THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-00885

BETWEEN

MARGARET ASSON-SEALEY

Claimant

And

INDUSTRIAL PLANT SERVICES LIMITED

First Defendant

MEGA BRITE SERVICES LIMITED

Second Defendant

Before the Honourable Mr Justice Robin N Mohammed

Date of Delivery: Friday 5th January 2024

Appearances:

Mr Justin Junkere instructed by Ms Tsian Rodulfo for the Claimant

Mr Roger-Mark Kawalsingh instructed by Ashely Roopchansingh for the First Defendant

Mr Bryan McCutcheon for the Second Defendant

JUDGMENT

I. INTRODUCTION & PROCEDURAL HISTORY

[1] This case involves a 'slip-and-fall' injury suffered by the Claimant in the workplace of the First Defendant after the floor was mopped by an employee of the Second Defendant. The Second Defendant was employed by the First Defendant as cleaning contractors to conduct janitorial services of its premises.

[2] On 13th March 2017, the Claimant by Claim Form and Statement of Case commenced these proceedings against her employer, the First Defendant. The First Defendant filed a Defence on 21st June 2017. Having considered the Particulars of the First Defendant's Defence, the Claimant filed an Amended Claim and Statement of Case on 2nd October 2017 to include a claim against the Second Defendant. The Second Defendant filed a Defence on 8th February 2018. In response thereto, the Claimant filed a Reply to the Second Defendant's Defence on 10th April 2018. Thereafter, the First Defendant filed an Amended Defence on 11th April 2018.

[3] On account of the Covid-19 Pandemic, the trial was conducted virtually on 22nd March 2021 via Microsoft Teams virtual platform. The Claimant was the sole witness in support of her case while the First Defendant called its Engineering and Maintenance Manager, Mr Barry Nancoo and Human Resources Officer, Ms. Stesi Cox. The Second Defendant called two witnesses in support of its Defence, namely Ms. Gail Jones and Ms. Elizabeth Alexander, both of whom were the janitors responsible for mopping the floor at the time of the Claimant's fall.

[4] Following the trial, the parties were invited to file written closing submissions. The Claimant and the First Defendant filed their submissions on 17th May 2021 and the Second Defendant filed on 20th May 2021. The parties filed their respective submissions in reply on 1st June 2021.

II. BACKGROUND

The Claimant's Case

[5] The Claimant claims against the Defendants, the following relief:

a. General Damages;

b. Special Damages;

c. Interest;

d. Costs; and

e. Any further and other relief that this Honourable Court deems fit.

[6] It is the Claimant's claim that on 1st April 2014, at approximately 2:50pm, whilst exiting her colleague's office and walking along a tiled corridor which was recently mopped, she slipped and fell face forward on the floor.

[7] She alleged that this incident was caused or contributed to by the negligence of the First and/or Second Defendant, their servants or agents.

[8] The Claimant asserted that the First Defendant owed her a duty of care to take reasonable care to ensure that she was reasonably safe whilst traversing her place of employment. The Claimant also asserted that the Second Defendant owed her a duty of care to ensure that she suffered no injury, harm or loss as a result of any acts or omissions of its duly authorised representatives in the course of their duties.

[9] The Claimant contended that the Defendants breached their duties of care towards her. The particulars of negligence are itemised as follows:

a. Failing to caution the Claimant that the floor in that area of the corridor was wet;
b. Failing adequately or at all to thoroughly clean or clear the floor of moisture;
c. Failing to adequately or at all to cover the wet floors or otherwise make it safe to walk in the vicinity thereof;
d. Failing to devise, institute or operate an adequate system for identifying wet floors and cleaning;
e. Causing or permitting the floors to remain wet;
f. Failing by means of barriers or otherwise to prevent the Claimant from walking in the vicinity of the wet floors;
g. Permitting the Claimant to walk in the vicinity of the wet floor when it was unsafe to do so;
h. Exposing the Claimant to danger or trap or a slipping hazard and a foreseeable risk of injury.

[10] As a result of the Defendants negligence the Claimant alleged that she suffered extensive personal injuries, which caused her severe pain and suffering. The nature and extent of her resulting injuries included:

(a) Limited mobility of her left arm due to the excruciating pain.

(b) She underwent surgery on 27th May 2014 and attended physiotherapy treatment sessions.

(c) She was later diagnosed with a post-traumatic adhesive capsulitis and advised for Arthroscopic capsular release.

(d) It was determined that she has a permanent partial disability award of twenty-five per cent (25%) consequent on her right shoulder rotator cuff injury.

(e) As at the date of trial, and continuing, the Claimant experiences pain, stiffness and discomfort in her shoulder and still has difficulty in performing household activities and dressing since she has not regained mobility in her right arm.

[11] The Claimant averred that her past and future expenses and losses sustained as a result of the incident are as follows:

i. Transportation- $2,300.00

ii. Medical Services- $300.00

iii. Physiotherapy- $10,900.00

iv. Future Medical Expenses- $30,000.00

TOTAL- $43,500.00

[12] The Claimant asserted that by letter dated 13th January 2016, she was informed by the First Defendant that they would *"no longer sponsor medical assistance in respect of the specific injury with effect from 2016 January 18 inclusive of payment for physiotherapy sessions"* by reason of the Workmen's Compensation on 5 January 2016.

The First Defendant's Case

[13] The First Defendant denied any negligence on their part and asserted that, by employing the Second Defendant, a reputable and skilled independent contractor to carry out janitorial services, which included mopping the floor of the building, they discharged their duty for the safety of the Claimant.

[14] It was further contended by the First Defendant that they are not responsible for the negligence of the Second Defendant who allegedly breached terms of a contract entered between them by the Second Defendant mopping the floor of the building at a time when it was not permitted to do so. The Second Defendant also failed to place any warning signs to indicate that the floor was wet. The First Defendant pleaded that their contract with the Second Defendant expressly provided that the mopping of the floor at the building had to be completed between the hours of 6:00am - 7:30am and 4:00pm - 6:00pm and when mopped, adequate signs had to be appropriately placed warning that the floor was wet.

