

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO. ANUHCV 2018/0012

BETWEEN:

HYACINTH THOMAS

Claimant's

and

BLUE WATERS HOTEL

Defendant's

Before:

Justice Jan Drysdale

APPEARANCES:

Mr. Lawrence Daniels for the Claimant's

Ms. Mandi A. Thomas for the Defendant's

2021: June 22nd
December 29th

DECISION

Introduction

[1] **Drysdale, J.:** This matter originates from a Claim Form and Statement of Claim filed on 15th January 2018, wherein the Claimant claims against the Defendant, inter alia, damages to be assessed and special damages for personal injuries the Claimant sustained to her lower back consequent of a fall upon the Defendant's premises.

The Pleadings

The Claim

- [2] The Claimant was employed as a room attendant with the Defendant, from 2016 to the date of her termination on or about 11th July 2020. The Claimant typically worked the night shift from 3p.m. to 11p.m. five days a week.
- [3] On 15th May 2016, the Claimant's was ordered by her supervisor to "style and turn-down" a room, which is a VIP service provided by the Defendant. This service entails the changing of the bedsheets and place same in a sleeping position and to provide the rooms with water, among other amenities.
- [4] The Claimant states sometime between the hours of 7:30 pm and 8:00 pm while traversing the steps of 600 block "Pelican" to execute her duties, she fell down a flight of stairs that led to the room. The Claimant's alleges that the area dark and not lit. As a result of the fall, she sustained injuries to her head, right side, back and foot.
- [5] The Supervisor, upon being informed of the accident came to assist the Claimant. Thereafter, the Claimant walked to the front of the hotel where she was transported via taxi to the hospital for treatment and was discharged.
- [6] On the following day, the Claimant asserts that she was unable to move and therefore sought the services of Dr. Philmore Benjamin. She was sent for an X-ray at Belmont Clinic along with an MRI which tests revealed that she had sustained injuries to her lower back.
- [7] Dr. Benjamin's MRI report dated 13th July 2016, shows the Claimant's results as indicated as follows:
- (i) schorml's node end plate of L5;
 - (ii) 4.45 mm x 6.29 mm diffuse disc herniation L4/5;
 - (iii) mass effect on the thecal sac and caudia equina; and
 - (iv) no nerve root contact.
- [8] The Claimant informed the Defendant of her injuries, and further supplied the medical report to the Defendant's Human Resource Department, more particularly, Ms. Karen Whitehead, who in turn sent the Claimant to the Defendant's doctors for examination and

therapy. The doctors being Dr. Gaekwad, Dr. Graham and Dr. Kowlessar. The Claimant agreed that the Defendant has borne all the medical expenses related to her injuries.

[9] The Claimant avers that the injuries sustained were by virtue of the Defendant's negligence as the management of the Defendant had or ought to have had knowledge that the light for the area was poorly lit, thereby exposing the Claimant's to foreseeable risk of harm which should have been avoided.

[10] The particulars of negligence on the part of the Defendant are as follows:

- (1) failing to adequately equip or protect the Claimant's in her employment, when it was important and their duty to do so;
- (2) failing to exercise any or any adequate supervision in ensuring that the 600 block was properly lit;
- (3) failing to provide or maintain the Claimant's with a safe system and/or place of work;
- (4) exposing the Claimant's to foreseeable and unnecessary risk of injury when they knew or ought to have known that it would be dangerous for the Claimant's to walk in a poorly lit area;
- (5) failing to develop and/or implement a safe system of work so as to alert, obviate and or minimize the risk of injuries to the Claimant's; and
- (6) failing in all circumstances to take any or any adequate duty of care for the protection and safety of the Claimant's.

[11] The Claimant particularised her injuries as follows:

- (1)Head
- (2)Right hip
- (3)Laceration to her left foot
- (4)Chronic bilateral S1 radiculopathy with pre-existent degenerative lumbar canal stenosis
- (5)Musculo-ligamentous injury of the trunk and the right lower limb
- (6)Motor deficits
- (7)Prone to unpredictable events of instability of the right lower limb.

