

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2016-00612

Between

RHONDA DE LEON

Claimant

And

THE PORT AUTHORITY OF TRINIDAD AND TOBAGO

1<sup>st</sup> Defendant

And

PORT OF SPAIN INFRASTRUCTURE COMPANY LIMITED

2<sup>nd</sup> Defendant

**Before Her Honour Madam Justice Eleanor J Donaldson-Honeywell**

**Appearances:**

Mr. Ronald Daniels, Attorney at Law for the Claimant

Ms. Tara Thompson and Mr. Joel Roper, Attorneys at Law for the Defendants

**Delivered on 1<sup>st</sup> March 2018**

**Judgment**

**A. Introduction**

1. The present case concerns an allegation of an accident and resulting personal injury that took place at the Port Authority building in Port-of-Spain. The Claimant was visiting the

Port Authority building where she intended to transact business when she claims that she fell down its internal staircase and fractured her wrist.

2. The First Defendant is a body corporate established under the Port Authority Act, Chap. 51:01 for the provision of a system of co-ordinated and integrated harbour facilities and port services and other matters relating thereto and connected therewith.
3. The Second Defendant is a company incorporated under the laws of Trinidad and Tobago. It is a private entity which assumes responsibility for port operations and in whose name the Port Authority building is vested pursuant to Legal Notice No. 68 of 2006.
4. On or about 9 March, 2015 the Claimant entered the Defendants' building to conduct business at Naipaul's Travel Agency which is located therein as a tenant of the Defendants. While climbing the internal staircase of the ground floor, she claims to have slipped and fallen on the fifth stair of that staircase due to her shoe getting stuck on the adhesive strips recently installed on the staircase.
5. The Claimant contends that the Defendants failed to discharge their duty of care owed to her in their:
  - a. Failure to exercise reasonable care to safeguard the Claimant from damage occasioned by any unusual danger which was known or ought properly to have been known by the Defendants;
  - b. Installation of protective strips which were adhesive on the internal staircase shortly prior to the Claimant's slip and fall;
  - c. Failure to warn the Claimant either through their agents and or their servants by oral communication or to display any or any adequate warning of the installation of the protective strips and of their adhesive character.
6. The Claimant's particulars of injury are outlined as follows:
  - a. Right Scaphoid Fracture;
  - b. Excruciating pain in right wrist and complete inability to use right hand for at least three (3) months;

c. Intermittent pain in wrist to date.

7. The Claimant also claims special damages for the following losses:

- |                                     |                     |
|-------------------------------------|---------------------|
| a. Medication for three (3) months- | TT\$ 310.50         |
| b. Maintenance of yard-             | TT\$ 450.00         |
| c. Cooking and cleaning services-   | <u>TT\$2,750.00</u> |
|                                     | <u>TT\$3,510.50</u> |

8. In support of her claim of injury, pain and disability for three months, the Claimant attaches a copy of her medication list and a medical report of Dr Alisha Glasgow from the Eric Williams Medical Sciences Complex Orthopaedic Out-patient Clinic along with a Hearsay Notice. No reason was stated in the Hearsay Notice for not calling the Doctor as a witness. Instead, the Hearsay Notice merely cited CPR 30.3(4) and CPR 30.6 as the authority for the Claimant not intending to call Dr Glasgow as a witness.

9. There are six possible reasons as provided for at CPR 30.6 that could have been stated as the reason for not calling Dr Glasgow as a witness and instead seeking to have her Report entered into evidence. In closing submissions Counsel for the Claimant belatedly cited one of the six reasons by explaining that the Doctor was overseas and unavailable. Contrary to what is said in closing submissions for the Claimant, neither that reason nor any of the other five reasons set out at CPR 30.6 was specified in the Hearsay Notice.

10. A Counter Notice was filed by the Defendants pointing out that the Hearsay Notice was filed out of time without permission being sought in keeping with CPR 30.2(2). It was filed on September 7<sup>th</sup> a day after the extended period within which the Claimant had been allowed by the Court to file witness statements and hearsay notices. At the Pre Trial Review, when evidential objections to the witness statements filed were considered, the medical report was struck out of the Claimant's witness statement.