[15] In the circumstances, the First Defendant claimed that the Second Defendant was solely liable for the Claimant's injuries and pleaded the following particulars of negligence against them:

a. Proceeding to mop the corridor of the First Defendant's building without having any or any proper regard for the safety of the First Defendant's employees;
b. Proceeding to mop the said building at a time that it was unsafe and dangerous so to do;
c. Mopping the said corridor at approximately 2:30pm when it was unsafe and/or dangerous so to do and outside of the designated period to do so;
d. Failing to place any or any adequate and/or any signage to indicate that the corridor was wet and/or to warn the First Defendant's employees that the corridor was wet and that it posed a risk to them;
e. Failing to properly and or effectively dry the said floor so that it was safe for the Claimant and or any of the First Defendant's servants and/or agents to walk upon; and
f. Exposing the Claimant to a risk of danger.

[16] With respect to the particulars of damages claimed, the First Defendant averred that in the event that they were liable, the claim for transportation and medical services were admitted but they made no admission to the claims for physiotherapy and future medical care.

[17] Nevertheless, the First Defendant sought to rely on the past payment of Workmen's Compensation and financial assistance to the Claimant in the sum of $254,157.98 which they contend should be deducted from any sum that the Claimant may be awarded.

The Second Defendant's Case

[18] The Second Defendant claimed that their trained staff regularly mopped the floor between 2:30pm and 3:00pm and they took adequate precautions in mopping the floors by placing 'wet floor' signs around the mopped area. They also used a yellow bucket in a similar style to the wet floor signs.

[19] The Second Defendant further claimed that the Claimant was negligent in that she speedily rushed out of an office in the corridor while wearing high-heeled shoes and rushed past the Second Defendant's servants and agents past a yellow wet floor sign. When the Claimant reached a door of an office she pulled the door instead of pushing it, which all resulted in her falling.

[20] The Second Defendant claimed that the First Defendant was also negligent in that they did not implement or enforce a suitable dress code, and failed to advise the Claimant to heed the 'wet floor' signs.

[21] The Second Defendant alleged that the incident was caused or contributed to by the negligence of the Claimant and/or the First Defendant and particularised their negligence as follows:

a. The Claimant was moving at a speed on a wet floor.
b. The Claimant failed to observe and take heed of the two (2) yellow wet floor signs.
c. The Claimant failed to observe and take heed of the two (2) servants and/or agents of the Second Defendant.
d. The Claimant was wearing inappropriate footwear for a titled floor.
e. The First Defendant failed to implement and/or enforce a suitable dress code.
f. The First Defendant failed to advise and/or train the Claimant and its staff to observe and take heed of the two (2) yellow wet floor signs.

g. The First Defendant failed to advise and/or train the Claimant and its staff to observe and take heed of the yellow bucket.

h. The First Defendant failed to advise and/or train the Claimant and its staff to observe and take heed of the 2 servants and/or agents of the Second Defendant.

i. The First Defendant failed to advise and/or train the Claimant and its staff to not move at speed on a wet floor.

j. In all the circumstances the Claimant was reckless and/or negligent in her actions.

III. ISSUES

[22] It is apparent from the facts that the parties have accused each other of being responsible for the Claimant's injuries. Therefore, the Court must determine whether the First and/or Second Defendants failed in their duties of care towards the Claimant, resulting in her injuries. Additionally, I must assess whether the Claimant's actions were responsible for and/or contributed to her injuries and the amount of damages, if any, that she is entitled to receive.

[23] However, in making my determination on liability, I must resolve the following evidential issues:

1) **Did the Second Defendant provide adequate signage and sufficient warning to the Claimant to indicate that the floor of the corridor was wet and that it posed a risk to traverse thereon?**
2) **Did the Second Defendant breach its contract with the First Defendant by mopping the corridor outside the contractually stipulated time periods?**
3) **Did the Claimant speedily rush out of an office whilst wearing stiletto high-heeled shoes and did she fail to take heed of the alleged wet floor signs and yellow mop bucket?**

IV. LAW & ANALYSIS

[24] The law of negligence is well-established. To prove negligence, the Claimant must satisfy the Court on a balance of probabilities that (i) the Defendants owed a duty of care to her;

(ii) the Defendants have breached that duty of care; and (iii) the Defendants breach of their duty of care caused or resulted in damage or loss to the Claimant[1].

[25] In this case, it is without doubt that both the First and Second Defendants owed a duty of care to the Claimant.

[26] It is well-established that an employer owes each of his employees a duty to take reasonable care for their safety. As explained in **Daron Andrew Williams v. R.B.P Lifts Limited and Anor** at para. 73:

> *At common law an employer owes to each of his employees a duty to take reasonable care for his safety in all the circumstances of the case. The duty is often expressed as a duty to provide safe plant and premises, a safe system of work, safe and suitable equipment, and safe fellow employees; but the duty is nonetheless one overall duty. The duty is a personal duty and is non-delegable. All the circumstances relevant to the particular employee must be taken into consideration, including any particular susceptibilities he may have. Subject to the requirement of reasonableness, the duty extends to employees working away from the employer's premises, which may include employees working abroad: Halsbury's Laws of England, Volume 52 (2014), paragraph 376.*

[27] The First Defendant acknowledged that it owed a duty of care to the Claimant, their employee, to take reasonable care not to expose her to unnecessary risks and to provide reasonably safe plant and equipment, premises/place of work and systems of working with effective supervision. While the First Defendant accepted that this duty was personal and non-delegable, they maintained that this duty of care is not an absolute one but one that is fulfilled by the exercise of due care and skill.

[1] Charlesworth & Percy on Negligence 13th Ed. at para. 6–01

[28] The Second Defendant also conceded that they owed a duty of care to the Claimant in the exercise of conducting the janitorial services to take reasonable care to avoid causing injury to her which was reasonably foreseeable.

[29] While both parties owe a duty of care to the Claimant this does not necessarily mean that a breach by the Second Defendant, will result in liability to the First Defendant. The authorities are instructive that an employer will not be generally found to be vicariously liable for the negligent acts of an independent contractor.