- [12] Further medical reports were exhibited as evidence indicating the extent of the Claimant's injuries from the date of the incident to present to aid in the assessment of damages. Those reports will be addressed further if the court is required to assess damages in the circumstances of this case.

The Defence

- [13] On 2nd August 2018, the Defendant filed its defence disputing liability. The Defendant denies that it breached its duty of care to the Claimant as alleged or at all. The Defendant denies that the area at the time was dark, and states further that the incident occurred on block 700 "Turtle Cottage".
- [14] The Defendant contends that at all material times it discharged its duty of care to provide the Claimant with a safe place of work by installing lights along the corridors leading to the cottages and on the walls of the cottage which the Claimant was approaching.
- [15] The Defendant further states that the fall was wholly or substantially attributed to the Claimant's negligence. The Defendant asserts that this is the area with which the Claimant is familiar and traverses regularly. If, which is not admitted, the stairway was unlit or poorly lit when the Claimant fell, the Claimant contributed to her injuries by exposing herself to an obvious risk and by failing to exercise sufficient care. Further, the Defendant contests the nature and extent of the injuries claimed.
- [16] The Defendant asserts that it has paid all the Claimant's associated medical expenses and therapy as it is obligated to do pursuant to the Workmen's Compensation Act and not in admission of any of negligence on its part.
- [17] The Defendant also denies the extent of the injuries claimed and contends that the injuries claimed are pre-existing and did not originate from the fall giving rise to the claim made.

Reply to Defence

- [18] The Claimant filed a reply to defence on 17th September 2018 and admitted that the incident giving rise to the claim occurred on Turtle Cottage and not Pelican.

[19] The Claimant however vehemently denied that she either caused or contributed to her fall or was negligent as alleged by the Defendant. The Claimant reiterated her statement above to emphasise her position.

[20] In pursuance of the trial of this matter both parties filed witness statements. The Claimant was her only witness at trial. The Defendant, however, relied on three (3) witnesses, namely Mrs. Karen Whitehead, Human Resource Manager, Mr. Kevon Drew, Head of Maintenance and Ms. Alecia Prince, Housekeeping Supervisor. All witnesses were extensively cross examined. As the trial is not bifurcated, the issue of liability will first be explored before any determination is made on an assessment of damages if necessary. The relevant evidence is set out below.

The Evidence on Liability

The Claimant's Evidence

[21] At paragraph 4 of her witness statement, the Claimant stated that she fell on the Defendant's premises while executing her duties due to there being no light. Further at paragraph 10 of her witness statement, the Claimant went on to state that "the Defendant Company had or ought to have knowledge that the light for the area was reduced and the area was poorly lit". The Claimant stated that she missed a step.

[22] Under rigorous cross-examination, the Claimant advanced that she is unaware of how she fell. The Claimant stated, she does not know what happened, she had towels and her keys in her hands. Her uniform comes with pockets and in her pockets, her phone she was given to work with. The Claimant expounded by saying what she recalls is *"going through the gate, closed the gate and the next thing I know is when I catch myself is the pain I felt, ... I really do not know if I went backwards, sideways or what."*

[23] Additionally, the Claimant stated she is unsure whether she slipped down the steps or fell over, but after falling she saw blood. The Claimant further told the court that she does not know whether it was poor lighting that caused her to fall. The Claimant added that it cannot be said that the area was not lit, however, there was no sufficient light in the area which she traversed. The Claimant expounded by stating that there was foot light in the area but there was no upper light at the time of the incident.

[24] The Claimant admitted that she had not made any complaints about poor lighting in the area, neither before nor after the time of the incident. The Claimant explained her reason for the same was due to the fact that there was always light coming from the rooms. She continued and stated that however on that occasion, there were no lights coming from the room. The Claimant states further that up to the time of the fall giving rise to the claim she was working at the Defendant's hotel for 3 years going on 4 and that she is very familiar with the premises, including Turtle Cottage.