11. The Claimant also attaches to her Claim a letter from the Customer Services Manager at Eric Williams Medical Sciences Complex addressed to her employer stating that she was a patient at the Complex and was discharged from the clinic on 25 May, 2015. This letter,

however, does not state the date of admission to and discharge from the hospital when she first went in to be examined.

12. The Claimant avers that during the three months after sustaining injury, she could not discharge her domestic duties and was forced to hire the services of her son and daughter-in-law in the maintenance of her household. This is supported by the witness statements of Seandell Neptune, son and Lyndell Perkins, daughter-in-law.
13. Further, she claims that she was unable to hold her new-born granddaughter for this period and was unable to attend to her common-law husband in the manner she is accustomed to. She also claims that she was unable to attend a planned birthday vacation in Tobago as well as two Courses as part of her job development. This, she claims, would have an adverse effect on her promotion prospects. She has not, however, provided any evidence of these scheduled courses nor of the adverse effect on her employment. Her common-law husband was not called as a witness.
14. The Claimant, in her witness statement, states that on the day of the incident, she told two persons in the building that she had fallen. Those persons were one Ms. Karen Fraser, an employee of the Defendants and one Ms. Michelle Sylvester-Mack, an employee of Naipaul's Tours and Travel Service 2011 Limited. However, neither of these persons was called as witnesses to support the Claimant's case.
15. It is not in dispute that the Claimant on the day following her fall, made a report to Mr Neil Bridgelall, Head of the Safety Department of the Port Authority. She did so on 10 March, 2015 and the report was recorded by Mr Jabari Edwards. She also says she met with one Mr Glen Henry, Head of Claims of the Port Authority about two weeks after the incident and was told that her report was forwarded to Mr Selwyn Wong of the Legal Department of the Port Authority. Thereafter, she visited Mr Wong's office and was informed by his secretary that the Legal Department was not in possession of the said report.

16. The Claimant brought Dr Rosalie Lystra Holder, Senior Inspector at the Occupational Safety and Health Agency as a witness in the matter. Dr Holder annexed to her Witness Statement a report done by her after the conduct of an investigation into the incident. This report contained statements from interviews conducted with several persons concerning the matter, including the two persons the Claimant claimed to have spoken to in the building on the day of the incident. However, much of Dr Holder's witness statement, including the parts of the report summarising her interviews, has been struck out as hearsay.
17. What remained of the Report was the findings of Dr Holder as to measurements of the staircase structure and whether same met certain Asti Standards which Dr Holder said are used in the United States of America to assess accessible and usable buildings and facilities. Dr Holder found at pages 17 and 18 of her report that having a handrail on one side only of the staircase was in breach of Asti Standard (2009). In addition she found that there was a lack of the required Asti Standard uniformity in riser heights and treader depths on the stairs.
18. There was neither evidence of the applicability of the Asti Standard in Trinidad and Tobago nor evidence that not meeting same could cause persons to fall on the stairs. However, at page 18 of her Report she refers to failures to meet Asti Standards as breaches of the OSH Act. No evidence to the contrary was presented by the Defendants.
19. No finding was reported on by Dr Holder regarding whether the slip resistant tape on the stairs could have caused the alleged fall. Instead the report recorded that the First Defendant had not submitted to Dr Holder the safety data sheets from the manufacturers of the tape, despite her requests. Notably she disclosed that her requests were not ignored by the Defendants. She attached to her Report the response from the First Defendant that they had written to the contractor who had installed the tape strips on the stairs requesting the manufacturer's safety data sheets but same had not yet been obtained.
20. The First Defendant's Defence to the Claim is that it is not a proper party to the action due to the transfer of the Port Authority Building to the Second Defendant. The Second

Defendant's main defence is that it was not in any way responsible for the Claimant's purported fall and/or any circumstance which may have occasioned the said fall.