[30] **Halsbury's Laws of England** Vol 97 (2015) states:

> **"430. Independent Contractors**
> **If the person employed to do a particular work is not an employee but is an independent contractor, the employer is not as a rule liable for any tort committed by him in the course of his employment, and any person injured thereby must look to the independent contractor for compensation."**

[31] Further, in **Granger v Neptune Inspection and Diving Services Ltd et Al** H.C.A. No. 3229 of 1999 Ventour J also gave recognition to this principle. He stated:

> *It is a well established principle in law that generally an employer is not vicariously liable for the negligence of an independent contractor or his servants in the execution of his contract. "Unquestionably", says Williams, J. in the case of Pickard v. Smith (1861) 10 C.B. 470, "no one can be made liable for an act or breach of duty unless it be traceable to himself or his servants in the course of his or their employment. Consequently, if an independent contractor is employed to do a lawful act, and in the course of the work he or his servants commit some casual act of wrong or negligence, the employer is not answerable."*
>
> *There are instances, however, where the employer would not be able to shelter behind an independent contractor whom he has employed and who has been*

negligent in the performance of his contract. One such instance is when the employer employs a contractor to do work which by its very nature through the eyes of the law involves a special danger to another. See paragraph 123 of the Sixth Edn. of Charlesworth on Negligence.

[32] The absence of a special danger may not altogether absolve an employer from being liable for a negligent act of the contractor if the employer retains in his own hands the control over or interferes with the performance of the contract. If such a course of action is adopted, the employer will also be responsible as a joint tortfeasor: **Mohammed v Ghany and Geo. F. Huggins Ltd** H.C.A. No. 172 of 1978.

[33] On the facts of this case, I do not find the contracted janitorial work carried any special degree of danger. As such, a claim of vicarious liability will only be established against the Claimant's employer if the Second Defendant is found liable in negligence and the First Defendant retained control over and interfered with the performance of the contract by the Second Defendant.

[34] Apart from the allegations of negligence against the Defendants, I must also examine whether the Claimant, by her own actions, can be found to be contributorily negligent for her injuries, as alleged by the Second Defendant.

[35] In **Jones v Livox Quarries Ltd** [1952] 2 QB 6 Lord Denning articulated the principle of contributory negligence as follows:

A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being careless.

[36] The burden of proof rests on the Second Defendant to establish that the Claimant did not, in her own interest, take reasonable care of herself and contributed by this want of care to her own injury[2].

[37] Having considered the law relative to the preceding claims of negligence, I now turn to consider the evidential issues to determine the respective liabilities of the parties. The determination of liability will hinge on the Court's finding of the version of the events, from the evidence of the witnesses, it considers to be more likely. The Court is mindful of the guidance of the Privy Council in the assessment of evidence in **Reid v Charles** PCA No. 36 of 1987 and followed in our courts by Madam Justice Rajnauth-Lee (as she then was) in **McClaren v Dickey** CV2006-01661, that is, the Court must check its impression of the evidence of the witnesses against: (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions.

[38] In doing so, I may also draw relevant inferences from the existence or absence of relevant evidence, more specifically important witnesses. In **Wisniewski v Central Manchester Health Authority** [1998] Lloyd's Rep. Med. 223, Brooke LJ set out the guiding principles under which an adverse inference can be drawn. He stated:

> *(a) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.*
>
> *(b) If a court is willing to draw such inferences they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.*
>
> *(c) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the*

[2] See paragraphs 76 to 80 of **Halsbury's Laws of England [Volume 78 (2)]**

desired inference: in other words, there must be a case to answer on that issue.

(d) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.

Evidential Issues

Issue 1: Did the Second Defendant provide adequate signage and sufficient warning to the Claimant to indicate that the floor of the corridor was wet and that it posed a risk to traverse thereon?

[39] The Claimant gave evidence that on the 1st April, 2014 at approximately 2:50 p.m., she was leaving one of her colleague's offices on the upper floor of the building through a slightly open door. When she stepped into the corridor outside her colleague's office, she slipped and fell forward unto the tiled floor. The Claimant explained that when she fell, she realised that the tiled floor of the corridor was wet and appeared to be recently mopped but she did not notice any warning wet floor signs or indications that the floor was wet in the area where she slipped.

[40] Under cross-examination, the Claimant maintained that she did not see any signs warning that the floor was wet where she fell. However, she admitted that when she was taken out on a stretcher after her fall, she saw a wet floor sign near the entrance of the department at the top of the steps which could be seen if someone was coming up the staircase.

[41] Notably, the Claimant relied on the Incident Report Form prepared by her supervisor which was dated the same day of the fall. This report confirmed that the Claimant fell on exiting Mrs Sargeant's office but it referred to the existence of another caution sign. It stated that, the Claimant was "*exiting Mrs Sargeant's office when she fell face forward onto the tiles.*

The Corridor was just mopped and was still wet. The caution sign was placed to the west of Mrs Sargeant's office but there was none in the vicinity of the fall".

[42] When the Claimant was questioned about the existence of this caution sign, she indicated that she did not look down when she exited the office. She maintained that the only sign she saw was the one close to the door of the department.

[43] The witnesses for the Second Defendant, however, gave a different account of the accident. Ms. Jones' testimony closely resembled that of Ms. Alexander, with the exception that she did not see the Claimant fall. They stated that at the material time of the accident they were responsible for cleaning the second floor of the First Defendant's building.

[44] Ms Alexander recollected that they placed a large yellow bucket and two knee-high 'Caution wet floor' signs in the corridor. As they came out of the door, Ms. Alexander placed one of the two yellow wet floor signs inside the hallway before the door. She recalled that Ms. Jones then began to mop the floor in the hallway coming down the corridor and she observed Ms. Jones placing the mop into the large yellow bucket, wringing the mop dry of the excess water and then mopping the floor. As Ms. Jones was coming down the hall mopping, Ms Alexander placed the second yellow wet floor sign on the floor. As the floor dried she moved the sign further down the hall. Ms Jones essentially gave an identical account of the events up to this point.

