

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

CLAIM NO: ANUCHCV2009/0135

BETWEEN:

MARTIN ROOPNARINE

Claimant

and

ANDREW MICHELIN
trading as Coco's Hotel & Restaurant

Defendant

Appearances:

Mr. Jason Martin for the Claimant
Ms. Andrea Roberts and Ms. Safiya Roberts for the Defendant

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2011: June 14
September 19
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JUDGMENT

[1] **MICHEL, J.:** The Claimant, Martin Roopnarine, is and was at all material times an employee of the Defendant, Andrew Michelin trading as Coco's Hotel &

Restaurant. The Claimant is employed as the maintenance man at the Defendant's hotel and has been so employed since May 2005.

[2] On 26th October 2007, the Claimant sustained personal injuries at the Defendant's hotel in the course of his employment with the Defendant. The injuries were sustained while the Claimant was attempting to install electrical wiring or clip the wiring he had installed along the awning of the roof of the bar of the hotel, having been instructed by the Defendant to install electrical lighting around the roof of the beach bar of the hotel.

[3] The Claimant opted to stand on a wooden chair, which he took from the bar area, in order to obtain the necessary elevation to reach the awning of the roof of the bar so as to install or clip the wiring. In the process of installing the wiring and/or clipping the wiring already installed, the chair on which the Claimant was standing either slipped under him or broke, causing him to fall onto some coastal rock just beyond the bar area.

[4] As a result of falling onto the rocks, the Claimant sustained injuries and was taken to the Holberton Hospital where he was detained for 14 days. According to a medical report from the hospital, the Claimant was found on examination to be conscious, oriented and stable; his left forearm was swollen and deformed in mid forearm; his left knee was swollen from mid thigh to foreleg and was tender with no movement, due to the pain. X-rays of the Claimant's left forearm showed incomplete fracture of the mid shaft of the left ulna and fracture of the left radius

with diastasis of ulna and carpal bones, while x-ray of the left knee and foreleg showed fracture of the left tibial plateau. The Claimant underwent surgeries of his left forearm and of his left knee on 30th October 2007 and a full cast was applied to his left forearm, while a knee brace was applied to his left knee. He remained on sick leave for seven months, after which he returned to his employment with the Defendant. During these seven months the Claimant continued to be paid his salary and received his service charge entitlement as an employee of the Defendant's hotel.

[5] By Claim Form filed on 4th March 2009, the Claimant claimed damages for personal injury caused to him by the negligence of the Defendant. In his Statement of Claim filed on the same date, the Claimant particularized his allegation of negligence against the Defendant, the injuries sustained thereby and the claims arising therefrom, including special damages totaling \$21,449.20, general damages, interest and costs.

[6] By Defence filed on 26th June 2009, the Defendant joined issue with the Claimant, denying his (the Defendant's) ownership of the hotel and the allegation of negligence on his part in causing the injuries to the Claimant and alleging that the Claimant's injuries were caused solely by or was contributed to by the negligence of the Claimant. The Defendant also supplied in his Defence particulars of the Claimant's alleged negligence and put the Claimant to proof of his injuries, loss or damage.

- [7] By Reply filed on 10th October 2009, the Claimant in turn joined issue with the Defendant on his Defence.
- [8] On 2nd February 2010, a mediation referral order was made by the Master, but mediation was not successful and on 16th September 2010 case management directions were given by the Master. Both parties complied with all of the case management directions, although the Defendant filed his Pre-Trial Memorandum and Listing Questionnaire outside of the prescribed time.
- [9] The trial of the matter was originally set for 28th February 2011, but took place on 14th June 2011.
- [10] At the trial, the Claimant gave evidence on his own behalf and called two other witnesses, Debra Harrigan, with whom he had been employed part time prior to his injury, and his wife, Bhagmattie Roopnarine; while the Defendant gave evidence on his own behalf and called one other witness, Tyrone Astaphan, who was at the material time the Acting Manager of the hotel.
- [11] The issues to be determined by the Court arising from the trial are:
1. Did the Claimant's injuries result from the negligence of the Defendant and/or agents or employees of the Defendant or was the Claimant the cause of his own injuries?
 2. If the Claimant was not the cause of his own injuries, did he negligently contribute to his injuries and, if so, to what extent?
 3. What damages, if any, is the Claimant entitled to from the Defendant?

