THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
SUB REGISTRY TOBAGO

CLAIM NO: CV2022-02412

BETWEEN

UNA ANTOINE **CLAIMANT**

AND

KENNY ALFRED **1ST DEFENDANT**
TOBAGO FOOTBALL ASSOCIATION **2ND DEFENDANT**
TOBAGO HOUSE OF ASSEMBLY **3RD DEFENDANT**

Before: The Hon. Mr. Justice Westmin R.A. James
Dated: 18th March 2024
Appearances: Ms Jocelyn Lynch-Benjamin and Ms Chaka McDowall, Attorneys at Law for the Claimant
Ms Carol Ann Bernard and Mr. Darrell Bartholomew, Attorneys at Law for the 1st and 2nd Defendants
Ms Tecla Duncan-Caines, Attorney-at-Law for the 3rd Defendant

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JUDGMENT

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1. This is a case of whether the Defendants are liable for injuries sustained by the Claimant.

Background

2. The pleaded case is that on 7th October 2018 the Claimant entered Mt. Pleasant Recreational Grounds and headed to the ticket booth to purchase a ticket. As the Claimant moved forward to the booth, her feet got stuck in the mud at the front of the booth. While trying to free herself from the mud she slipped and fell. As a result, the Claimant sustained injuries.

3. The 1st Defendant is the current President of the 2nd Defendant having been appointed in June 2022, some four years after the incident.

4. The 2nd Defendant is a body corporate established under section 141A of the Constitution of Trinidad and Tobago and has the responsibility of controlling and maintaining the Mt. Pleasant Recreational Grounds.

5. The 3rd Defendant granted the 2nd Defendant permission to use the recreational grounds to host the Tobago Football Association football games.

6. By Claim Form and Statement of Case filed on 4th July 2022 the Claimant sought

    a. Damages for personal injuries and consequential loss and expenses suffered by the Claimant caused on the 7th October 2018 at the compound of Mt. Pleasant Recreational Grounds by the ticket booth, due to the negligence of the Defendants and/or agents of the Defendants.
    b. Interest at the statutory rate under section 25 of the Supreme Court of Judicature (Amended) Act 2000
    c. Interest at the statutory rate under section 25 of the Supreme Court of Judicature (Amended) Act 2000 and at a rate of 2.5% per annum on General Damages from the date of the First Named, and Second Named Defendant entering their respective appearances until the date of judgment and at the rate of 1.25% per annum on Special Damages from the 7th October 2018 until the date of judgment and thereafter, the statutory rate of 5% per annum from the date of judgment until payment.
    d. Costs
    e. Such further and/or other relief as the Court may deem just.

7. The 1st and 2nd Defendants filed their Defence on the 15th November 2022 and the 3rd Defendant filed its Defence on the 3rd October 2022; all denied the claim.

8. The Court ordered the parties to file Arguments on Quantum which was done.

Is the 1st Defendant a proper party to the proceedings

9. The 1st Defendant who was inaccurately named in the pleadings and sued in his personal capacity was not the President of the 2nd Defendant or affiliated with the 2nd Defendant at the time of the incident. There was no reason for the 1st Defendant to be sued in his personal capacity. The Claimant's Counsel conceded in oral submissions to the Court that the 1st Defendant was not a proper party to this action and this was the right concession.

10. The case against the 1st Defendant therefore has to be dismissed. The Claimant's Attorney requested no orders as to costs and I unable to accede to that request. The

Claimant never sent a pre-action protocol letter to the 1st Defendant. The Claimant was alerted to the fact that the 1st Defendant was wrongly sued at the time of the Defence filed on 15th November 2022 and did nothing about it. The Claimant carried on with the case against the 1st Defendant and did not even file a Reply to counter this pleading. In those circumstances, the 1st Defendant is entitled to his costs.