[45] Ms Alexander stated that while standing on the opposite side of the hallway, she noticed Ms. Jones was inside one of the offices and had left the large yellow bucket outside of the office in the hallway. She also heard a telephone ringing from an office she knew to be the office of the Claimant. Then she saw the Claimant moving fast wearing high-heeled stiletto shoes rushing out of another person's office, into the hallway and rushed past Ms Alexander who was standing on the other side of the hallway beside the large yellow bucket. One of the yellow wet floor signs was in the middle of the hallway between the Claimant's office and the office out of which she had come.

[46] According to Ms Alexander's evidence-in-chief, the Claimant rushed past the yellow wet floor sign and approached the door of her office. The office door was a "push" door, so it

had to be pushed to enter. However, she saw the Claimant pulled the door and at this point she fell to the floor. Ms. Alexander heard a loud crash and the Claimant groaning and thereafter co-workers of the Claimant came out and attended to her. The workers did not want Ms. Alexander's or Ms. Jones' help.

[47] It is important to note that Ms. Jones did not witness the Claimant's fall. She was mopping inside of an office and only heard a crash and a woman calling out in pain. Therefore, I found her testimony to be useful only in terms of her evidence related to the placement of the caution signs and mop bucket.

[48] It was Ms. Jones' evidence under cross-examination that the large yellow bucket was left outside the office whilst she mopped but this was contradicted by Ms Alexander, who accepted under cross-examination that Ms Jones took the bucket, the mop and the liquid into the office she was mopping.

[49] Ms Jones and Ms Alexander noted that within a day or so after the incident, they attended a meeting with some persons from the First Defendant and explained the work they carried out on the second floor. Ms Jones asserted that apart from this meeting, she was never asked by First Defendant to provide a report or a statement of the incident and did not hear about this incident until 2018 in connection with this Claim.

[50] In examining the differing accounts of the Claimant's fall, the Court was mindful of the following limitations in the evidence:

i. There is only direct evidence from the Claimant and Ms Alexander on circumstances under which the Claimant fell.

ii. While the Incident Report Form was prepared contemporaneous to the incident, Mrs Sargeant is listed as the only eyewitness to the fall and despite the relevance of her testimony, she was not called as a witness.

iii. Although, Ms Alexander and Ms Jones were interviewed by the First Defendant's representatives, there is no evidence of their account of the accident in the Incident Report Form or any other investigative report placed before the Court notwithstanding their undisputed presence at the time of the accident. This omission therefore casts

doubt on the partiality of the First Defendant's investigative process and reporting on the incident.

iv. Though Ms Jones testified that she recalled seeing caution signs in the hallway she did not state where exactly the second caution sign was located.

v. No mention was made of the location of the mop bucket in the Incident Report Form.

[51] Taking these limitations and the testimonies into account, I found that the Claimant to be more consistent in her evidence and as such I preferred her account over that of the Second Defendant's witnesses. I therefore accept her evidence that she fell shortly after exiting Mrs Sargeant's office. Though I am not convinced that the mop bucket was in the hallway at the material time of the fall, I deduced from the Incident Report Form, Ms Alexander and Ms Jones' evidence and the Claimant's own testimony that there was in fact two yellow caution signs in the corridor. One was near the door and the other was located in the corridor in the vicinity which was mopped. However, I find that it is highly likely that the Claimant did not have the opportunity to notice the warning signs in the corridor cautioning pedestrians to be careful while walking, given that she fell moments after leaving Mrs. Sargeant's office.

[52] Based on the above findings, I cannot conclude that the Second Defendant failed to provide adequate warning signs to alert the Claimant of the potential danger in walking along the corridor. Therefore, I cannot attribute the main cause of the Claimant's fall and subsequent injuries to this alleged failure.

<u>Issue 2</u>: Did the Second Defendant breach its contract with the First Defendant by mopping the corridor outside the contractually stipulated time periods?

[53] The Claimant testified also that she did not expect the corridor floor to be mopped during working hours when she fell.

[54] According to Engineering and Maintenance Manager, Mr Nancoo, the First Defendant engaged the janitorial services of the Second Defendant by way of a procurement process which entailed contractual obligations. He explained that upon award of the contract, it was an express term of the contract that the Second Defendant was required to supervise their employees to ensure compliance with the terms of the contract. It was also agreed that janitorial services at the building were to commence only after 4:00 pm He referred to Clause 2.3.2 of the Scope of Works which states:

> "1. At the CNC and N2000 Administration buildings All Daily Services shall be conducted during the hours of 6 am to 7:30 am and 4 pm to 6 pm. The Reception Area must be COMPLETED by 7:30 am.
>
> 2. Sweep and mop all offices, corridors and stairways. (The Custodian shall ensure that warning signs are placed to inform personnel of wet floors, etc.)"

[55] Mr Nancoo asserted that the Second Defendant breached the contract by mopping the offices outside of the specified timelines of the contract. He indicated that after the accident, an investigation was conducted and a Summary of Approved Investigation Report dated 20th May, 2014 was prepared. This report found that the Second Defendant was culpable for the breach in safety protocols which resultantly caused the Claimant's fall and associated injury. It was Mr Nancoo's evidence that there was nothing in the investigation that led to the conclusion that the Claimant was at fault or contributed to her own fall by failure to adhere to any safety protocols.

[56] He noted further that following the said report, the Second Defendant issued a memo dated 11th August, 2014 to their employees reminding them of the times mopping must be undertaken at the building. Specifically, that it should be conducted before 7:30pm and after 4:00pm.

[57] However, under cross-examination, Mr Nancoo admitted that the janitorial staff normally started their work a little earlier in the Finance Department. He noted that some offices in the Finance Department contained sensitive information and it was requested that the

offices be mopped before 4:00pm since they did not wish to have persons access them after working hours.

[58] This evidence suggests that there was some variation in the contract to permit earlier mopping of the Finance Departments but Mr Nancoo was insistent that this allowance was limited only to some of the office spaces.

[59] The witnesses for the Second Defendant insisted that they were never made aware in their job training about the contractual time restrictions for mopping. They were both initially adamant that the instructions to mop the corridor and offices before 4:00pm came from the First Defendant. However, after further cross-examination they accepted that they received instructions from their supervisor at the daily toolbox meeting to mop the corridor and offices at the hours they did. Ms Jones also confirmed that no representative of the First Defendant was present at their meetings.

