THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-02182

BETWEEN

NARDIA NARINESINGH

Claimant

AND

PARTY PRO LIMITED

Defendant

Before The Honourable Mr. Justice Frank Seepersad

Appearances:

1. Mr. Sieunarine for the Claimant.
2. Ms. Caesar instructed by Ms. Ramsingh for the Defendant.

Date of the delivery: 5th July, 2018

ORAL DECISION REDUCED INTO WRITING

1. Before the Court for its determination is the issue as to whether or not the Defendant is liable for the injury which the Claimant sustained on or about 14th June, 2013. In so doing the court has to consider the following:
    a. Whether the Defendant owed the Claimant a duty of care; and
    b. If such a duty of care existed at the material time, does the evidence suggest in accordance with the pleaded case of the Claimant that the Defendant is in breach of that duty of care and if so, did the breach result in injury to the Claimant?

2. The first issue as to whether or not a duty of care exists is a simple one to resolve. This was a commercial premises where a store was being operated and the Claimant was a potential customer of the establishment. On the facts therefore it seems to be very clear in the Court's mind that there was a general duty of care that would have existed as the owners of the Defendant company and the company itself offered goods for purchase to members of the public. Consequently they had a duty to ensure that all of the persons who entered the establishment did so in surroundings which were safe.

3. The Court then had to consider the Claimant's pleaded case as it relates to the breach of that duty and determine whether the Defendant was in breach of a duty of care and the Court was constrained to do so, based on the particulars of negligence, as articulated by the Claimant in the statement of case.

4. The Claimant's case was not premised on a breach of any statutory duty nor was the Claimant's case premised on the fact that there was unsuitable carpeting installed at the premises. The crux of the Claimant's case revolved around her pleaded assertion that the carpeting was uneven, loose or worn and that circumstance led to her heel becoming caught in the worn or torn portion of the carpeting, which in turn caused her to fall.

Therefore, the Court disregarded to the evidence as it related to the absence of Town and Country Planning approval or Fire approval.

5. The Court also found that the issue as to whether or not a sign was present and whether it was posted at the time, was not relevant.

6. The entry way to the main floor of the building had to be accessed by a stairway and the Claimant in her witness statement made very clear statements as to her assessment of the nature of the step before she commenced traversing upon same. In particular at paragraph 7 of her witness statement, she said that she made certain observations about the steps namely that they were wooden, very steep and covered with worn and loose carpet which was not fastened. She then exercised caution by holding on to the hand railing as she proceeded to move down.

7. The steps are the main thorough way to get to the lower portion of the premises and the Claimant said unequivocally in her witness statement that she used the necessary care and caution which was required, having regard to the antecedent circumstances as she proceeded down the steps.

8. A live issue which arose concerned the state of the Claimant's footwear, whether or not it was fastened at the time and whether this contributed to the accident.

9. The Court found that the Claimant's daughter Dr. Narinesingh, in giving her evidence, was very frank and forthright and she instilled in the Court a general feeling that she was a witness of truth. The Court also found her to be very helpful. The same assessment applied in relation to the Claimant. Contrary to the submissions of the Defendant, the Court did not find that there were material contradictions in their evidence either in terms of what they said in their initial witness statements and in their responses in cross examination. The fact that the Claimant did not say that she wore glasses or had an

eyesight problem in her witness statement did not in the Court's view amount to any breach or failure by her to properly address the particulars of negligence or contributory negligence as outlined in the Defence. Her responses were very forthright and she said that she didn't wear glasses at the material time because she wore contact lenses. In any event, the Court did not find that her response on this issue was significant nor did it impact on the Court's assessment as to the veracity of her evidence.

10. In relation to the shoe, both the Claimant and her daughter both gave evidence that her shoe was properly affixed to her foot before the incident occurred and remained so affixed after the incident occurred. The Court did not find that the Claimant's evidence that the shoe was twisted and sustained some damage to be inconsistent with the aforesaid position. The Claimant in her reply also categorically denied that her shoe was a shoe which consisted of either one or two buckles and in the Reply she specifically pleaded that there were no buckles to her shoe. In the cross examination it came out that the shoe had an elastic band that formed or comprised part of the strap. On the other hand, the only evidence of there being a buckle on the shoe came from the Defendant's witness Mrs. Boodram. Her evidence was that there was a very short conversation between herself and the Claimant after having heard the thud to the top portion of the steps and she said that she then saw the Claimant sitting. She stated that she asked her a question about the shoe and the buckle but there was really no conversation as between herself and the Claimant.

