as a result of the negligence and/or breach of statutory duty of the defendant, her servants and/or her agents, the claimants suffered and continue to suffer pain, injury, loss and damage.

[11] The first claimant's injuries, as she contended, included displaced fracture of the right olecranon; hairline fracture of pelvic bone and soft tissue injury to the left hip. The second claimant's injury included fracture of the midshaft left femur.

[12] The claimants contend that the ancillary defendant was never in sufficient control over the said premises to become occupier thereof, and that the defendant never divested herself of occupation and control of the premises, but only allowed the ancillary defendant to use same for a day. Issues of structural integrity therefore remained with the defendant.

The case of the Defendant

[13] The defendant filed an ancillary claim form on 25th January 2019 against, Dian Murray-Ambrose (hereinafter referred to as "the ancillary defendant"). The defendant avers that at all material times the ancillary defendant was the occupier of the premises. The defendant states that the premises were leased to the ancillary defendant who was under a duty of care to take reasonable and adequate care for the claimants' safety whilst on the premises.

[14] The defendant states that by oral agreement made on or about the last week of June 2017, at the request of the ancillary defendant, the defendant agreed to rent the premises consisting of the bar, two toilets, the restaurant, the lower deck, the upper deck and all pathways, walkways, stairways appurtenant to those areas.

- [15] The defendant indicates that the ancillary defendant and the claimants did not have an invitation or licence of the defendant to mount the stairs where the accident occurred whether implied or express.
- [16] The defendant does not admit that the fall of the claimant was as a result of her negligence, and denies owing a statutory or any other duty to the claimant, as she contends she was not the occupier or in possession or control of the property at the time of the accident.
- [17] The defendant avers that the property and the staircase in particular are regularly maintained, and states that the entire staircase was replaced in 2015.
- [18] The defendant asserts that the ancillary defendant allowed the claimants to enter the premises and failed by means of barriers or otherwise howsoever to prevent the claimants from walking in the vicinity of the said haphazard/precarious staircase. The defendant further asserts that the ancillary defendant permitted or suffered the claimants to walk in the vicinity of the said haphazard/precarious staircase when it was unsafe to do.
- [19] The defendant contends that if the claimants suffered and continue to suffer pain, injury, loss and damages it is not as a result of the defendant's negligence and/or her servants or agents.
- [20] The defendant states that the loss and damage suffered by the claimants were as a result of their own negligence as the weight capacity of the steps was exceeded by congregating collectively on the steps thereby causing it to give way. The defendant also avers that there were alternative stairs leading to the deck which could have been used.
- [21] The defendant contends that the staircase used by the claimants were private stairs and that the ancillary defendant ought to have known that it was a restricted area that was not rented out. The defendant avers that the guests could have exited to the ground by traversing short stairs to the restaurant, exiting where they entered, or to the front of the restaurant.

[22] The defendant claims against the ancillary defendant, general and special damages for loss and damage suffered by the claimants caused by the negligence of the ancillary defendant as occupier of the premises.

[23] The particulars of negligence pleaded against the ancillary defendant are: failing to take reasonable and adequate care for the claimants' safety whilst on the premises; failing to warn the claimants that the use of the stairs to the deck being used was unauthorized and that there was an alternative stair to the deck; failing to warn the claimants that the stairs were an unusual danger or trap; failing to prevent the claimants from walking in the vicinity of the haphazard/precarious staircase; permitting the claimants to walk in the vicinity of the haphazard/precarious staircase when it was unsafe to do.

The case of the Ancillary Defendant

[24] The ancillary defendant contends that she entered into an oral agreement with the defendant to rent the premises to host her wedding ceremony, but that it was never a term or condition of said oral agreement that occupational control would have passed from the defendant to her. The ancillary defendant thus avers that she did not owe a duty of care to the claimants to keep them safe since she did not have occupational control of the premises.

[25] The ancillary defendant denies that she is liable for general damages and other relief claimed by the defendant. The ancillary defendant asserts that the claimants were the licensees of the defendant. She avers that the guests at the wedding ceremony had to pass on the stairs leading to the defendant's dwelling house to access the deck. The ancillary defendant alleges that the steps from which the claimants fell were severely rusted, which appeared to have caused the said step to collapse. The ancillary defendant contends that the defendant ought to have known that the nails were rusted and were a potential hazard to the guests of the ancillary defendant. The ancillary defendant further contends that the defendant failed to advise her and the claimants that the nails were rusted or that the stairs

were not sturdy. Additionally, no signs were posted warning of dangers whether latent or apparent.

Legal Analysis

Whether the Defendant and/or the Ancillary Defendant were Occupiers of the Premises on 22nd July 2017

[26] The claimants and the ancillary defendant contend that the defendant was the occupier of the premises and that while the premises were being used, she did not divest herself of any occupation and control of the premises.

[27] On the other hand, the defendant asserts that she owed no duty of care towards the claimants as the property was leased to the ancillary defendant, and that the ancillary defendant was occupier at that point in time.