[60] It would be remiss of the Court not to point out its disappointment that the Second Defendant failed to call any witnesses with the requisite authority to speak to the contractual terms with the First Defendant and any subsequent variation.

[61] While the Second Defendant's evidence attempts to establish that there was some variation of the contractual times to permit earlier mopping of the offices **and** the corridor before 4:00pm, I am not convinced there is sufficient evidence to substantiate this position. Neither Ms Alexander nor Ms Jones in their capacities as janitorial staff, could properly speak to the contractual terms as they had neither seen the contract between the First and Second Defendant nor been apprised of its terms. They took instructions from their supervisor. In the absence of evidence from a supervisor or any other directing authority of the Second Defendant, the Court is entitled to draw an adverse inference that no instruction was given by the First Defendant to mop the corridor of the Finance Department during working hours. I am also entitled to draw the inference that the Second Defendant failed to adequately instruct and supervise their staff to ensure compliance with the contractual terms.

[62] In this regard, I find that the Second Defendant breached their contract with the First Defendant by mopping outside of the contractual stipulated hours and in doing so they created an unsafe and dangerous work environment for the Claimant to traverse. In such circumstances, the Claimant could not have reasonably foreseen that the floor would be wet when she exited Mrs Sargeant's office so that she could take the relevant care in walking in the corridor. As a result, she found herself in a precarious position that caused her to sustain an unexpected fall and serious injuries.

[63] The question, however, remains, whether the Claimant in any way contributed to her fall and injuries.

Issue 3: Did the Claimant speedily rush out of an office whilst wearing stiletto high-heeled shoes and did she fail to take heed of the alleged wet floor signs and yellow mop bucket?

[64] I have already accepted that the Claimant fell mere moments after exiting Mrs Sargeant's office, so I must disregard Ms Alexander's evidence about the Claimant falling when she reached her office while attempting to pull instead of push the door to her office. Therefore, the only issue to be resolved is whether the Claimant was wearing inappropriate office footwear, specifically, stiletto high-heeled shoes.

[65] The Claimant gave evidence about the First Defendant's policy regarding the requirement for all employees to wear safe and appropriate office attire, including footwear. She asserted that if an employee failed to comply with the First Defendant's policy, that employee is not permitted to enter the compound of the building. In this vein, the Claimant stated that on the date of the accident, she complied with the First Defendant's policy as she wore a pair of "Piccadilly" shoes, which have a flat sole profile and was not objected to by the First Defendant.

[66] Ms Cox gave evidence regarding the established Human Resource policies of the First Defendant. She explained that the First Defendant has an established and documented Dress Code and Appearance Policy which sets out the general guidelines to be followed by employees during business hours. These guidelines are enforceable by all supervisors

and/or department managers through disciplinary action sanctioned by the Human Resource Department. She stated that based on her records at the Human Resource Department, there was no record of any breaches to the policy by the Claimant.

[67] Under cross-examined, Mr Nancoo also confirmed that in order to enter the building, all of the First Defendant's employees were required to wear appropriate footwear and were warned against running. He asserted that it was therefore highly unlikely that the Claimant was wearing high-heeled stilettos or running in the corridor at the material time given the First Defendant's stringent safety protocols.

[68] The Court reviewed the stated policy and noted that it mandated that "heel heights shall be maintained at two to three inches or less and should not be a stiletto".

[69] Significantly, during cross-examination Ms Alexander failed to confirm that the Claimant was wearing the alleged stiletto heels at the material time of the accident. Although she asserted that the Claimant's shoe had a heel, she could not recall its length and did not respond to questions about the alleged stiletto shoes.

[70] On this basis, there is also insufficient evidence to convince the Court that the Claimant was wearing stiletto heels at the time of the accident, in breach of the First Defendant's policy and resultantly contributed to her own injuries. As such, the Second Defendant's allegations to this effect must fail.

Findings

[71] Having regard to the above analyses the Court makes the following findings on liability:

1. **The Second Defendant did erect caution signs in the corridor of the Finance Department but given the timing and location of the Claimant's fall she did not have the opportunity to observe them in order to take the necessary precautions.**
2. **The First Defendant owed a duty of care to the Claimant to take reasonable care for her safety and to provide reasonably safe plant and equipment, premises/place of work and systems of working with effective supervision. In the discharge of this**

duty the First Defendant contracted the Second Defendant to conduct janitorial services on its compound after engaging in a rigorous procurement process.

3. **The Second Defendant breached its contract with the First Defendant by mopping the corridor of the Finance Department before the stipulated hours and by failing to appropriately instruct and supervise its staff to ensure contract compliance.**
4. **By virtue of the Second Defendant's non-compliance with the contractual terms, their servants failed to take reasonable care to avoid causing injury to the Claimant which was reasonably foreseeable. As such, they breached their duty of care to her which caused her to sustain serious personal injuries.**
5. **While some evidence suggests that the First Defendant modified the terms of the contract by allowing earlier cleaning of the office spaces in the Department, there is no indication that this alteration extended to the earlier cleaning of the hallway. Therefore, I cannot conclude that the First Defendant is responsible for the Second Defendant's breach of contract. I therefore can make no finding of vicarious liability against the First Defendant.**
6. **There is also no evidence of contributory negligence.**
7. **The Second Defendant is therefore wholly liable in negligence for the Claimant's injuries.**

Quantum of Damages

General Damages

[72] The relevant principles for assessing general damages in a personal injuries claim were laid down by Wooding CJ in **Cornilliac v. St. Louis**[3]. They are as follows:

i. the nature and extent of the injuries sustained;
ii. the nature and gravity of the resulting physical disability;
iii. the pain and suffering which had to be endured;
iv. the loss of amenities suffered; and

[3] (1966) 7 WIR 491

v. the extent to which, consequentially, pecuniary prospects have been materially affected.