[12] In terms of the first issue to be determined, the evidence of the Claimant is that on 25th October 2007 he was instructed by the Defendant to install lights around the beach bar of the hotel, running the wiring for the lights along the outside of the awning of the beach bar so that the wires would not be visible. He was of the opinion that the Defendant wanted the work done as soon as possible in order that the beach bar could be used at night and so he undertook the work the following morning. The task required the use of a ladder to reach the awning of the roof of the bar. The hotel did have a ladder of the correct size to do the work but it had been damaged about seven months before. The hotel had another ladder but it was too long to do the job. He did not therefore have a ladder to do the work assigned to him by the Defendant. The Claimant's evidence was that, despite this, because he had limited formal education, he was a non national, he had a young family to provide for, and he felt powerless to object, he proceeded to use a chair to gain the height necessary to run the wiring, because nothing else was available or provided by his employer who expected the work to be done nonetheless. As he was almost finished with the wiring, the chair that he was standing on slipped from under him and he fell over the deck of the beach bar and onto the rocks below. As a result, he sustained the injuries and underwent the surgeries as stated in the medical report of the Holberton Hospital, to which he had been taken by the Acting Manager of the hotel.

[13] Commenting on the evidence in the witness statement of the Defendant, the Claimant testified that it is not correct that he had access to tools, materials and

ladders wherever and whenever necessary. He testified that he did not have the equipment, the proper ladder, the materials to build the scaffolding and the assistance to help him. He then testified that he did have nails and hammers, but he did not have materials to build scaffolding. Then he testified that in the course of his employment at the hotel he was never instructed to build scaffolding. Then that it was never part of his job to build scaffolding. Then that he is a joiner and he only builds things like cupboards, stools, furniture and so on but not construction things like scaffolding and so on. Then that he did not have the knowledge to build the scaffolding. He testified that, apart from the chair, there was nothing else he could use to do the job and that at the time of the accident he was the only person in the maintenance department. He testified that in the morning he asked the gardener to assist him and the gardener, whose name he remembers as Godfrey, told him that this is not "their" job.

[14] Under cross examination, the Claimant testified that he is a handyman and a joiner and would build and fix tables, chairs and other furnishings at the hotel. He testified though that he never built a scaffolding to climb on and it would be difficult for him to build one. He testified that he does not know how to build scaffolding and that he has never done that kind of work, even though he had the tools and materials to do so, and that it is different from joinery, although he also testified that a carpenter knows joinery and a joiner knows carpentry.

[15] Under further cross examination, the Claimant testified that if he needed materials he would go to the manager, Tyrone Astaphan, and tell him what he needs and

that Mr. Astaphan would go and buy them. He testified also that he had a good working relationship with the management of the hotel and that if he needed materials he would say so and Mr. Astaphan would get them. He testified that he would not be scared to tell "them" if he needed materials. He also testified that if there were no materials to do one thing he would do other things and that, apart from his regular tasks, he would decide when to do other tasks.

[16] Under still further cross examination, the Claimant testified that the work that he had to do on the beach bar was urgent because the lights were needed to use the beach bar in the night. He testified that the Defendant asked him to do the work on the beach bar the day before his accident and he (the Claimant) said that in the morning, when he finished with the pool, he will work on it. He testified that the Defendant told him that he needed the work done as early as possible because "they" wanted to use the beach bar in the night.

[17] Still under cross examination, the Claimant testified that when the task was assigned to him he did not ask for a ladder. The task required him to use a ladder but he chose to use a chair. The chair was the closest object to him and he used it. The deck was wet and the chair slipped. He testified that, despite knowing that the deck was wet, he still chose to use a chair. His testimony was that "they" needed the work done urgently and he took his own risk to get it done; he did not know that he would fall; but he was afraid that "they" would fire him because "they" always say that if you can't do the work "they" will get somebody else; "they" would get rid of him and he has his family to mind. He testified that he knew that he was

taking a risk and that he did not ask for a ladder. He testified that the danger was not the deck but was because he opted to use a chair to do the work. He testified that he should have known better than to use a chair to do the work but there was nothing else to use. He agrees that how he chose to do the work was up to him.

[18] Under re examination, the Claimant testified that he did not ask for a ladder because he had told Mr. Astaphan months before that the ladder was broken and he could not use it and that he should get a new ladder. He also testified under re examination that when he said under cross examination that he used the chair at his own risk, what he meant was that he took his risk to do it because - and the mysterious "they" is again called into service - "they" say already that if you don't want to do the job "they" will get somebody else to do it. He testified too that he see already that "they" fire people for that and he does not want to be fired because he has a family to mind.

[19] The other two witnesses for the Claimant did not address the issue of liability.

