

**EASTERN CARIBBEAN SUPREME COURT
ST VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV 2012/0140

BETWEEN:

LITHA PETERS

Claimant

and

LISAQUOW

Defendant

Appearances:

Mr Jaundy Martin for the claimant

Mr Sten Sargeant and Ms Danielle France for the defendant

2017: February 13, 16

JUDGMENT

[1] **ROBERTS, J. [Ag.:]** The claimant was a tenant in a studio apartment at Frenches in St Vincent and the Grenadines when on Saturday 5th March 2011 she was injured. She claims that the injury arose out of an incident which occurred when the defendant who was her landlord or landlord's agent was using a hose to wash down windows to her apartment and water thus seeped into the apartment. She fell in the water that had seeped in when she went to open the window.

[2] The Claimant stated that she was sleeping when she was awakened by the noise of splashing of water on her window. Upon investigating the cause of the noise, she saw the defendant with what



appeared to be a power hose standing outside her window washing and scrubbing the window and the outside walls of the building around it. The claimant states that she did not at that time open her window and remained in her apartment for half an hour after first observing the defendant. The claimant's apartment had 4 windows that the claimant normally keeps opened whilst in the apartment.

- [3] As the claimant proceeded to open the window closest to her bed, she slid and fell in water that had seeped into the room through the window as a result of the defendant's scrubbing and washing of the window and the outside of the walls of the building around it thereby suffering pain and injury and sustaining loss and damage,
- [4] The claimant stated that the defendant was negligent in that she -
- (1) failed to inform the claimant of her intention to wash the window and scrub the walls of the building around the window of the claimant's apartment, despite knowing that the claimant was an occupant;
 - (2) failed to take suitable and or any sufficient step to prevent water from entering the apartment and thereby preventing a danger or risk to the claimant;
 - (3) failed to take any or any adequate care for the safety of the claimant;
 - (4) exposed the claimant to a danger or a trap or a foreseeable risk of injury.
- [5] In her defence, the defendant while denying that she was the claimant's landlord or landlord's agent, admitted that she "looks after the premises in the absence of the owner". She stated that the apartments were of modern construction having been completed in 2006. She stated that on the day in question she rinsed the dust from the building. She checked all of the windows to ensure that they were properly closed and proceeded to "rinse off the building."
- [6] The defendant pointed out that the windows to the claimant's apartment were not known to be defective in any way and they were "not prone nor known to leak". She denied that water seeped into the claimant's room as alleged causing her to slide and fall. She also denied that she was performing any scrubbing. The Defendant denied that she was negligent in any way or at all. She denied each and every particular of negligence in that -

- (1) she was under no obligation to inform the claimant of her intention to wash the windows;
- (2) in the circumstances she took all necessary steps in ensuring that all windows were properly closed before rinsing off the windows to the building;
- (3) the claimant was well aware long before the alleged fall that the defendant was rinsing off the windows to the building;
- (4) the defendant took all requisite steps to ensure the adequate safety for the claimant and did not expose the claimant to a danger or a foreseeable risk of injury.

[7] The defendant further claimed that "the said matters were caused wholly or in part by the claimant's negligence" in -

- (1) failing to observe or avoid the alleged water on the floor;
- (2) failing to look where she was walking;
- (3) failing to take all or all sufficient steps to prevent herself from falling.

[8] The claimant replied that the defendant held herself out to be the landlord or the landlord's agent in that she collected the rent, kept the premises in repair and maintenance and responded and acted upon the claimant's queries, complaints or requests. She reiterated that water did enter into the apartment through the window as a result of the defendant's use of a hose on her window. She also denied that she herself was negligent

Evidence and Analysis

[9] The witness statement and oral evidence of the claimant was in keeping with her statement of claim. I will quote directly from her witness statement as to her version of what happened. She said at paragraph 4 of her witness statement :

"After the defendant had moved on from the window closest to *my* bed, I went to open it. As I did so, I slipped and fell. I felt a sharp and continuous instant pain in *my* left leg. I tried to get up but could not do so as the pain got more intense.

I noticed that I had slipped in water that had seeped into the room through the window from the defendant washing and scrubbing outside. On looking closely, I saw the trail where the water had freshly seeped in through the bottom and sides of the window and entered the room".

The claimant was not cross examined on that crucial piece of evidence that "on looking closely she saw the trail where the water had freshly seeped in through the bottom and sides of the window and entered the room". The defendant met the allegation that the water came into the apartment as a result of her hosing the windows and walls with a broad, "No, it's not so that Ms Peters slipped because water got in and caused her injury". However, the defendant admitted in cross examination that "she told me she slipped because of water coming from the windows".

[10] The defendant did not appear to protest the version of the claimant at the time. Her reaction to the statement was to take the claimant to the doctor then to the hospital and then after treatment at the hospital, to the claimant's mother's house. The defendant testified that at the hospital the claimant gave her keys to lock up her premises for her. There clearly was no contention between the parties after the claimant told the defendant that she had slipped as a result of water seeping in the apartment from her hosing the windows. I accept the version of events as given by the claimant.