Nature and Extent of Injuries & Gravity of Resulting Disability

[73] The Court considered the medical reports presented by the Claimant and the First Defendant in its assessment of the Claimant's injuries. It is noted that following her fall, she was referred to Dr. R. P. Maharaj at the Southern Medical Clinic where she was diagnosed with a near complete supraspinatus rupture. A recommended arthroscopic examination of the shoulder confirmed an L-shaped retracted 90% rupture of the supraspinatus tendon. On 27th May 2014, the Claimant underwent surgery at the Southern Medical Clinic where a double row repair utilizing bi-composite screws was done with anatomic restoration.

[74] After this surgery, she was examined by Dr. Sinanan in January 2015 and he awarded the Claimant a permanent partial disability (PPD) of 20%. Additionally, Dr. Manohar found that the supraspinatus muscle was atrophic, i.e. weakened following surgery.

[75] It is noted that the Claimant underwent further medical examinations and in a medical report dated 7th June 2016, Dr. Maharaj awarded the Claimant a permanent partial disability of 25% consequent to a right shoulder rotator cuff injury. However, all other reports point to injuries to the Claimant's left shoulder. It is unclear whether this was a typographical error on the part of the doctor and no clarification was made on this point by the Claimant. I will therefore rely on the initial assessment of 20%.

[76] The Claimant asserted that she attended physiotherapy treatment sessions thereafter upon the doctor's recommendation.

[77] She returned to work in January 2015 (according to the evidence of Ms Cox) and remained employed with the First Defendant until 30 April 2016 when she was separated from the company and as such is no longer employed. The Claimant indicated that she found it difficult to continue the doctor-recommended physiotherapy sessions scheduled for three-

times weekly at the cost of $500.00 per session. So, she sought the assistance of Mr Esan Waterman, who was certified in Biomechanics, Physiology and Practical Application and underwent a strength training regime at a fitness centre.

Pain and Suffering & Loss of Amenities

[78] The Claimant testified that in the moment of the fall, she instinctively attempted to protect her chest and face so she used her left hand to brace the impact with the tiled surface. Consequently, when she experienced excruciating pain in her left shoulder as she laid on the floor and noticed that she could not move her left arm. The Claimant was taken out of the office on a stretcher and she received medical attention.

[79] The Claimant stated that the injury has affected her standard of life and it is painful for her to complete basic tasks like getting dressed in the morning. She asserted that any activity which requires her to lift or extend her left arm required the support of her left shoulder and this has been compromised as a result of the injury.

Pecuniary Prospects

[80] There is no evidence that the Claimant's pecuniary prospects have been materially affected on account of her injuries. Ms Cox gave evidence that the Claimant was paid her full salary during her injury leave and received a substantive payment for Workmen's Compensation. There is no suggestion that she was separated from the First Defendant as a result of her injuries or that she was unable to work because of same.

Judicial Trends

[81] The Claimant seeks an award of general damages in the range of $100,000.00 and $120,000.00. The First Defendant submitted that the Claimant should be awarded general damages in the sum of $100,000.00 for her pain and suffering and loss of amenities while the Second Defendant suggested an award of in the range of $30,000.00 to $85,000.00.

[82] In determining the appropriate award of the general damages, I considered the authorities submitted by the parties[4] and found the following cases to be most relevant:

- **Belford v Dass & Anor** CV2012-02204. In this case, the claimant suffered from multiple abrasions to both forearms and hands; dislocation of right shoulder (anterior); fracture dislocation of left shoulder; and comminuted fracture left tibial plateau schatzer V. As a result of these injuries, the claimant was unable to lift any heavy objects. An award in the sum of $150,000.00 for the claimant's pain and suffering and loss of amenities was made on the 16th April, 2014.

- **Jason Balbosa v Telecommunication Services of Trinidad and Tobago Limited** CV2015-01128. In this case, the claimant suffered a partial rotator cuff tear/strain of subscapularis in the right shoulder and labral injury and associated soft tissue injury of the right shoulder. As a result of these injuries, he was left with mild loss of motion of the right shoulder and was assessed an 8% PPD. Master Pierre by her judgment delivered on the 16th June, 2020 found that an appropriate award of damages for pain and suffering and loss amenities for the claimant was the sum of $85,000.00.

- **Nekeisha Candace Moe v Caribbean Airlines, Airport Authorities of Trinidad and Tobago; Airport Authority of Trinidad and Tobago (Ancillary Claimant) v T&T Carpet Installation and Cleaning Limited (Ancillary Defendant)** CV2014-04881. In this case, the claimant slipped and suffered soft tissue injuries to the left knee, shoulder and lower back. The Court awarded $60,000.00 in general

[4] **Boysie Seecharan v H & C Bandsawmill Co. Ltd.** H.C.A. No. S 463 of 1998, **Bobby v Austin** S-104 of 1978, **Harewood v Trading and Distribution Limited** CV2007-02359, **Bentley v The Attorney General** HCA 2532 of 1972, **Andy Marcelle v The Attorney General of Trinidad and Tobago** CV2013-02048, **Nekeisha Candace Moe v Caribbean Airlines, Airport Authorities of Trinidad and Tobago; Airport Authority of Trinidad and Tobago (Ancillary Claimant) v T&T Carpet Installation and Cleaning Limited (Ancillary Defendant)** CV2014-04881; **Balbosa v Telecommunications Services of Trinidad and Tobago (supra)**, **Sealy v Layne & Others** CV2016-0004, **Williams v The Attorney General of Trinidad and Tobago** CV2017-00671, **Gaffor v Lance & Ors** **Lennard Garcia v Point Lisas Industrial Port Development Corporation Limited** CV2010-03061 and **Clarke v Caribbean Development Company Limited** H.C.A. 3342 of 2001; **Irwin Williams v MIC Institute** CV2017-01897, **Francis v Prakash Auto & Hardware Supplies Limited & Ors** CV2015-00621 and **Roland Clarke v Caribbean Development Company** H.C.A. No.3342 of 2001.

damages on 19th January 2018, which was lowered on account of contributory negligence.

- **Sealy v Layne & Others** CV2016-0004. In this case the claimant sustained a severe injury to his left shoulder, namely a fracture dislocation of his left humeral head for which he had an open reduction and internal fixation. The humerus had some inferior subluxation of the humeral head. The claimant had suffered a fracture dislocation of the left shoulder. She was awarded $85,000.00 for pain suffering and loss of amenities on 20th March 2019.