21. The Second Defendant avers that the Claimant did not report the incident to anyone on the day of the accident and alleges that its employees who were posted in close proximity to the staircase did not see the Claimant's fall. The witness statements of Yashpal Lakhansingh, Estate Constable and Pearl Valdez-Narcis, Junior Clerical Officer support this contention. The Second Defendant also claims that hundreds of persons traversed the same staircase on that day and no issue was made of the safety of the staircase.
22. Further, the Second Defendant avers that the staircase was well equipped for safety, being well-lit, outfitted with fluorescent slip resistant tape, sturdy handrails and highly visible cautionary signage. A photo of said signage is attached to the defence. The Second Defendant also contends that the Claimant failed to exercise appropriate caution when using the staircase and, inter alia, failed to use the handrails.
23. The Claimant in her reply claims that only one of the signs attached to the Defendant's defence was there at the time of the incident. She also avers that there is only one handrail to the left of the staircase and while ascending she was using the handrail but was forced to continue on the side without a handrail as two other persons were descending at the same time.

**B. Issues**

24. The issues that have been identified in the present case and outlined succinctly by the Defendants in submissions are as follows:
  - a. Whether the First Defendant is a proper party before the court;
  - b. Whether the Claimant has proven its claim on the Law of Occupier's Liability and/or negligence; and
  - c. Whether the Claimant is entitled to the reliefs sought in her Re-amended Claim Form and Statement of Case.

### **C. Law and Analysis**

#### *Whether The First Defendant is a proper party to these proceedings*

25. The Defendants cite the Vesting Order No. 68 of 2006 as the Order which transferred the building at which the accident occurred to the Second Defendant. They submit that, as a result of this Order, the Second Defendant is the only party capable of being sued for occupier's liability as it is the owner and occupier of the said building.

26. The Defendants further cite the decision of Boodoosingh J. in **Mervyn Seurattan v Port Authority of Trinidad and Tobago CV2008-01680** where he said:

*“By the 2006 Vesting Order, the Authority then vested the ownership of all its assets, both real and personal, and its rights and obligations to POSINCO, another private entity established to assume responsibility for all port operations. This transfer of port operations and the vesting of all assets in POSINCO was approved by the Government and was done pursuant to section 10 (1) of the Act.*

*This is significant. The nature and effect of the Vesting Order effectively transferred legal ownership of all the Authority's assets and the business of all port operations to POSINCO. In my view, this is different from a mere delegation of powers or functions.”*

27. The Claimant's counter-argument is essentially that the First Defendant still owes some duty of care as occupier of the building and that it is not precluded from suit by the vesting of the building in the Second Defendant. The Claimant cites **ORCA Transport Limited and Samson Elliot v Port Authority of Trinidad and Tobago CV2013-01523** as a case in which the Port Authority was sued for occupier's liability after the said vesting of the building in the Second Defendant without any challenge being raised regarding whether it was a proper party.

28. The fact that the issue was not raised in that case, however, does not legitimise the First Defendant's inclusion in the present proceedings. Failure of counsel for the First Defendant

in that case to put it in issue cannot preclude the First Defendant from doing so in the instant case on a legitimate basis.

29. On a plain reading of the Vesting Order it is clear that the First Defendant has divested ownership and control of the building in question to the Second Defendant. It has not been established therefore, that the First Defendant has a sufficient degree of physical control over the building where the Claimant says she fell in order to be regarded as an occupier of it for purposes of being held liable in negligence.

*Whether the Claimant has proven its claim in Occupier's Liability and/or negligence*

30. The Claimant has established in her unrefuted evidence that she was an invitee of Naipaul's Tours and Travel Service 2011 Limited, a tenant in the building of the First and/or Second Defendant. Any documentary evidence to contradict such tenancy would have been in the possession/remit of the Defendants and has not been produced in the present case. The Second Defendant accepts that it owes a duty of care to the Claimant as invitee to the Administration Building.
31. However, the Claimant's case does not put forward evidence other than her own testimony regarding her fall and resulting injury. There is no evidence before this Court either from witnesses to the fall or from persons she reported her injury to on the day of the fall.
32. The Claimant's explanation for the failure to call the persons to whom she reported the fall on the day of the incident is that one was an employee of the Defendant and the other worked with the Defendant's tenant and they were therefore afraid of victimisation from their employers if they were to testify. This, however, is an unsupported allegation and is further discredited by the fact that one of the persons to whom Claimant says she reported the fall was an employee of Naipaul's Travel Tours, which is not a party to these proceedings. There is no evidence as to why a third party would victimise a witness as to the Defendants' safety shortcomings.



