THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2009 – 01023

BETWEEN

JANE CRAIG **CLAIMANT**

AND

LJ WILLIAMS LIMITED **DEFENDANT**

BEFORE THE HONOURABLE MR JUSTICE R. BOODOOSINGH

APPEARANCES:

MRS D. MOORE-MIGGINS FOR THE CLAIMANT

MS D. PALLACKDHARRYSINGH FOR THE DEFENDANT

DATED: 30 July 2012

REASONS

1. This claim was filed on 20 March 2009 for an injury sustained by the claimant on 21 March 2005. The claimant says she visited the defendant's place of business at Shaw

Park when an object fell on her head and caused her injury. She had set out in her statement of case it was a steel iron frame. In her evidence she could not say exactly what the object was. She said it could have been an iron chair or table. She glanced at it. It was made of iron.

2. The claimant says she had gone to the defendant's place to buy items for a small grocery business she had. She said she regularly went there to make purchases.

3. What is clear, and I accept her evidence on this, is that some metal object fell on her head. She was taken to the hospital for treatment and she was discharged. She says she has continued to have headaches and dizziness over time as a result of this injury. She had gone for treatment on several occasions after this to a private institution.

4. That the defendant owes a duty of care to persons in the premises is not in doubt. What the defendant contends is that the claimant went to an area which is restricted and where there were signs marked 'Employees Only'. There was also a sign painted on the ground saying "STOP". The area where the claimant went, according to the defendant, was a restricted area. By going into that area, she became a trespasser, and the defendant owed a duty of "common humanity" only in those circumstances: British Railways Board v Herrington [1972] 1 All ER 749. In this case it was held that, whereas an occupier does

not owe a duty of care to trespassers, he does owe a duty of "common humanity" or a duty to act "in accordance with common standards of civilised behaviour".

5. The claimant hotly disputed that there were signs prohibiting entry to the area. She said after she purchased her goods, she went to an area where she had gone to on several occasions in the past to stand and wait for the delivery of her goods.

6. The defendant did not produce an eye witness to the incident. Anthony Carter, Sales Manager, was their sole witness. He was not the warehouse manager on that day or the supervisor. He could give no evidence, first hand, of the circumstances in which the claimant's injury was sustained.

7. He did give evidence about signs he said were placed in the area where the claimant was. He also produced photographs of the area where he said the incident occurred. It was clear from his evidence, however, that he did not know much about where the incident occurred. He also did not take the photographs. There was also no indication about when they were taken. The defendant had also sent a letter in September 2005 in response to the claimant's attorney's letter sent the day after the incident happened. In that letter, the only reference was to an "employees only" sign.

8. Given the evidence presented by both sides, I accepted the claimant's evidence on a balance of probabilities on the location of the incident and how it occurred. I did not find any reason to disbelieve her based on the cross-examination.

9. What is also clear is that notwithstanding the denials by the defendant, the claimant was able to gain very easy access to the area. If there was a barrier, it was meant for vehicles. Also, any 'STOP' sign on the ground could only be for vehicles. The defendant ought to have had someone stationed there to restrict access or have a gate or some other protective barrier to prevent access in those circumstances.

10. I accepted the claimant's evidence that after making her purchases, she customarily would go to the area she went to on 21 March 2005 to await the delivery of her goods. Given this evidence, it is expected that more would have been done by the defendant to keep persons out of an area like this to which the claimant frequently had access without apparent hindrance.

11. Also, the object fell from above. The claimant denied she had leaned on any objects such as wooden pallets to cause something to fall. The defendant produced no evidence on this. I accepted the claimant's evidence that an iron object fell from above and she had not leaned to cause this to happen. This suggests that it was not properly secured. This would be an unusual danger such as would ordinarily make an owner liable. In those

circumstances, I find there was a breach of the duty of care owed by the defendant to the claimant. I also do not find any contribution attributable to the claimant in circumstances where she was merely waiting her turn to get her goods and an object fell striking her on the head.

12. On the issue of damages, the claimant was attended to and discharged the same day. No doubt she would have felt some significant pain with a blow such as this. I accepted her evidence of continuing headaches over a period of time. I do not, however, accept, without further explanation or medical evidence, that this would have resulted in an ongoing disability. An assessment of 10 % was given, but no basis was established for this except to say there may be drowsiness from taking medication which could limit activity. There was no evidence of the continuing frequency of headaches. I also do not find that the claimant's pecuniary prospects were affected.

13. Several of the cases cited by both sides were old cases. Limited assistance could be derived from them. In the case of **Guyana & Trinidad Mutual Fire Insurance Company Limited v Sookraj Boodoosingh and Another, unreported, HCA 560 of 1984**, delivered in 2000, an award of $ 6,500.00 was given where a female had a laceration to her head requiring 4 stitches, and serious pains in her head for some time which had ceased some years after. In this present case, the pains have continued, the claimant had to continue to seek medical attention from time to time, and it appears she gets some discomfort up to now.

14. In these circumstances given the pain and suffering, loss of amenities over a period of time, and the nature of the injury itself, I think an award of $ 25,000.00 for general damages is appropriate.

15. In respect of the special damages claim, I accept that the claimant may not have been able to operate her small business for a few days while she recuperated. She gave no evidence of her likely daily sales loss, but I think her estimate of losing about $200.00 per day is not unreasonable for a business of that nature. It would also be unreasonable to expect her to have detailed records for a small business operation like hers, commonly called a parlour. I will allow this for 5 days. I also allow the sum of $915.00 for medical expenses which I find proved.

16. Interest is to run on general damages at 6 percent per annum from 20 March 2009 to present and interest on special damages on the sum of $1,915.00 at 3% per annum from 21 March 2005 to present. Prescribed costs are awarded in the sum of $8,070. Stay of execution: 28 days.

Ronnie Boodoosingh

Judge