[83] Having compared the nature of the Claimant injuries to the judicial trends, I find that the Claimant is entitled to an award of **$85,000.00** for general damages on account of her for pain suffering and loss of amenities.

Special Damages

[84] It is trite law that special damages must be specifically pleaded and proven. Accordingly, the Claimant must plead her losses sustained and include the relevant documentary proof such as receipts, bills, invoices, pay slips, etc. to support her claim.

[85] The Claimant alleged that as a result of her injury, she incurred medical expenses in the sum of $300.00, expenses for physiotherapy treatment in the sum of $10,900.00 and transportation expenses to attend these treatment sessions in the sum of $2,300.00. She has provided documentary evidence to support these expenses and as such, I find that she is entitled to recover these sums expended from the Second Defendant.

[86] The Claimant also testified that she commenced gym-based exercises program since June 2016 as a more affordable alternative to physiotherapy per the doctor's recommendation as stated in the medical report dated 19 November 2018. The Claimant's membership costs $700.00 monthly and she therefore claimed the sum of $31,500.00 representing 45 months' worth of these sessions. The Claimant submitted that she has sought to mitigate her own loss by seeking this alternative to physiotherapy.

[87] However, these expenses were not specifically pleaded in her claim and therefore will not be awarded.

Future Medical Expenses

[88] The Claimant pleaded future medical expenses in the sum of $30,000.00.

[89] She was assessed by Dr. R.P. Maharaj as requiring a further future surgical procedure on her Left Shoulder Arthroscopy. The estimate is dated 24th January 2017 and includes hospital expenses ($15,000.00), Anaesthetist fees ($3,500.00) and Consultant Orthopaedic Surgeon's fees ($15,000.00).

[90] I find no reason to disallow this total estimated sum of **$33,500.00**.

[91] I therefore find that the Claimant is entitled to an award of special damages in the sum of **$47,000.00**.

V. INTEREST

[92] In the seminal judgment of **Jefford v Gee**[5], Salmon LJ set out the relevant principles for calculation of interest on special and general damages. He stated:

> "*Special damages mean the actual and pecuniary loss suffered by the plaintiff, up to the date of trial, owing to the wrongful act of the defendant. In principle the plaintiff should be awarded interest on the sum which represents that loss as from the date it was incurred. If he has recouped that loss from some other quarter, that should be taken into account in awarding interest: for he ought not to be compensated for losing money when he has not suffered the loss….*
> [In respect of general damages:]
> *Interest should be awarded on this lump sum as from the time when the defendant ought to have paid it, but did not: for it is only from that time the plaintiff can be said to have been kept out of the money. This might in some cases be taken to be the date of letter before action, but at the latest it should*

[5] [1970] 1 Lloyd's Rep 107

be the date when the writ was served. In the words of Lord Herschell, interest should be awarded "from the time of action brought at all events". From that time onwards it can be properly said that the plaintiff has been out of the whole sum and the defendant had the benefit of it. Speaking generally, therefore, we think that interest on this item (pain and suffering and loss of amenities) should run from the date of service of the writ to the date of trial."

[93] I can find no reason to justifiably deny the Claimant her claim for interest on the general and special damages.

[94] Accordingly, I find that interest should be awarded on **general damages** from the date the Claimant commenced proceedings against the Second Defendant by adding them as a party to the Claim, i.e., 2nd October 2017 to the date of this judgment [a total of 2270 days]. Moreover, interest shall be awarded on special damages from the date of accident, 1st April 2014 to the date of this judgment [a total of 3550 days].

[95] This Court is of the view that interest should be awarded on general damages at the rate of **2.5% per annum**. In keeping with the decision of the Court of Appeal in **The Attorney General of Trinidad and Tobago v Fitzroy Brown et al** No. CA 251 of 2012[6], interest on general damages will be i.e. Pre-judgment interest on general damages will therefore be calculated by the following formula: **[$85,000.00 x 2.5% x 2270] ÷365 = $13,215.76**].

[96] With respect to special damages, I also find that an award of interest at a rate of **1.5% per annum** would be appropriate in the circumstances. The award of interest on special damages is therefore to be calculated from 1st April 2014 to the date of this judgment [a total of 3550 days] by the use of this formula: [**$47,000.00 x 1.5% x 3550] ÷365 = $6,856.85]**

VI. COSTS: Entitlement and Quantification

[6] See also the cases of **Larry Baila v AG,** CV2015-00249; and **Zalina Karim v Christopher Boodram v Motor One Ins. Co. Ltd** CV2016- 00400]

[97] On the question of costs of the Claim, the general rule on the award of costs is that the Court must order the unsuccessful party to pay the costs of the successful party: **CPR Rule 66.6(1)**. Although this general rule is now considered to be the starting point and that the Court must consider all the circumstances including the factors set out in **CPR Rule 66.6(4), (5) and (6)** before deciding where costs should be allocated.

[98] I can find no justification for departing from the general rule as it relates to the Claimant's entitlement to costs against the Second Defendant (the unsuccessful Defendant). However, the Claimant was unsuccessful in her claim against the First Defendant as they were not found liable for her fall and resulting injuries. So, by virtue of the same general rule where costs follow the event, the First Defendant will be entitled to their costs. The question thus arises as to whether the First Defendant is entitled to costs from the Claimant or the Second Defendant?

[99] I find it was entirely reasonable for the Claimant to have joined and pursued a claim against the First Defendant, her employer, following her fall that took place on their premises and was caused by a contractor, the Second Defendant, whom the First Defendant had hired. It is undoubted that the causes of action were interconnected and the both Defendants pointed fingers at and blamed each other for causing the Claimant's fall and injuries.