Defendant's Evidence

The Witness - Karen Whitehead

[25] Ms. Whitehead told the court that since the Claimant's employment, the Claimant has been mostly scheduled to work the 3:00 pm to 11:00 pm shift. Turtle Cottage was occupied with guests at the time thus the reason the Claimant's was sent to do turn-down service at the cottage.

[26] The witness stated that she is familiar with Turtle Cottage as she works on premises of the Hotel. Her evidence is that the area has lamps placed in the gardens running along the corridors leading to Turtle Cottage and there are electric lamps on the walls at the entrance of Turtle Cottage. The lights are used at nights to shed light on the entrance of the cottage, which is not far from the steps.

[27] The workers and guests alike ascend and descend the steps regularly to get to and from the cottage. There is a small gate at the top of the stairs and a wooden handrailing running to the bottom of the 4 steps. Further, Ms. Whitehead expressed that she has never received any complaints or reports, written or otherwise from the Claimant, nor any other employee concerning the absence or inadequacy of lights in or around Turtle Cottage. Not prior to or after the incident giving rise to this claim.

The Witness - Kevon Drew

[28] The witness stated he has been in the employ of the Defendant since 1998. His duties on the premises entail overseeing the technicians and maintaining the entire premises

to the standard set by Management, among other things. Technicians would take complaints and note, and address incidents. Additionally, routine checks would be done on the property to ensure that things are in working order and in good condition. He further stated that there is at least one technician working at night, and complaints from visitors or other workers are made to the Manager on duty, the Supervisor or at the front desk. Particularly, it is the practice of the maintenance department, in conjunction with the housekeeping department to prepare rooms for guests before their arrival. As is custom and practice of the maintenance department, a routine check would have been carried out by a technician prior to the guests arriving to occupy the cottage, which includes ensuring the bulbs inside and outside the buildings are working. Matters such as these are addressed immediately.

[29] The witness in much the same form as Ms. Whitehead gave evidence with respect to the placement of the lighting at Turtle Cottage. For brevity, it will not be re-stated but considered. He further stated that the steps are tiled with exterior tiles. The witness added that the lights used on the premises are photocell lights, commonly referred to as dusk to dawn light. He has admitted that it is a possibility that shrubs could block the lights or that a bulb could have been blown.

The Witness - Alecia Prince

[30] The witness stated that between the months of February to May 2016, the Claimant had been assigned to do turn down service at Turtle Cottage on numerous occasions. On the date of the incident, sometime around 7:30 pm and 8:00 pm she had received a telephone call from the Claimant advising of the incident.

[31] The witness stated she walked hastily to where the Claimant was from the housekeeping department. Based on her recollection, when she arrived at Turtle Cottage she could clearly see the Claimant sitting on the bottom step and she had descended the steps to where the Claimant's was. She also saw the bruises on the Claimant's knee.

[32] It is her evidence that she could not recall exactly which lights were on owing to the fact that she was not concentrating on the lights, however, she was able to recall that

there was sufficient light which allowed her to see the Claimant and to see where she was going. In cross-examination, the witness stated that “*the lights that were on were more likely on the door... not directly on the door but next to the door*”. The witness stated she did not recall if any lights were on the steps but that lights were on the side of the walkway and she was able to see the Claimant's from the lights going down to the Villa.

The Issues

[33] The issues to be resolved are as follows:

- a. Where did the accident occur?
- b. Whether the Claimant's fall is consequent of a breach of the Defendant's common law duty to provide a safe place/system of work amounting to negligence?
- c. If the above is in the affirmative, what is the quantum of damages to which the Claimant is entitled?
- d. Whether in the circumstances of this case, the Claimant is entitled to an award under the Workmen's Compensation Act?

Issue 1. Where did the accident occur?

[34] Firstly, the matter of locus must be settled to facilitate the resolution of the substantive issues before this court. Whilst it is not in dispute that the Claimant fell on the Defendant's premises, there are inherent inconsistencies with the Claimant's statement of claim; reply to defence; and her testimonies at trial as to where on the premises she fell.