[28] In **Wheat v E. Lacon & Co. Ltd**¹, Lord Denning described the word “occupier” as:

“A convenient word to denote a person who had a sufficient degree of control over premises to put him under a duty of care to those who come lawfully onto the premises”²

[29] Gilbert Kodilinye in **Commonwealth Caribbean Tort Law**³ expounded on the term “occupational control” stating that it is:

“control associated with and arising from presence in and use of or activity in the premises.”

[30] The ancillary defendant argues that she only had use of the property for approximately seven (7) hours, and that the defendant did not relinquish full control of the premises to her, since the stairs described as private are part of the stairs leading from the grounds of the premises to the deck, which the defendant also had to use to access her private dwelling.

¹ [1966] AC 552

² [1966] AC 552, page 577 G

³ (4th edn, Routledge 2009) page 126

[31] The ancillary defendant further argues that the defendant had the control of repairing any defective part of the structure of the premises by use of the staircase to access her private dwelling.

[32] In **Wheat v E. Lacon & Co. Ltd**⁴, Lord Denning further stated the following:

“...wherever a person has a significant degree of control over premises that he ought to realise that any failure on his part to use care may result in injury to a person coming lawfully there, then he is an ‘occupier’ and the person coming lawfully there is his ‘visitor’ and the ‘occupier’ is under a duty to his ‘visitor’ to use reasonable care. In order to be an ‘occupier’ it is not necessary for a person to have entire control of the premises. He need not have exclusive occupation. Suffice it that he has some degree of control. He may share control with others. Two or more may be ‘occupiers’. And whenever this happens, each is under a duty to use care towards persons coming lawfully on to the premises, dependent on his degree of control. If each fails in his duty, each is liable to a visitor who is injured in consequence of his failure, but each may have a claim to contribution from the other.⁵

[33] Thus, in **Kelly v Woolworth & Co.**⁶ a company in the business of operating a restaurant entered into a contract with a promoter, who hired restaurant rooms from the defendants and sold tickets for an evening dance held in the restaurant rooms from 8:00pm to midnight. The company earned income from sales of beverages, the promoter earned income from ticket sales. The claimant was a guest of the promoter. On appeal it was held that the claimant had a good cause of action against both the company and the promoter on the ground that the restaurateurs had not parted with their estate, possession, or occupation of the rooms, had authorised the promoter to invite the claimant, and the claimant was on the premises by their invitation. The short time for which the rooms were rented was irrelevant.

[34] It is the view of this court that both the defendant and ancillary defendant owed the claimants a duty of care to ensure their safety on the premises. Two or more

⁴ [1966] AC 552

⁵ [1966] AC 552, page 578

⁶ [1922] 2 IR 5

may be occupiers, and both the defendant and the ancillary defendant were involved with the preparation of the premises and the execution of the wedding, especially given that it was the defendant who provided the bar and gained profit therefrom during the rental of the premises by the ancillary defendant. Moreover, this court is of the view that the ancillary defendant was in sufficient control of the premises so as to determine the safety of the said stairs, the collapsing of which caused the injuries to the claimant. Had either the defendant or the ancillary defendant been more diligent in their checks of the premises, it is likely that this unstable tread may have been detected.

Whether the Defendant and the Ancillary Defendant breached the duty of care owed to the claimants

[35] The claimants argue that there was negligence in the failing to ensure that the claimants were kept safe and free from harm and foreseeable causes of such harm. They also state that there was failure to ensure that the premises were structurally sound enough to host a wedding party.

[36] The defendant asserts that she regularly maintains the property and the staircase in particular. Evidence given by Rickson Thomas on behalf of the defendant indicates that in September 2014, both staircases to the upstairs of the building were repaired. The defendant alleges that the accident would have occurred albeit she exercised all reasonable care.

[37] The necessary prerequisites for the existence of a duty of care was set out in **Caparo Industries plc v Dickman**⁷, namely (i) there is reasonable foreseeability of damage; (ii) a relationship of proximity exists between the wrongdoer and the person damaged; and (iii) it is just, fair and reasonable to impose a duty of care.

[38] The duty of care owed by the defendant and ancillary defendant is defined by Gilbert Kodilinye in **Commonwealth Tort Law** as:

⁷ [1990] 1 All ER 568

“A duty to take such care as in all 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”⁸

[39] The duty comprises an obligation to take reasonable care to ensure that the person or persons to whom the duty is owed do not suffer a particular type or types of damage. The defendant as owner of the private residence at trial said that she was granting the ancillary defendant a favor in allowing the use of the area adjoining her private residence.

[40] It is clear to this court that there was a breach of this duty by the defendant when the stairs fell from beneath the claimants. The claimants were using the stairs for the specific purpose of traversing from an upper level of the building situate on the premises, to the lower level. This staircase ought to have been sufficiently safe for its ordinary purpose of moving between levels.

[41] Moreover, as the defendant had rented the premises for a wedding on this, and other prior occasions, it was her responsibility to ensure that the structural integrity of the building was met for that specific purpose.