33. It is accepted, as submitted by Counsel for the Claimant, that the Claimant had made an official report of the fall to the Defendant's safety personnel and told them that she informed their employee Karen Fraser just after it happened. They too failed to call her as a witness. I therefore draw no adverse inferences against either side for failing to call Ms. Fraser. However, the Court has not benefitted from her potential testimony and as such the fact that the Claimant may have reported the matter to her is not taken into account in my findings regarding proof of liability on a balance of probabilities.
34. The Claimant's highly qualified supporting witness, Dr Holder was convincing in the thoroughness of her findings regarding inherent dangers in the structure of the staircase. She withstood robust cross-examination challenging her independence. Though some aspects of her report regarding interviews she conducted were not admitted into evidence, her scientific findings remained un-contradicted. Those findings did not of themselves provide either the evidential link to confirm that the Claimant fell that day or if so the causative link as to whether she fell due to the sticky adhesive as specifically pleaded or some other cause such as failing to hold the handrail. However there was also evidence from the Claimant's testimony.
35. The Claimant presented as a truthful witness in so far as it was believable that she may have stumbled on the stairs that day. She however gave no evidence that could convince me that she fully was conscious of the reason for her stumble, save that one side of her shoe stuck to the adhesive safety strip on the stairs. I was left with the clear impression that it could have been due to her not holding the available hand rail or waiting for the persons descending to pass before proceeding up the stairs. As a non-medical person she was unconvincing as to how serious the stumble was since she testified to continuing with her business at Naipaul's afterwards.
36. The Defendants' witnesses, although they impressed me as truthful, did not on a balance of probabilities establish that the Claimant did not fall. Essentially, their evidence was that they did not see or hear the fall although they were near the stairs and the Claimant did not tell them about it. It is possible however, that the receptionist and the guard who were the

Defendants' witnesses could have missed the brief incident at the time when the Claimant stumbled.

37. However, the fact that the Claimant did not make any reports to persons stationed nearby and/or failed to call witnesses to whom she reported without a reasonable explanation does discredit the Claimant's account. Furthermore, if there had indeed been a fall and subsequent injury, the pain the Claimant experienced does not appear to have been significant due to the fact that she proceeded to carry out her business at Naipaul's Travel Agency on that day directly after the fall.

38. A further inconsistency appears in the Claimant's cross-examination where she indicated that she reported to the receptionist that the stairs needed fixing and used obscene language. This was not included anywhere in the pleadings or in her witness statement and the evidence of the receptionist is that she recalls no such incident. It also appears that this interaction, if it occurred, was not disclosed to the Expert Witness as there was no interview of the receptionist in her report.

39. Regarding the evidence of the Expert Witness, much of her report was struck out as hearsay due to the fact that the persons purportedly interviewed in the investigation were not called as witnesses in this matter. The failure of the Claimant to call these witnesses to support her case diminishes the reliability of interviews with them in the Expert Witness's account.

40. There is also a lack of medical evidence of the Claimant's injury as the Claimant failed to have a Doctor testify on her behalf. The medical report attached to the Claimant's witness statement was struck out after the Defendants opposed the Claimant's Hearsay Notice. Accordingly, there is no medical report properly before the court. The Claimant's testimony as to her injury and medical treatment therefore is the only evidence of an actual injury.

41. The lack of evidence is similar to the circumstances cited by the Defendants, in the case of **Cynthia Ramsaran v Homes Restaurant Limited W/C 158 of 2011**, as follows:

*“There was no medical evidence before me to support the applicant’s injury claim since she failed to call Dr Kumar to give viva voce evidence on his examination and findings referred to in his report of February 8, 2011 and there was no hearsay notice to have the said report admitted into evidence. I have attached little weight to the applicant’s evidence on her permanent partial disability assessment of 30% since it was not within her expertise or knowledge.”*