[35] At trial, the Claimant's maintained that she slipped and fell at Pelican block. This is in keeping with paragraph 5 of both her Statement of Claim and Witness Statement. Of note, prior to her evidence at trial, the Claimant's at paragraph 1 of her Reply to Defence admitted the incident happened at Turtle Cottage. Interestingly too, in cross-examination, the Claimant identified photographs shown to her of Turtle Cottage and accepted that the area depicted in the photographs was where she fell.

[36] A witness for the Defendant, Kevon Drew under cross-examination testified that at Pelican, there are 2-3 steps leading to the house and that there are no gates there. The court notes the importance of this description, as the photographs tendered in evidence displays four (4) steps, with handrails and a gate. The witness also testified that at Turtle Cottage, there are about 4-5 steps tiled with exterior tiles. The court notes that the 5th step here being referred to is the landing.

[37] Counsel for the Defendant emphasised that the description of Pelican, does not match the description of where the Claimant says she fell. Counsel proffered that this description is in keeping with the photographs of Turtle Cottage admitted in evidence disclosed to the court by the Defendant's and relied on by the Claimant's.

[38] Based on the evidence before me, I have no difficulty in accepting that the incident occurred at Turtle Cottage.

[39] Counsel for the Claimant submitted that it not being disputed that the Claimant slipped and fell and injured herself on the Defendant's premises, that the real issue at hand is that of quantum. I reasoned counsel's argument to be, that by virtue of the incident taking place on the Defendant's premises, the Defendant is therefore liable.

[40] As intimated earlier, the issue of liability is a live one before this court and it must be resolved to ascertain if there is need for an assessment of damages. Therefore, I do not find favour with counsel's submission. The court will go on to resolve the issue of liability.

Issue: Whether the Claimant's fall is consequent of a breach of the Defendant's duty amounting to negligence.

[41] This broad issue encapsulates three issues, which are: whether there is a duty owed to the Claimant by the Defendant; whether there is a breach of that duty; and further, whether the Claimant's fall and injuries sustained is consequent of that breach¹. The Claimant must prove these three issues in the affirmative to establish liability.

¹ Gilbert Kodilyne Commonwealth Caribbean Text Law 5th edition page 68.

Duty owed

[42] The claim is grounded in common law and not statute². Thus, the duty owed to the Claimant is viewed at common law. In the case at bar, it is not in dispute that the Claimant, at all material times was in the employ of the Defendant. The close relationship between an employer and an employee necessarily influences the nature of a duty of care to safeguard the employee's health and safety in the context of his employment.³ Thus, it is axiomatic that the Defendant owes a duty of care to the Claimant by virtue of their employer and employee relationship.⁴ It follows that the next question is whether the Defendant breached its duty owed in all the circumstances.

Whether there was a breach

[43] The Claimant's pleadings have to be viewed within the context of the alleged breach of the Defendant occasioning the Claimant's fall. That is, there was no light or sufficient light in the area of Turtle Cottage. Further, it was the obligation of the Defendant to provide both a safe place of work and a safe system of work.

[44] A safe system of work is defined in the authority of **Michele Jones v The Saint Vincent and the Grenadines Port Authority**⁵ at paragraph 43 of Byer J judgment as:

"... The physical layout of the job; the setting of the stage, so to speak; the sequence in which the work is to be carried out; the provision in proper cases for warnings and notices, and the issue of special instructions ..."

² There is no Legislation in the State of Antigua and Barbuda which requires proof of negligence to ascertain an employer's liability for incident which occurs on the employer's premises.

³ *Munkman on Employer's Liability*, 2013 16th edition, at para 2.44 learned author cited the authority of **White v Chief Constable of South Yorkshire Police [1999] 2 AC 455 at 506**.

⁴ Also, it can be argued that the Defendant's owes a duty to the Claimant's as an occupier of its premises, however that is not before the court.