[42] The defendant has also admitted, in pleadings, that the staircase traversed by the claimants was haphazard and precarious, and she is bound by same and by her pleadings⁹. The defendant knowing the perilous nature of the stairs should have restricted access. It is the evidence that she lived on the compound and was very present at times during the wedding celebrations. It is the evidence, and the court accepts that the defendant decorated the premises for the wedding and was fully aware that in excess of 100 persons were expected to be in attendance yet she failed to place any warning signs to alert the invitees of the haphazard nature of the steps.

[43] The court applying the foreseeability test is of the view that the risk, and the damage suffered by the claimants were not reasonably foreseeable so as to hold

⁸ (4th edn, Routledge 2009) para 128

⁹ [2018] ECSCJ No. 39 George W Bennet Bryson’s & Co. Ltd. v George Purcell

that the ancillary defendant was in breach of the duty of care owed to the claimants. Albeit that both the defendant and ancillary defendant are occupiers, it is the defendant who would have had the associated control of the premises with regard to the structural integrity of the building. It is this kind of risk that resulted in the injury that distinguishes this case from that of **Kelly v Woolworth & Co**¹⁰ where both the promotor and the company responsible for the property were found liable. In this case, it is the building itself that created an occupational hazard.

Whether the Claimants were Trespassers

[44] The defendant argues that there were alternative steps leading to and from the property to the deck that should have been used by the claimants, and that the area where the accident occurred was her personal space. The defendant thus argues that the claimants were trespassing. According to the defendant, at the rehearsals held on 20th and 21st July 2017, the smaller staircase was used from the deck to go to the inside of the restaurant.

[45] The ancillary defendant indicates, however, that the defendant did not identify any restricted areas at the said establishment prior to leasing the premises. Moreover, the claimants gave evidence that the stairs used by guests to access the area upstairs the restaurant, where the wedding ceremony was held, were the same stairs which caused their injury. Furthermore, there were no signs indicating the number of persons who could use the stairs, or that the stairs were not to be used.

[46] The defendant's argument regarding the privacy of the staircase does not absolve the defendant of liability, as even if a person on premises wanders beyond the expressly permitted areas and suffers loss, that person may still recover damages as their implied permission can be extended on a more generous basis¹¹. This principle is based on how the reasonable visitor would interpret the permission,

¹⁰ [1922] 2 IR 5

¹¹ Tort: The Law of Tort (Common Law Series), 3rd edn, 2014

and what the reasonable occupier should anticipate as likely behaviour by the visitor¹².

- [47] Taking the defendant's argument at its highest, the claimants in this instance were moving from an agreed authorised area to another agreed authorised area using the stairs. It is not unreasonable for the claimants to have interpreted that they were permitted to use the stairs, and the reasonable occupier would anticipate this to be likely behaviour by the visitor.
- [48] On the evidence before this court, there is therefore nothing to substantiate the defendant's argument that the claimants were trespassers. Accordingly, the duty of care hereinabove described which is owed to visitors is the said duty which was owed to the claimants by both the defendant and the ancillary defendant. However, the court is of the view that the defendant had control and responsibility for the structural integrity of the premises and should have reasonably foreseen the potential result of the injuries suffered as a result of the haphazard and precarious stairs.
- [49] Furthermore, no restrictions were put in place by the defendant to prevent guests from using areas she contends were private. It is the evidence of the defendant that this is not the first time that the premises was rented for the purpose of conducting a wedding. Given these prior activities on the premises, the defendant ought to have been aware of the use of the facility in such a manner. The court also accepts the evidence that the defendant decorated the venue and gave no evidence of placing any signs restricting the use of the stairs. Also, the defendant was physically present at time during the celebration and had not totally relinquished control of the premises to the ancillary defendant.
- [50] The court taking into consideration the evidence finds the defendant liable for the injuries suffered by the claimants. Accordingly, judgment is entered in favour of the claimants against the defendant. The ancillary claimant's claim against the defendant stands dismissed.

¹² Tort: The Law of Tort (Common Law Series), 3rd edn, 2014

Conclusion

[51] It is therefore ordered and declared as follows:

- (1) Judgment is entered for the claimants against the defendant.
- (2) The ancillary claim against the ancillary defendant is dismissed.
- (3) The defendant shall pay damages to the claimants, to be assessed if not agreed within twenty one (21) days .
- (4) Failing settlement:
 - (i) the claimants shall file and serve witness statements, submissions with authorities in support of the assessment on or before 30th September 2022.
 - (ii) The defendant shall file and serve witness statements, submissions with any authorities in response on before 30th October 2022.
 - (iii) The assessment of damages shall be conducted on a date to be arranged by the court office upon the application by counsel for the claimants.
- (5) Liberty to file a consent order on damages.
- (6) The defendant shall pay the ancillary defendant's costs in the sum of \$7,500.00 pursuant to CPR 65.5 (2) (b).

Agnes Actie
High Court Judge

By the Court

Registrar