[11] The defendant curiously averred in her defence that, "the defendant further denies that the claimant suffered any pain and or injury". Yet she testified that she took the defendant to the doctor and to the hospital". I do not think that the defendant was being forthright in this statement.

[12] In response to the claim that she was negligent for not having informed the claimant that she intended to hose the windows of the claimant's studio apartment, the defendant contended that she was under no obligation to inform the claimant of her intention to wash the windows. She further contended that in any event the claimant was fully aware of the circumstances since she had observed the defendant washing the windows for half an hour. The defendant agreed that she was hosing the window for about half an hour.

[13] I disagree with the defendant's contention. I am of the view that the defendant ought to have warned the claimant that she intended to hose down the window. The claimant would have had the opportunity of taking the necessary precaution against the eventuality of water seeping on to the apartment floor, as it in fact did. The defendant said in her witness statement, "I usually inform the tenants at least the night before, whenever I am going to wash the building. I could not inform the claimant as she was seldom ever at home." It would appear that the defendant made no effort to notify the claimant. She did not attempt to telephone the claimant, or leave a note for her at her premises. It is a very poor excuse to say that she did not inform the claimant "as she was seldom ever at home."

[14] It is no answer that the activity woke up the claimant so she would have been aware during the time of the activity. I accept the testimony of the claimant that she was awakened by the sound of the water against the window, she took a few steps in her studio apartment then went back into her bed where she observed by listening. When she observed that the activity had moved from her window, she went to open the window when the incident occurred. In those circumstances, it cannot be said that the claimant was aware of the dangers or had any forewarning. I hold that the defendant was negligent in omitting to notify the claimant of her intention to wash off the dust on the windows with a hose.

[15] I also hold that it was reasonably foreseeable that the water would seep in the bottom and sides of a window if you use a hose to wash it for half an hour. The very act of "pushing down" the windows, as the defendant said she did, attests to the fact that it must have occurred to her that water might end up in the apartment as a result of her hosing. I find that there was a foreseeable substantial risk of injury to claimant.

[16] Counsel for the defendant submitted that the defendant did all she could to eliminate risk to the claimant. The defendant indicated in her witness statement that "on or about the 5th day of March 2011, at about 7 am, I physically checked all of the windows on the ground floor from the outside to make sure they were all closed". In cross examination the defendant said that she "pushed" the windows. I am of the view that merely pushing the window was not sufficient. It seems to me that using a hose on a window for some half an hour (as agreed by both parties) warranted more than

merely pushing the window to ensure that water did not seep in and cause injury to the claimant. It seems to me that the simple precaution of taping the sides and bottom of the windows would have been necessary. Under the circumstances, I find that the defendant was negligent in that in undertaking the cleaning of the windows with a garden hose, she did not take every step which could reasonably have been taken to avoid the substantial risk of injury to the claimant.

[17] But the defendant claims that the claimant was contributorily negligent in that "the said matters were caused wholly or in part by the claimant's negligence in failing to observe or avoid the alleged water on the floor, failing to look where she was walking, or failing to take all or all sufficient steps to prevent herself from falling". The defendant led no evidence to support her allegation that the claimant contributed to her fall and I am not able to deduce such. The circumstances do not support the allegation of contributory negligence. The claimant has said that the tiles were white and one could not see the water on the tiles. I find that the claimant was not negligent and that she did not contribute to the incident.

Conclusion

[18] I conclude that the defendant was negligent and therefore liable. It was foreseeable that using a hose against a window for half an hour to wash it would result in water entering a studio apartment. I find as fact that the water did seep into the claimant's apartment on 5th March 2011 as a result of the defendant's action in hosing a window for a half an hour. This caused the claimant to slip and injure herself. After the fall the claimant looked closely and saw the trail of water freshly coming in to the apartment. The defendant caused the claimant's injuries. The Claimant suffered pain and suffering as a result of the negligence of the defendant.

[19] I conclude that the defendant owed a duty of care to the claimant, that she breached that duty and that the claimant was injured as a consequence of the breach of duty. The defendant did not take all steps that she could reasonably have taken to avoid the substantial risk that she created by the method she chose to wash the windows.

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Order

[20] I find for the claimant and because this simple matter took so long to come to trial (nearly 5 years) and to avoid further delay in this case, I now give directions for the assessment of damages pursuant part 16.4 (2) (c),

- (1) The claimant may file and serve witness statements, submissions and authorities in respect of the assessment of damages on or before April 7th, 2017;
- (2) The defendant may file and serve witness statements, submissions and authorities on or before April 21st, 2017;
- (3) The assessment of damages will be heard on May 31st, 2017.
- (4) Prescribed costs on the amount assessed but capped at \$5,000.00, as agreed by the parties, to be paid by the defendant to the claimant.



Sir Clare K. Roberts, QC

High Court Judge (Ag)