⁵ SVGHCv2009/0171

[45] The employer also has the obligation to provide a safe place of work. In the case of **Michele Jones v The Saint Vincent and the Grenadines Port Authority**⁶ at paragraph 45, Byer J states:

“This is met by the employer 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 a system to keep the workplace clean and free from obstruction that is all that can be reasonably demanded from him’.”

[46] I adopt and apply the authority *mutatis mutandis*, that is, if the Defendant has a system to keep the workplace sufficiently lit, that is all that can be reasonably demanded from it.

A safe system of work

[47] A safe system of work has to do with the method of working in order to minimize the risk associated with the work. Counsel in its pleadings avers that the Defendant failed to develop and/or implement a safe system of work however, there is a paucity of evidence led by the Claimant. The court deduced this could be on account that the Defendant’s system of work was less of a concern to the party.

[48] I accept the Claimant’s evidence that at the time she was carrying towels, keys and work sheets in her hands. The Claimant did not allege, and neither will the Court infer that these items overburdened her and or impaired her vision. What is clear is that the Claimant did not utilise the handrails provided along the stairs when traversing the same. The Claimant also was routinely familiar with that area and did not make any complaints about any alleged inadequate lighting which would have impaired her in the performance of her duties.

[49] It is trite law that he who asserts must prove, and the requisite standard of proof is on a balance of probabilities. The Claimant failed to discharge her burden to the requisite

⁶ SVGHCV2009/0171

standard to establish that the Defendant failed to provide a safe system of work. Based on the overwhelming evidence that was led before this court, the court determines that what is in question is a safe place of work and not a safe system of work. In the event that I am mistaken for clarity the Claimant has in any event failed to establish a safe system of work.

A safe place of work

[50] The Claimant's case at its highest is that the lights at Turtle Cottage at the material time was reduced substantially which impaired her vision, resulting in her fall. At common law, the duty owed to the Claimant to provide a safe place of work is not an absolute one. All that is mandated of the Defendant is to provide reasonable care. The employer is not under a duty to prevent injuries to the Claimant which arise out of the ordinary risks of normal life.

[51] In the authority of **De Verteuil v The Bank of Nova Scotia Trinidad and Tobago Ltd**⁷, Jamadar J, in his judgement stated the standard of care which the employer is held as follows:

‘..... The duty is to ensure that reasonable care is taken to provide a safe place of work. The duty is an objective one, the measure of which is stated in the cases as being ‘to take reasonable care ... as not to subject those employed ... to unnecessary risk’.⁸ Thus, the employers are not under a duty to prevent injury to their employees which arise out of the ordinary risks of normal life.’⁹

[52] Reasonable care is the standard which the Defendant is held. Therefore, it must be shown that the Defendant acted unreasonably in failing to ensure that Turtle Cottage was sufficiently illuminated at night. Taking reasonable care is a question of facts.

⁷ H.C.A No 2121 of 1995 (Carilaw TT 2002 HC 85)

⁸ See Woods v. Durable Suites Ltd [1953] 2 All E.R. 391 at 395 C-D; and Davies v. De Havilland Aircraft Co. Ltd [1950] 2 All E.R. 582 at 583.

⁹ See Thomas v. Bristol Aeroplane Co. Ltd [1954] 2 All E.R. 1 at 4A and F.

[53] I accept the evidence of the Defendant's witnesses that there are lamps placed in the gardens running along the corridors of Turtle Cottage and electric lamps on the walls at the entrance of the cottage. This was without difficulty as the Defendant also submitted photographs of the area to bolster the witnesses' evidence. The photographs tendered in evidence is as described by the witnesses. Further, this evidence went unchallenged by the Claimant.

[54] The lights were installed to illuminate the area of the cottage. Mr. Drew stated that the lights in place are dusk to dawn lights, meaning the lights do not require human intervention as the sensors allow the lights to turn on and off automatically at dusk and at dawn. However, it must be assessed further whether the placement of the lights sufficiently illuminates the area, in particular the steps leading to Turtle Cottage.