Whether the 2nd and/or 3rd Defendants are liable for the injuries of the Claimant

11. The 2nd Defendant and 3rd Defendant as occupier of the Mt Plesant Recreational grounds owed a duty of care to the Claimant who, it is not disputed, would be treated in law as an invitee. The duty of care owed by an occupier to an invitee is governed by the common law and is described in ***Indermaur v Dames*** [1861–73] All ER Rep 15 as follows:

> "[The invitee] using reasonable care on his part for his own safety, is entitled to expect that the occupier shall on his part use reasonable earn to prevent damage from unusual danger which he knows or ought to know…"

12. While recreational facility owners and operators, as occupiers, must be proactive in their approach to safety of the premises, the occupier is not automatically liable by virtue of the fact that someone was on its premises and sustained injuries.

13. Also as stated in ***Chandelle Pierre v Hyatt Regency Trinidad*** *CV 2016–00085*, by Boodoosingh J (as he then was) at para 47:

> *"*The cases have noted that slipping is a common incident of life. For an employer or owner or occupier of premises to be liable the claimant must show the substance on the floor caused her to slip; the substance constituted an unusual danger; and the defendant knew this to be dangerous: See for example ***Witherspoon v The Airports Authority of Trinidad and Tobago, HCA 2533 of 1995*** *per Jamadar J and* ***Kirpalani v Hoyte, Civ Appeal No. 77 of 1971*** *per Hyatali CJ."*

14. In order for the Claimant to succeed in this matter, the Claimant on a balance of probabilities must establish (i) that the cause of the fall was the mud (ii) the presence of the mud was an unusual danger which the Defendants knew or ought to have known; and (iii) the Defendants did not take reasonable care to prevent harm to the Claimant from the unusual danger.

15. It is not disputed that the Claimant fell at the grounds and sustained injury, what is in dispute is the circumstances of the fall as alleged by the Claimant.

16. There were differences between the pleaded case, the witness statement and the oral evidence of the Claimant. There was therefore difficulty in ascertaining exactly how the Claimant fell.

17. The pleaded case is that on 7th October 2018 the Claimant entered Mt. Pleasant Recreational Grounds and headed to the ticket booth to purchase a ticket. As the Claimant moved forward to the booth, her feet got stuck in the mud at the front of the booth. While trying to free herself from the mud she slipped and fell. As a result, the Claimant sustained injuries.

18. The particulars of negligence pleaded by the Claimant were:

    a. Failing to ensure that the grounds was dry and free from any substances likely to cause persons including the Claimant to get stuck, slip and fall.
    b. Failing to ensure proper signage were placed along the areas of the building; and/or
    c. Failing to warn the Claimant of the emergency thereby created; and/or
    d. Failing to take any or any adequate precautions for the safety of the Claimant while she was a visitor; and/or
    e. Exposing the Claimant to risk of damage or injury of which the Defendants knew or which they ought to have known; and/or
    f. Failing to provide a safe recreational environment for the Claimant in the circumstances.

19. The Claimant stated in her witness statement filed 17th November 2023, "...I was carefully picking my way towards the ticket booth window. The area in front of the said booth appeared to be normal upon first observance so I moved forward, slowly picking my way to prevent me from slipping in the mud, only to find that as I placed my feet in an area just before the window, that both of my feet became stuck in the water-soaked mud. While trying to free myself from the quicksand type of mud I slipped and fell and heard a cracking sound and I felt instant pain in my right foot."

20. In cross examintion when asked what she meant when she stated that the area in front of the booth appeared to be normal upon first observance, the Claimant said that the sentence in the witness statement was not true. Further, in cross examination by the 3rd Defendant, the Claimant said when she said feet in the witness statement that was not true but it was only one foot that got stuck in the mud and the other foot was outside the mud. There were also no details how the claimant "slipped" if at least one foot was stuck in the mud.

21. Leaving aside the possible inadequate particulars of negligence, the Court cannot fathom how any of the Defendants could ensure that open recreational grounds could remain dry. The evidence of the Claimant was that she knew the area was muddy but still proceeded through the mud. There are also issues surrounding

whether the mud was the cause of the fall or whether it was the Claimant's actions in pulling her foot out that caused the fall and therefore the injury.

22. The Claimant's pleadings and evidence to say the least were lacking and the Court holds that the Claimant has not shown on a balance of probabilities that the presence of the mud is what caused the Claimant to "slip" and "fall" causing her injury.