[100] The Court therefore has a discretion to order the unsuccessful Defendant to pay the successful Defendant's costs. This can be done by the Court making either a **"Bullock Order"** or a **"Sanderson Order"**. As conceptualised in the case of **Bullock v London General Omnibus Co. [1907] 1 KB 264, CA**, a Bullock Order obligates the claimant in a multi-defendant case to pay the successful defendant's costs but allows the claimant to include or be reimbursed these costs in those payable to the claimant by the unsuccessful defendant. On the other hand, a Sanderson Order, as derived from the case **Sanderson v Blyth Theatre Co. [1903] 2 KB 533, CA**, requires the unsuccessful defendant in a multi-defendant case to pay the successful defendant's costs directly without involving the claimant as an intermediary.

[101] While these orders originated under the taxation regime under the RSC 1975 prior to the introduction of the Civil Proceedings Rules 1998, they are still applicable to today's Rules. In **Sawh v ALGICO and ors** CV 2015-00720, Rahim J referred to the dicta of Gibson LJ in **Irvine v Commissioner of Police for the Metropolis and others** [2005] EWCA Civ 129 who emphasized the utility and the rationale of the orders, stating:

> *[22] There is no doubt that the jurisdiction to make a Bullock or Sanderson order has survived the introduction of the CPR, though the exercise of discretion to make such an order must be guided by the overriding objective and the specific provisions of r 44.3. The jurisdiction is a useful one. It is designed to avoid the injustice that when a Claimant does not know which of two or more Defendants should be sued for a wrong done to the Claimant, he can join those whom it is reasonable to join and avoid having what he recovers in damages from the unsuccessful Defendant eroded or eliminated by the order for costs against the Claimant in respect of his action against the successful Defendant or Defendants.*
>
> *However, it must also be recognised that it is a strong order, capable of working injustice to the Defendant against whom the claim has succeeded, to be made liable not only for the Claimant's costs of the action against that Defendant, but also the costs of the other Defendants whom the Claimant has chosen to join but against whom the Claimant has failed.*
>
> *[23] The court has a wide discretion over costs, and even where a Claimant reasonably brings proceedings against two separate Defendants and succeeds against one and fails against the other, there is no rule of law compelling the court to make a Bullock or Sanderson order (see Hong v A&R Brown Ltd [1948] 1 KB 515, [1094] 1 All ER 185). That case demonstrates that the court must also consider whether it would work injustice on an unsuccessful Defendant to make him liable for the costs of another Defendant against whom the Claimant has failed.*

[102] According to **Zuckerman on Civil Procedure, Principles of Practice**[7] cited by Mohammed (M) J. in **Shaliza Lutchmansingh v Taran Rampersad; First Caribbean Internal Bank v Direct Transportation and Equipment Rental & ors CV2020-00392** the factors that the Court will take into account in making a Sanderson Order (with which this Court agrees) are: *(a) whether it was reasonable for the Claimant to join and pursue a claim against the successful Defendant; (b) whether the claim against the successful Defendant had been made "in the alternative;" (c) whether the causes of action had been connected with those on which the Claimant had been successful; and (d) whether one Defendant blamed another.*

[103] On the facts of this case I am satisfied that the making of a Sanderson Order would be most appropriate, especially based on the oral submissions of the parties after the Court had invited addresses on this issue. In the circumstances, I find that the First Defendant is therefore entitled to have its costs paid directly by the Second Defendant.

[104] Since this Claim has been determined after a full trial, costs are to be quantified on the Prescribed Scale of Costs pursuant to **CPR Rule 67.5(1).**

[105] In order to quantify costs on the Prescribed Scale, however, the **"value"** of the claim must first be determined in accordance with **CPR Rule 67.5(2)**. In relation to the Claimant, the value of the claim will be the amount ordered by the Court to be paid by the Defendant as damages: **CPR Rule 67.5(2)(a).** However, on the authority of the Privy Council Appeal in **Benoit Leriche v Francis Maurice [2008] UKPC 866** the **"amount ordered to be paid"** by the Court for the purposes of determining the "value" of the Claim, must include the amount ordered as **pre-judgment interest**. Having decided that pre-judgment interest will be allowed at the rate of **2.5% per annum** and **1.5% per annum** on the general and special damages respectively, the **value of the claim** will therefore be [**$85,000.00 + $47,000.00 + ($13,215.76) + ($6,856.85) = $152,072.61.** Prescribed costs of the Claim on this value **($152,072.61)** in accordance with the **Scale of Prescribed Costs at Appendix B of Part 67 CPR 1998** are therefore quantified in the sum of **$31,810.89**.

[7] Zuckerman on Civil Procedure, Principles of Practice, 3rd edn, at paragraph 27.84

VII. DISPOSITION

[106] Having regard to the above analyses and findings the order of the Court is as follows:

ORDER:

1. **Judgment be and is hereby granted in favour of the Claimant against the Second Defendant on the Amended Claim filed on 2nd October 2017 for damages, interests and costs, as detailed in clauses 2, 3 and 4 hereunder.**

2. **The Second Defendant shall pay to the Claimant:**
   - **(a) General damages in the sum of $85,000.00; and**
   - **(b) Special damages in the sum of $47,000.00.**

3. **The Second Defendant shall also pay to the Claimant pre-judgment interest on the sum awarded as general damages at a rate of 2.5% per annum from the date of filing of the Amended Claim Form (2nd October 2017) to the date of this Judgment (19th December 2023) calculated in the sum of $13,215.76.**

4. **The Second Defendant shall also pay to the Claimant pre-judgment interest on the sum awarded as special damages at a rate of 1.5% per annum from the date of the accident (22nd March 2014) to the date of this Judgment (19th December 2023) calculated in the sum of $6,856.85.**

5. **The Second Defendant shall also pay to the Claimant prescribed costs on the Amended Claim quantified in the sum of $31,810.89 pursuant to CPR Rule 67.5 and the Scale of Prescribed Costs at Appendix B of Part 67 CPR 1998.**

6. **The Amended Claim filed on 2nd October 2017 against the First Defendant be and is hereby dismissed.**

7. **The Second Defendant shall pay to the First Defendant prescribed costs on the Amended Claim quantified in the sum of $31,810.89 pursuant to CPR Rule 67.5 and the Scale of Prescribed Costs at Appendix B of Part 67 CPR 1998.**

8. **Stay of execution 42 days.**

_____

Robin N Mohammed
Judge