[55] The Defendant's witnesses state that lights are near the steps and that there are no lights on the steps. The court weighs the undisputed fact that not only the Claimant herself, but other workers alike and visitors of Turtle Cottage traverse Turtle Cottage. Particularly, they ascend and descend the stairs regularly. Further there have been no complaints as to poor lighting in the area prior to the Claimant's incident. Further, the Claimant led evidence that she has never made any complaints about the lighting.

[56] Taking the circumstances in the round, of persons regularly traversing the area and there being no complaints with respect to the lighting at the cottage, I find that it is more likely than not the lights and their positions on the compound have been sufficiently illuminating Turtle Cottage. I find that the days leading up to the incident Turtle Cottage was sufficiently lit. The next question is to assess whether the lights at Turtle Cottage at the night in question was sufficient.

[57] I pause here to raise the point of the Claimant that she slipped and fell down the staircase only to dismiss it. I do not find that the incident was a slip and fall incident. There was no obstruction on or defects with the staircase itself which rendered traversing the stairs unsafe. Evidence was led by the Defendant that there are outside tiles used to tile the staircase and handrails are at the staircase. All this went unchallenged by the Claimant. Thus, it is not a slip and fall incident.

Knowledge of risks

[58] The Claimant, in a particularly unhelpful manner with no reference to the evidence before the court states that the Defendant ought to have known that the lights for the area were reduced and that the area was poorly lit which exposed her to a foreseeable risk of harm which should have been avoided.

[59] Learned author in **Munkan on Employer's Liability** at paragraph 2.55 and 22.133 states:

2.55 "The duty of the employer is to guard against risks and prevent exposure of the employee to risks which the employer knows of or ought to have known about. A failure to take measures to protect against a risk of which no-one was, or could have been aware, plainly cannot amount to negligence"

22.133 "...The duty is to take reasonable precautions for the safety of the employees. If the entrance to a workplace was made slippery by a sudden snowfall, an employer cannot be expected to clear the snow immediately: **Thomas v Bristol Aeroplane Co Ltd [1954] 1 WLR 694**. Nor is the employer liable for failure to cure a transient and exceptional danger of which it neither knew of or ought to have known: **'Reilly v National Rail and Tramway Appliances Ltd (1966) 1 All ER 499**. "The fact that workmen knew of the danger was not sufficient for the employer to be held to know in absence of knowledge on the part of chargehands, foremen or managers."

[60] It is emphasized, however, an employer relying on ignorance of risk in the context of an accident is more difficult, as shown in **Henderson v Henry E Jenkins & Sons**¹⁰ and similarly in **Barkway v South Wales Transport Co Ltd [1950] AC 185**¹¹. It is of note that the above-stated authorities emanate from England and Wales which has statutory provisions which speak to the duty of the employers to be aware of risks. It is also noted that there is no like statute in the State of Antigua and Barbuda. However,

¹⁰ [1970] AC 282

¹¹ paragraph 2.57 in Munkman on Employer's Liability, 2013 16th edition

the authorities pronounced that though the duty of the employer to be aware of risks has been strengthened by statute¹² to conduct a 'suitable and sufficient assessment' of risks arising out of the conduct of the undertaking. This duty should inform the common law standard of care with result, that the court will reject a defence of ignorance when a proper assessment would have revealed the kind of risk concerned.

[61] Therefore, it is incumbent on the Defendant to do a satisfactory assessment of the premises at Turtle Cottage to ensure that the lights implanted are in working order. In particular, the night the incident occurred. Having explored the evidence, I accept the evidence of Mr. Kevon Drew that there is at least one technician who works the night shift, and it is the Defendant's practice to do routine checks of the area particularly in conjunction with the house keeping department when preparing for a guest. It can logically be deduced that on the night in question, it is more likely than not, the technician in keeping with the Defendant's practice, would have followed the usual protocol to do routine checks at Turtle Cottage to ensure the bulbs outside and inside were in working order. I find the routine assessment by the Defendant to be satisfactory.