[20] The next witness to address the issue of liability for the Claimant's injuries was the Defendant. He stated that the Claimant has always had discretion as to how he carried out his tasks, using the available tools and materials stored at the hotel. In about September 2007, he instructed the Claimant to install electrical lighting around the bar area of the hotel, which lighting was subsequently installed by the Claimant. At the time that the instruction was given to the Claimant he did not ask for a ladder. On 26th October 2007, the Claimant decided to install clips to tidy the

electrical lighting already hung along the awning of the roof around the bar area. He (the Claimant) opted by his own choice and judgment to complete the task on that day in an unsafe manner by using a wooden chair from the beach bar to carry out the task. By putting too much weight on the chair the Claimant fell through the chair, lost his balance, fell on the rocks below and injured himself. The Claimant also did not take reasonable precautions to ensure that the task was carried out safely by getting assistance from another employee. He usually asked for assistance with tasks, if necessary, and fellow employees were always willing to oblige. If the Claimant felt that there was some reason that he should not carry out a specific task he would not hesitate to inform the manager or the person issuing the instruction the reason why he would not be performing the task. It was therefore the choice of the Claimant to use the chair recklessly to carry out this task.

- [21] The Defendant further stated that the Claimant's injury was not as a result of a directive issued by him and that the instruction had been issued to the Claimant weeks before. The Claimant had the discretion as to when and how he was to carry out the task. In fact, the Claimant usually asked for assistance and would not carry out a task if he felt he could not do it by himself or at all. The Defendant stated too that the Claimant was an experienced employee of the hotel who had access to and use of the tools, ladders and materials to build scaffolding when necessary. The Claimant was not forced therefore to use a chair to perform the task but opted to carry out the task in the manner that he did of his own volition. He said too that the Claimant would also have been aware of the danger of

performing such a task using a chair and of the rocks below. The Defendant asserts that the Claimant's accident was caused not by negligence on his (the Defendant's) part but by the choice of the Claimant in carrying out the task in the manner in which he did. It was the poor judgment of the Claimant in opting to use a chair when other tools and materials to build scaffolding were available to him and other staff available to assist him.

[22] The evidence contained in the witness statement of the Acting Manager of the Defendant's hotel, Mr. Tyrone Astaphan, was materially identical to the evidence contained in the witness statement of the Defendant as to how the Claimant sustained his injuries and the cause of the Claimant's injuries and asserting that the Claimant had ladders available to him and also had tools and materials to build scaffolding if necessary.

[23] In commenting on the evidence of the Claimant, Mr. Astaphan testified that if the Claimant has difficulties in carrying out any task he would call him (Mr. Astaphan) to assist or the Claimant would ask him to send someone to assist. He also denied some of the Claimant's evidence, including the alleged damage to the short ladder, and denied any knowledge of the Claimant almost falling from that ladder while trying to repair a fan in a guest room.

[24] Under cross examination, Mr. Astaphan emphasized that the Claimant would not do the job if it was not safe and that if the Claimant did not have the required ladder he would not be pressed to do the work without the appropriate tools. He

testified that he would have expected the Claimant to use a ladder rather than a chair to do the job and that if an appropriate ladder was not available he would not expect the Claimant to do the job. He testified that if he was told that the ladder was damaged he would have gotten it fixed or gotten another one. He also denied most of the evidence of the Claimant relative to the ladder, the alleged damage to it and the efforts to get it replaced.

[25] At the conclusion of the trial, both parties were directed to file written closing submissions by 3.00 pm on 5th July 2011, with the Defendant filing his within the stipulated time and the Claimant filing his just outside of the stipulated time.

[26] After reviewing the evidence, the Court was left uncertain as to which version of events to accept as to the cause of the Claimant's fall on 26th October 2007 and the resulting injuries to the Claimant, whether that is, to accept the Claimant's version, which version was unsupported by any other witness, or whether to accept the version advanced by the Defendant and his witness.

[27] The Court's sympathies are entirely with the Claimant, whom the Court accepts is a hard working man who was trying his best to do his job as he saw fit and who was very conscious of his vulnerabilities arising from his non national status, his lack of education and training and the need to maintain his job to support his wife and children. But his eagerness to do his job and impress his employer might have caused him to take unwarranted risks and to suffer injury thereby. It is very difficult to believe that the only way that the Claimant could run the wiring along

the awning of the roof of the beach bar or clip the wiring already installed (whichever of these tasks he was carrying out on 26th October 2007) was by taking a chair from the bar area and going all on his own, with no other staff member even present, to carry out the task, and without ever asking the Manager, with whom he had a good working relationship, to cause the ladder to be repaired or replaced (if necessary) before he undertook the task or to assist him or cause another staff member to assist him by holding the chair while he used it to gain elevation. This was what the Claimant chose to do, with his misplaced confidence that he could do so without falling and hurting himself. If, as the Claimant stated, the floor was wet and this caused the chair to slip under him, he knew – according to his own testimony – that the floor was wet and he should also have known that the chair on which he stood could therefore slip under him. The Claimant therefore knowingly took the risk that he might fall and hurt himself, when he had other options available to him in carrying out the task given to him.