42. In the present case, the Claimant’s failure to provide medical evidence of her injury limits the extent to which she can prove her claim. The Claimant’s attempted distinction that a Hearsay Notice was in fact filed in this case is irrelevant in light of the Counter Notice filed and subsequent striking out of the report. It is not disputed that the Claimant failed to seek medical attention until the day after her injury.
43. There is merit however, to the Claimant’s submission that the instant matter is distinguishable from the **Cynthia Ramsaran** case. This is so in that although the medical report of Dr Glasgow does not properly form part of the evidence in these proceedings, the nature and extent of the Claimant’s injury could still be determined from her own evidence and that of her witnesses in relation to factors other than the specific medical diagnosis.
44. Firstly, the Claimant deposed that she visited the Eric Williams Medical Sciences Complex (EWMSC) where she underwent a radiological examination. Her right hand was fitted with a soft plaster of paris cast by Dr Glasgow on March 10, 2015. The Claimant was a patient of the Orthopaedic Out-patient Clinic. The cast was removed from the Claimant’s hand in the latter half of May, 2015.
45. Secondly, the Claimant’s son and daughter in law who were her witnesses deposed to having seen her hand fitted with a cast. The Defendants did not challenge any of this evidence in their cross examination of the Claimant or her witnesses. Even without evidence confirming the fracture, the fact of having been fitted with a cast and the Claimant’s evidence as to her discomfort makes it more probable than not that the injury caused her to be severely incapacitated for a period of three months, requiring assistance.

46. The Claimant's son and daughter in law appeared to be truthful witnesses in their claims that they assisted her with household chores. The evidence presented under cross-examination was of a casual arrangement between a mother and her adult children which was in existence prior to the incident. Particularly, her son's evidence that other sons regularly assisted with yard maintenance was an indication of this. However, the quantum of \$3,200 claimed for the three months of extra assistance required when their mother's wrist was in a cast is not excessive. Likewise the claim for \$310 in medication will be allowed based on the Claimant's own evidence.

47. The Claimant cites several items under the head of loss of amenities which are unsupported by evidence other than the Claimant's word, including a cancelled birthday trip to Tobago, inability to attend two Firefighter courses and resulting diminishing of prospects for promotion. It is clear that the Claimant has failed to sufficiently prove these losses, by documentary or other proof, as required – **Bonham Carter v Hyde Park Hotel [1948] 64 TLR 178.**

48. I find in favour of the Defendants that the Claimant's pleaded case that they failed to safeguard her from unusual danger and in particular the newly installed adhesive strips has not been proven as establishing liability solely on their part. Though the Claimant may have tumbled, her own account as to the cause, seriousness and resulting injury was somewhat uncertain and unsupported by medical evidence.

49. In my findings I do not however, overlook the compelling expert evidence of Dr Holder as to factors in the staircase structure that amounted to OSH Act breaches. Such factors would come within the pleaded context of unusual dangers from which the 2<sup>nd</sup> Defendant had a duty to take reasonable care to safeguard the Claimant. Accordingly, the 2<sup>nd</sup> Defendant has not succeeded in proving that it did not partly cause the Claimant's fall.

*Whether the Claimant is entitled to the reliefs sought*

50. Overall my finding is that the Claimant contributed to the fall by not holding the existing railing and has failed to prove that she sustained anything more than a minor injury in

relation to which there is no medical evidence. She has however proven by her own testimony and that of her relatives that she was incapacitated by injury in so far as she had to wear a cast placed on her wrist at the hospital for three months. General damages will be awarded at the lower end of the precedents cited. In my view an award of \$50,000 is appropriate. The Special damages claimed will also be awarded.

51. However, only 50% of general and special damages is to be paid to the Claimant as it is my finding that on a balance of probabilities she contributed equally to the cause of the fall.

**D. Decision**

52. The Claimant has succeeded in proving that the 2<sup>nd</sup> Defendant is partly liable in negligence, resulting in her fall and minor injury. The Claimant's contributory negligence to the extent of 50% also caused her to stumble. The Claimant is awarded \$25,000 being 50% of \$50,000.00 in general damages and \$1,755.00 being 50% of special damages plus interest on both amounts at 3% from the date of filing of her Claim to the date of Judgment.

53. The 2<sup>nd</sup> Defendant is directed to pay the Claimant her costs of the Claim at the prescribed rate.

54. The Claimant is to pay the costs of the 1<sup>st</sup> Defendant in the amount of \$14,000.00.

55. Stay of execution for 28 days.

**Delivered on 1<sup>st</sup> March 2018**

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**Eleanor Joye Donaldson- Honeywell  
Judge.**

**Assisted by: Christie Borely, JRC 1**