11. In response and answer to the Court she said that these assessments or observations in relation to the shoe were never reduced into writing. The Court felt this evidence to be improbable as the Director would usually want to record such an event. The witness never reviewed the footage that would have been available so as to form any opinion to the nature of the incident which occurred. Consequently the Court found that it was highly unlikely, that years after the event and when served with the pre-action protocol letter that her assessment and/or recollection as to the nature of the Claimant's shoe was accurate. The Court preferred the evidence of the Claimant and her witness and found as

a fact that on the day this incident occurred, the Claimant was wearing a shoe which had no buckles and the top of same had an elastic portion which would have to be pulled to remove the shoe. The court also found as a fact that before the incident occurred, the shoe was properly affixed to the Claimant's foot and same remained affixed to the Claimant's foot after the fall. Consequently, the shoe and/or the straps to the shoe in no way contributed to the Claimant's fall.

12. The Court next addressed its mind to the issue as to whether or not there was some degree of haste that could be apportioned to the Claimant in the circumstances. The incident occurred the day before her daughter's bridal shower. The daughter entered the establishment first and left the Claimant behind. Both the Claimant and her daughter appeared to be very clear in their recall of the events. The Court accepted their evidence that all of the plans for the bridal shower had already been made. This was a Friday afternoon, several hours before the event which was carded for the Saturday and they lived in a fairly close proximity to the establishment. The daughter's explanation that given the particular nature of the vehicle, the passenger side had to be locked with the key and that she gave her mother the key and went off to the store and her mother proceeded thereafter, was one which the Court found to be probable and plausible. In fact, in the Court's mind, if this was a rushed trip to the establishment to pick up last minute things for the bridal shower, then it would more likely than not that she would have gone in and leave her mother behind so as to get in and out quickly. Therefore, the Court rejected the defence's assertion as it relates to the Claimant acting with undue haste at the material time.

13. The Court accepted the evidence that they had previously acquired what they needed and that this trip was just a mother and daughter outing. In the excitement of the event, they were browsing to see if there was anything that may have met their fancy. There was nothing on the facts to suggest that the Claimant acted with haste or that she was rushing and so contributed to her fall.

14. The Court considered the decision in **Witherspoon v. The Airports Authority of Trinidad and Tobago HC2533/1995** and noted the assessment both of evidence and the law that Jamadar J (as he then was), undertook. It is a matter of fact that falls can happen at any time and they can occur in circumstances, where no rational explanation, for the event can be advanced.

15. If liability is to be attributed to the Defendant in this case, the Court must make three assessments. The Court must find as a fact that it was the worn, loose carpet that caused the Claimant to fall was outlined in the pleaded case. The Court would also have to find that the carpet constituted an unusual danger and thirdly, that the Defendant knew or ought to have known that it was dangerous.

16. The evidence as to the nature of the carpet came both from the Claimant and from her daughter. The Court, found both witnesses to be impressive witnesses whose evidence was characterised by a quality of candour and noted that both witnesses said that these steps were made of wood but when they were asked as to how this assessment was made, their evidence was that those assessments were made by the feeling of the step, the Defendant stated that the step was not wooden. The undisputed evidence in this case is that these steps were covered with carpeting and the pleaded assertion was that the carpet was loose at some points. Therefore, in the mind of the Court, on a balance of probabilities if one placed one's foot on loose carpeting that may give the sensation of the wooden step that there may be some play or movement and this may have led both the Claimant and her daughter to opine that the step was made of wood.

17. Based on the Court's assessment of the witnesses' credibility and the inherent plausibility and probability of their rival assertions, the Court found as a fact that the carpeting on the steps on the day of the incident was such that the carpet was in fact uneven, loose and/or worn. The Court is emboldened, as regards to its finding of fact in that regard, since it was a business and there was significant foot traffic and especially since the step was the entry way to the main floor of the business. The evidence before the Court is that this

store was opened in 2009, some four years prior to the incident. The Defendant's evidence was that the carpet was never changed. It is highly probable and plausible, that given the volume of customers traversing this pathway to access the main floor over a period of four years prior to the incident, that the carpet may have have been loose and/or torn and/or uneven. In arriving at this conclusion the Court was mindful of the fact that there was no evidence that was put forth by the Defendant so as to suggest that the specific nature or special quality and/or nature of this carpet and/or its installation technique was such that there was some guarantee that it would stay in a good condition, for a period in excess of four years.