- [28] Having regard to the totality of the evidence in this case, including the concession by the Claimant under cross examination that the danger was not the deck on which he was working but the fact that he chose to use a chair to stand on to do the work, and the concession too that he could decide when and how to undertake a task assigned to him, and having regard even to the fact that it was the Claimant who had the responsibility as the hotel's maintenance man to build and repair the wooden furniture, such as the chair from which he fell, and having regard also to the location of the burden of proof of negligence, inasmuch as one might sympathise with the Claimant because of his injuries and the loss and damage

arising therefrom, one cannot but find that he has not proved negligence on the part of the Defendant or his agents or employees in causing him to fall and injure himself on 26th October 2007 and that, in fact, the more probable cause of his fall and the resulting injuries was his own negligence in carrying out the task assigned to him in an unsafe manner.

[29] The answer to the first question posed earlier in this judgment is therefore that the Claimant's injuries did not result from the negligence of the Defendant and/or the agents or employees of the Defendant, but the Claimant was the cause of his own injuries. It is accordingly unnecessary to address the second and third questions posed.

[30] In the circumstances, the case against the Defendant is dismissed.

[31] Whereas costs would normally follow the event, the Court does have the power under Rule 64.6 of the Civil Procedure Rules 2000 to order a successful party to pay all or part of the costs of the unsuccessful party or to make no order as to costs. Taking all of the circumstances into consideration, including the conduct of the parties both before and during the proceedings, the manner in which the Claimant has pursued the case, and the fact that it was reasonable in the circumstances for the Claimant to pursue the claim and allow the Court to determine the issue of liability, the Court declines to order the Claimant to pay the Defendant's costs and instead makes no order as to costs.

[32] In concluding this judgment, I think it is necessary to state, and not just perfunctorily, that I thank both Counsel for the assistance rendered to the Court by the quality of their research and their overall conduct of the case. Without diminishing the excellent work of Ms. Roberts, however, I do want to specially thank and commend Mr. Martin, who so thoroughly researched and presented the case for the Claimant as to make it difficult for the Court to do what in the end it had to by dismissing the Claimant's case.

[33] The following authorities were referred to by Counsel in their written closing submissions and considered by the Court in arriving at its judgment:

By Counsel for the Claimant –

1. **Wilsons & Clyde Co. Ltd. v English;**¹
2. **Smith v Baker;**²
3. **Winter v Cardiff Rural District Council;**³
4. **Naismith v London Film Productions Ltd;**⁴
5. **Speed v Thomas Swift & Co. Ltd;**⁵
6. **James v Wellington City;**⁶
7. **Machray v Stewarts and Lloyds Ltd;**⁷
8. **Charles Milne v British Railways Board;**⁸
9. **General Cleaning Contracts Ltd. v Christmas;**⁹
10. **Grant v Motilal Moonan Ltd;**¹⁰

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¹ [1938] AC 57

² [1891] AC 325

³ [1950] 1 ALL ER 819

⁴ [1939] 1 ALL ER 794

⁵ [1943] KB 557

⁶ (1972) NZLR 978

⁷ [1964] 3 ALL ER 716

⁸ (1994) Outer House Cases 1

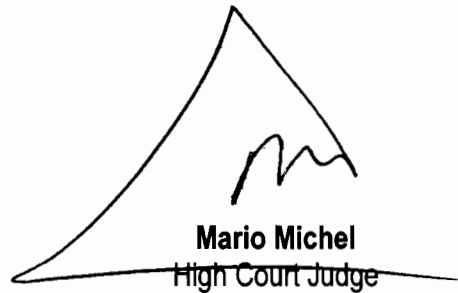
⁹ [1953] AC 180

¹⁰ (1988) 43 WIR 372

11. **Gunness v Lalberharry;**¹¹
12. **Laura Marrocco v The Attorney General of Antigua and Barbuda;**¹²
13. **Kendol Fredericks v Carlton Cunningham;**¹³
14. **Randy James v Leroy Lewis et al;**¹⁴
15. **Sherma Mathurin v Rain Forest Sky Rides Ltd;**¹⁵
16. **Smith v Manchester Corporation;**¹⁶
17. **Alphonso v Deodat Ramnath;**¹⁷
18. **Jefford v Gee.**¹⁸

By Counsel for the Defendant –

1. **Quinn v Burch Bros. (Builders) Ltd;**¹⁹
2. **Chalesworth & Percy on Negligence.**²⁰



Mario Michel
High Court Judge

¹¹ Unreported

¹² ANUHCv 1997/0240

¹³ SVG High Court Claim No. 475 of 2002

¹⁴ ANUHCv 2007/0403

¹⁵ SLUHCv 2008/0551

¹⁶ (1974) 17 KIR 1

¹⁷ (1997) 56 WIR 183

¹⁸ [1970] 2 QB 130

¹⁹ [1966] 2 QB 370

²⁰ Volume Number 6 of The Common Law Library