[62] It is difficult to find favour with the Claimant's argument that the Defendant ought to have known that the area was not sufficiently lit in face of the overwhelming evidence before this Court. There has been no report of insufficient lighting at Turtle Cottage the night in question leading up to the Claimant's incident. Counsel for the Defendant states that the Defendant's record tendered in evidence shows that the Defendant attends to reports of issues on the hotel premises with urgency. I find favour with counsel's argument having accepted that the Defendant has done satisfactory assessment of the premises.

[63] The Claimant vehemently states that her incident is owing to insufficient lighting or no lighting at Turtle Cottage. However, Ms. Prince's stated that when called by the Claimant, she rushed to where the Claimant was. Having arrived at Turtle Cottage, she could see the Claimant clearly at the bottom of the steps, and she also saw blood on the Claimant. Although, Ms. Prince could not pinpoint exactly which lights were on, she stated that there was sufficient light.

¹² Framework Directive 89/391/EEC and implemented by reg 3 of the Management of Health and Safety at Work Regulations 1999, SI 1999/3242.

[64] The Claimant had inherent inconsistencies in her evidence. She went from stating that there was no light in the area at the time she fell, to there was no sufficient light in the area when she fell, and there were foot lights but no upper lights. Further, the Claimant is unaware of how she fell, and she is unsure whether it is poor lighting that caused her to fall.

[65] I have considered the evidence before the court that there is a possibility that shrubs could block the lights, or a bulb could have been blown. Defence counsel argues, however, that this is not the case nor contention of the Claimant and the same was not put to the Defendant's witnesses as such. I agree with counsel in this respect. I find that on a balance of probability that Turtle Cottage at the night in question was sufficiently lit.

[66] Though an unfortunate incident suffered by the Claimant, the Claimant has not discharged her burden to the requisite standard of proof that the Defendant was negligent. The court concludes that the Defendant has done all that is reasonably required to provide a safe place of work. Thus, there is no breach of the Defendant's duty to the Claimant. Further, it follows that the reason for the Claimant's fall is not consequent upon a breach on the part of the Defendant.

[67] It is noted that the authorities of transient danger were not applied. The reason is, there is no basis to apply the authorities as the court finds that Turtle Cottage was sufficiently lit so there was no transient danger at the time of the incident. Further, the court finds that the Claimant's accident was a mere occurrence of human nature as opposed to an assumption of risk as posited by the Defendant, as the Claimant is unaware of how she fell.

Issue: Whether in the circumstances of this case, the Claimant's is entitled to an award under the Workmen's Compensation Act

[68] Counsel for the defence posits the Claimant had not returned to work since 15th May, 2016 and (up to the time of making her statement) the Claimant's has continued to receive her salary through workmen's compensation insurance as required by law. This is done since she was injured on the job and that she has not lost any earnings. It was also stated that the Claimant's employment was terminated on 11th July, 2020 and that

the Claimant remained on sick leave from the date of the incident. This was admitted to by the Claimant.

[69] Pursuant to **section 3** of the **Workmen's Compensation Act**¹³ ("the Act") the employer, in some instances is required to pay compensation to its worker arising out of and for injuries sustained in the course of such employment. Negligence on the part of the employer is not a pre-requisite for entitlement to payment.

[70] More importantly, **section 16** of the Act requires the Claimant to bring the claim within six (6) months of the incident to be compensated. The Claim having been brought one year and four months after the incident has exceeded the statutory limitation for the commencement of such matters.

Order

[70] Based on the foregoing, the court finds the Defendant is not liable for the Claimant's fall and injuries sustained. Therefore the order of the court is as follows:

1. The claim is dismissed.
2. The Claimant shall pay the Defendant prescribed costs.

Jan Drysdale

High Court Judge

By The Court

Registrar

¹³ Cap 475 of the Laws of Antigua and Barbuda.