

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

**FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

CLAIM NO. SKBHCV2017/0327

BETWEEN:

NICHOLAS HAYNES

Claimant

and

TERRENCE THOMPSON

Defendant

Appearances:

Dr. Henry Browne Q. C., with him, Ms. Claudette Jenkins for the Claimant
Ms. Natasha Grey for the Defendant

2019: September 23
(Written Closing Submissions filed on 30 September)
October 28

JUDGMENT

[1] **VENTOSE, J.:** The Claimant filed a claim form on 24 October 2017 in which he sought the following reliefs against the Defendant:

1. Damages for personal injuries and consequential loss suffered on the 22nd day of October, 2015 as a result of the collapse of a wall consisting of concrete blocks upon the Claimant resulting from the gross negligence and gross misconduct of the Defendant and/or his servants and/or agents

2. interest pursuant to Section 29 of the Eastern Caribbean Supreme Court (St. Christopher and Nevis) Act, Cap 3.11,
3. Costs and
4. Such further or other relief as this court deems just in the circumstances.

[2] The Claimant claims that he suffered personal injuries in the course of cutting a wall on the third floor of the Defendant's property for the purpose of installing hot and cold-water pipes leading from the ground floor to the third floor of the Defendant's property. While cutting the ten (10) feet concrete wall, it collapsed on him. The Claimant was driven by the Defendant to the Defendant's property where the work was to be done, and the Defendant pointed out to him the work that needed to be completed. It was not disputed that the Claimant suffered injuries in the course of cutting the wall or that the incident occurred at the Defendant's property. There is some disagreement between the parties as to whether the Defendant provided all or some of the tools used by the Claimant to do the work, but a finding on this issue is not material to the central question in this matter of whether the Defendant is liable in negligence for the injuries suffered by the Claimant.

[3] The Defendant states that he informed the Claimant that the wall in question was not filled with concrete or tied with steel and that it was not safe to cut the wall to carry out the plumbing work, and that he also informed the Claimant that the decision was entirely his if he wanted to proceed with the job. The essential questions that arise are: first, whether the Defendant informed the Claimant that the wall was not filled with concrete or tied with steel; and, second, whether this absolves the Defendant completely from liability for the injuries suffered by the Claimant. Having heard the evidence of both the Claimant and the Defendant, I believe the evidence of the Defendant who gave his evidence in a forthright manner and he seemed to me to be a witness of the truth. I do not believe the evidence of the Claimant that he was not informed by the Defendant that the wall was not filled with concrete or tied with steel and it was not safe to cut the wall to carry out the plumbing work, but the decision was entirely his if he wanted to

proceed with the job. I find that the Defendant informed the Claimant of the matters mentioned above but that the Claimant took the calculated risk that the wall would be able to withstand the work he was about to perform.

[4] When the Claimant was asked during cross examination whether, as a skilled plumber, he would be able to know if a wall is filled with concrete or tied with steel, he replied that he would be able to tell if it is filled with concrete, but that he would not be able to tell if it is tied with steel. In response to whether he would be able to tell when he started drilling the wall, the Claimant replied in the affirmative. He gave evidence that when he was halfway drilling the 10 feet wall it collapsed on him but later testified that it was only after he finished drilling the wall that it fell on him. At no point during his examination in chief and cross-examination did the Claimant indicate whether he checked to see if the wall was filled with concrete when he started to drill it or during the process of drilling it.

[5] I am of the view that the warning given by the Defendant to the Claimant was enough to warn the Claimant of the potential danger but that the Claimant independently took the decision, knowing the risks that it might pose, to undertake the task that required drilling into the wall that was neither filled with concrete nor tied with steel. This might explain why the Claimant took no precaution to see if the wall was safe to drill, that is, whether it was in fact tied with steel or filled with concrete. The Claimant gave evidence that he would have been able to tell if a wall is filled with concrete when he started drilling.

[6] When asked in reexamination at what stage would he know if there was concrete in a wall when he was cutting it, the Claimant replied that he would not know until he started to cut the wall. However, he cut the wall for 10 feet and did not give any evidence of whether he actually checked first to see if the wall was filled with concrete. I accept that as soon as the drilling started with the demolition hammer drill, the Claimant would have been in a position to know whether or not the wall was filled with concrete. I also accept that the Claimant, after he started drilling the wall, must have realized that the wall was not filled with concrete but nonetheless

proceeded with cutting the wall. This in my view was part of his calculation that there were either no, or only marginal, risks with the task of cutting into the wall.

- [7] Having considered the evidence of the parties, I am of the view that the Defendant gave sufficient warning or notice to the Claimant, and that the Claimant independently decided to perform the plumbing work on the wall when he (the Claimant) knew or ought to have known that it was unsafe and dangerous for him (the Claimant) to do so. The Defendant is, therefore, not liable for the injuries suffered by the Claimant.

Disposition

- [8] For the reasons explained above, I make the following orders:
- (1) The claim is dismissed, and judgment is entered in favour of the Defendant.
 - (2) Prescribed costs to be paid to the Defendant by the Claimant pursuant to CPR 65.5 within 14 days of today's date if not agreed.

Eddy D. Ventose
High Court Judge

By the Court

Registrar