18. The Court saw two sets of photographs: one adduced by the Claimant and one adduced by the Defendant. The Court paid very little regard to the photographs and found that they provided no valuable assistance. Photographs can and are often very misleading because the image captured may be dependent on the angle that the photograph was taken and on the quality of the camera. Photographs can also be enhanced if they are digitally taken. These photographs were not taken by a professional photographer nor was there any evidence as to the angle, camera lens or positioning. The photographs were also taken several years after the incident occurred and therefore provided no assistance in the resolution of the issue, as to whether or not, on the material day, the carpet was either worn, uneven or loose. In accordance with the pleaded case and the evidence as contained in paragraphs 7 and 8 of the Claimant's witness statement as well as the supporting evidence of her witness, the Court found that it was highly probable and plausible that the carpet was worn, uneven or loose especially given the nature of the Defendant's business operation and the length of time as between the store opening and the incident.

19. In **Witherspoon (supra)** The Court found that the nature of the bump which was slightly 1 inch raised on the concrete floor in the duty free area of the airport could, not in the usual course of things, cause someone to slip or stumble and on an objective application of the test, the Court felt that the bump did not constitute an unusual danger.

20. On the evidence adduced, the court found as a fact that the carpet was worn or torn, loose and uneven and the Claimant fell suddenly and abruptly. The Court noted the Claimant's evidence as contained at paragraph 9 of her witness statement and considered the issue as to whether or not carpeting of that nature being worn, uneven and/or loose would have constituted an unusual danger. The determination as to what constitutes an unusual danger has to be assessed objectively. It is a danger which is not usually found in the given circumstances. Subjectively, one must also consider whether the danger could not be expected by the particular invitee.

21. The step was the only means of ingress and egress to the main shopping floor of the premises. A sign is now placed on the wall and so at some point, the Directors of this company found it necessary to so alert customers to be careful when they are going down these steps.

22. The step is long and there are some 10 to 15 treads and handrails are affixed on either side. It was important to ensure the safety of customers and there was a responsibility to ensure that the steps were covered so as to mitigate against persons slipping or against their shoes or heels from being caught up in the surface. In this regard, the failure to properly maintain the carpeting and to allow it to become worn, uneven and loose was unacceptable and presented an unusual danger. It was the Defendant's obligation to ensure that the carpet was in good condition and a reasonable person, objectively looking at such a circumstance, would have determined that carpet posed a risk to the users of the steps. The likelihood of someone slipping or tripping or a shoe being caught in carpeting of that nature was foreseeable and presented an unusual danger. In addition the Defendant must have been aware of this fact.

23. The fact that no one else fell on the day in question is of no moment. The Claimant fell and she did not contribute to her own fall nor did it just "happen". Her shoe got caught in the carpet and she fell.

24. After the Claimant fell she was in pain and it was entirely reasonable for her focus to be on her condition and to get treatment as soon as was practicable as opposed to lodging a complaint that the condition of the step caused her to fall. Her daughter had medical training and she too would have been focused on assisting her mom. Neither witness struck the court as being persons who were argumentative or confrontational, they appeared to be very quiet and composed individuals and no adverse inference was drawn from the fact that they did not immediately raise a concern about the step.

25. The Court also raised no negative inference from the fact that no steps were taken prior to the issue of the pre-action protocol letter. The Court accepted the Claimant's explanation that her medical status after the incident occurred, was her primary focus.

26. In the circumstances the Court formed the view, having found as a fact, that the carpet was uneven, loose and worn, that the condition of the carpet caused the Claimant to fall on the day in question. The Court objectively found that the nature of the carpet on the day in question did constitute an unusual danger and that the Defendant knew or ought to have known that it was dangerous. Accordingly, for the reasons outlined, the Court is of the view that the Defendant is liable for the injury which the Claimant sustained on the 14th June, 2013 and there shall be judgement in favour of the Claimant. This matter is referred to a Masters in Chambers for the assessment of the appropriate quantum of damages and the calculation of costs.

_____

FRANK SEEPERSAD

JUDGE