23. Even if I am wrong on this point, the Claimant has an even greater task in showing that the presence of the mud can be regarded as an unusual danger.

24. Mendonca JA in The Court of Appeal case of ***Anthony Abed v Courtyard Marriott Port of Spain a firm*** TT 2023 CA 2 set out the law on unusual danger. He stated:

> "62 The second consideration is whether the bathroom floor that is slippery when wet can be regarded as an unusual danger. This begs the question what is an unusual danger? This was discussed in *London Graving Dock Co.* Ld. v Horton [1951] AC 737. In that case, Lord Porter stated (at 745):
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> > "I think "unusual" is used in an objective sense and means such danger as is not usually found in carrying out the task or fulfilling the function which the invitee has in hand, though what is unusual will, of course, vary with the reasons for which the invitee enters the premises…A tall chimney is not an unusual difficulty for a steeplejack though it would be for a motor mechanic…
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> Lord Macdermott added (at 762):
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> > "…Now, there can, I think, be little doubt that that expression was intended to exclude the common, recognizable dangers of every day experience inherent in premises of an ordinary type, such as the danger of working on a factory chimney or at the edge of a reasonably lit wharf…"
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> 63 In Kodilinye, **Commonwealth Caribbean Tort Law**, 5 th edition, the author, citing Fleming, **The Law of Torts**, 6 th edition, states that whether a danger is unusual or not depends not only on the character of the danger itself, but also on "the nature of the premises on which it is found and the range of experience with which the invitee may fairly be credited." This is similar to a statement appearing at paragraph 25 in the report of the Law Reform Committee (Third Report: Occupiers' Liability to Invitees, Licensees and Trespassers) Cmd.9305 (1954)) on, inter alia, whether any improvement to the law of England relating to the liability of occupiers of property was needed. At paragraph 25 of that report it is stated:

> "...The term ["unusual danger"] defies comprehensive definition, because the quality of unusualness with respect to a given danger depends not only on the character of the danger itself, but on the character of the premises in which it is found, and also on the subjective consideration of the danger in question from the point of view of the particular invitee, having regard to any relevant skill, knowledge or experience he may possess and the nature of any task he came on the premises to perform."
>
> 64 This is consistent with the statements of Lord Porter and Lord Macdermott in the *Horton* case referred to above. I accept that whether the bathroom that was slippery when wet constituted an unusual danger should be considered in the light of the above statements. It is, however, fair to say that whether an unusual danger exists is dependent on the facts of each case. A danger may be unusual in some types of premises but usual in others and usual to some invitees but unusual to others."

25. A playing field or recreational ground which is open air being wet after rainfall is natural. That would not be unusual. It was also common for the dirt in a recreational field which is wet in parts would turn into mud. That would also therefore not be considered unusual. None of this came as a surprise or appeared unusual to the Claimant herself who was familiar with the premises having sold items there before. The Claimant herself indicated to the Court that she knew that when the rain fell the premises would have mud. In fact, because of the rainfall that day, the Claimant said she wore sneakers to the grounds. This to the Court's mind goes to the fact that it was not unusual to have mud after rainfall at the premises having regard to the nature of the premises. There was no evidence that the mud was more than usual.

26. The accumulation of mud after rainfall in a recreational field is obvious and a condition which would occur naturally and not pose an unreasonable risk of harm to individuals using reasonable care on his part for his own safety. In light of the above and having regard to the nature of the premises and the facts of the case, I hold that the presence of mud after rainfall on these premises was not an unusual danger.

27. The Claimant's case must therefore be dismissed.

Costs

28. I do not find that there is any reason for the usual order for costs not be imposed. The Claimant never served a pre-action protocol on the 3rd Defendant. The Claimant pursued the claim against the 1st Defendant which should not have been brought in the first place. The Claim against the 2nd and 3rd Defendants was tenuous.

29. Having regard to the above

[1] the Claimant's claim is dismissed.

[2] the Claimant to pay prescribed. costs assessed in the sum of $14,000.00 to each Defendant.

/s/ Westmin James
Westmin R.A. James
Judge