

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**H.C.A. No. 1899 of 2000**

**JEAN CARR**

***Plaintiff***

**AND**

**TELECOMMUNICATIONS SERVICES OF  
TRINIDAD AND TOBAGO**

***Defendant***

***Before the Honourable Mr. Justice Smith***

***Appearances:***

***Mr. C. Pope for the Plaintiff***

***Mr. F. Hosein for the Defendant***

**JUDGMENT**

1. The Plaintiff's case is that on the 23<sup>rd</sup> February 1999 she went to the Defendant's premises at 54 Fredrick Street, Port-of-Spain, to make enquiries about and/or to pay off a phone bill for her mother, Bernadine Carr-George when, on leaving the building, she pushed open a door, slipped on a landing which was

wet, fell down two stairs and ended up on her buttocks on the pavement. She alleges that this fall was caused by the negligence of the Defendant.

The Defendant contends, firstly, that the Plaintiff did not sustain this fall on their premises or alternatively, that it was not negligent.

2. Both Counsel for the Plaintiff and for the Defendant accepted that the law on the issue is, as stated in Wotherspoon v the Airport's Authority of Trinidad and Tobago page 4 (citing with approval from Indermaur v Dames (1866) L.R. 1 C.P. 274 and Kirpalani's Ltd v Hoyte Civ. Appeal 77 of 1977).

*"A slip is quite a common incident of life and usually no harm is done, so it was incumbent on the Plaintiff to show: (1) that the substance on the floor caused her to slip; (2) that the substance on the floor constituted an unusual danger; (3) that the defendants knew it to be dangerous."*

3. Applying those principles to the present matter, this Plaintiff had to prove:
- (1) It was the slip and fall on the wet landing and/or stairs of the Defendant's building which caused her to sustain injury.
  - (2) The presence of rain water on the landing and/or stairs was an unusual danger.
  - (3) The Defendant knew or ought to have known of the danger posed by the wet landing and/or stairs.

4. With respect to item (1), the Plaintiff testified that she had gone in to the Defendant's premises to obtain a print out of her mother's phone bill. Having

obtained the print out, she proceeded to exit the Defendant's premises by pushing a tinted glass door, she then slipped on the landing, skated down two stairs and ended up on her buttocks in front of the building. According to her, a TSTT estate constable, one Mr. Joseph, was at the doorway when she was leaving and he saw her slip and fall; he even helped her up after the incident, escorted her inside the building, and put her to sit down. After this, another employee of the Defendant, one Mrs. Tidd, gave her a glass of water and tended to some cuts on her knee which she sustained in the fall. The Plaintiff then left the building, went home and after having had a rest and a meal, she began to experience severe pain as a result of which she sought medical treatment.

Cross-examination did not shake her story or reveal any inconsistencies in her testimony, but she remained adamant on two points, namely (i) that she had gone to the Defendant's premises where she received a print out phone bill for her mother, and (ii) that E. C. Joseph witnessed the fall.

I noted that the Plaintiff failed to lead any medical evidence of her injuries.

5. E. C. Joseph testified for the Defendant and gave clear and convincing testimony that he was neither present in the building when the Plaintiff allegedly fell, nor did he witness the events complained of. According to him, he had come from another part of the building and met the Plaintiff sitting on the landing. He then took her inside and arranged for another employee to see after her. He made no report of the matter since in his view the Plaintiff was not really injured.

It was only in about January 2000, pursuant to a letter written from the Plaintiff's lawyer, that he was asked to prepare a report about the incident.

As stated before, his testimony was clear and convincing and he appeared to want to assist the court as much as possible. There were no inconsistencies in his testimony and he appeared to be a credible and truthful witness.

6. Merlin Tidd, testified that all requests for print outs of bills were written up on a form which contained inter alia, the customer's name, phone number, identification document number and the signature of the cashier who delivered the print out to the customer. If the request was not made by the customer, a letter of authorization must also have been presented. Mrs. Tidd also presented a document containing all the requests for bill print outs made at the Defendant's premises at 54 Frederick Street, Port-of-Spain, between the 18<sup>th</sup> and 25<sup>th</sup> February 1999, which document was put in to evidence by consent. There was no request for a print out for Bernadine Carr-George nor was there a letter authorizing someone else to receive such a print out. There was a request for a print out for one Bernadine Cornwall made by the said Bernadine Cornwall on 23<sup>rd</sup> February 1999, and the cashier who made the entries in the document recording the request, testified to that effect. The undisputed documentary evidence in the case put a lie to the Plaintiff's story that she had been in the Defendant's building and had requested and received a print out for her mother's phone.

7. In the circumstances, the Plaintiff's testimony on two material parts of her evidence as mentioned in paragraphs 5 and 6 above, was successfully contradicted by credible and unshaken evidence, and I did not feel satisfied, on a balance of probabilities, that I could accept her story, that it was the slip and fall on the wet landing or stairs of the Defendant's premises which caused her to sustain any alleged injury.

8. In the event that I erred in my findings above I went on to consider the second factor stated at paragraph 3 above, which the Defendant had to prove, namely, that the presence of rainwater on the landing and/or stairs was an unusual danger.

In Trinidad and Tobago, rainfall is a common occurrence of life, and rain sometimes falls even in the "dry" season. The presence of rainwater on an external landing or stairway was not, in my view, in the circumstance of this case, an unusual danger. Further, the Defendant had installed high grade, non-skid tiles on its premises and there was evidence that there had been no other reports of skidding or falling on these stairs. There was no proof that the presence of rain water on the external landing and stairs of the Defendant's premises was an unusual danger.

9. I also went on to consider the third factor namely, whether the Defendant knew or ought to have known of the danger.

The evidence was that no similar incident ever occurred on this part of the Defendant's premises before or after this alleged incident on the 23<sup>rd</sup> February 1999. This negates the suggestion that the Defendant knew of the danger.

Further, the Defendant had installed high grade, non-skid tiles on the landing and stairs. The Defendant's witnesses also testified that in cases of heavy and prolonged rain, there were independent maintenance crews who went around to mop all the wet areas. The evidence also established that the rainfall on the 23<sup>rd</sup> February 1999 was a short shower so that there was probably no need for such a crew. In these circumstances, it can hardly be said that the Defendant ought to have been aware of the "danger" posed by a short shower of rain on these external surfaces.

10. I even went on to consider the position assuming that the Plaintiff had satisfied the onus of proving the three factors referred to above, and I was satisfied that on the evidence, the Defendant proved that they had taken adequate precautions to negate the danger of slippery tiles by installing high grade non-skid tiles on the external landing and stairs and by having maintenance crews ready in cases of prolonged or heavy rainfall. In the circumstances, I was satisfied that the Defendant had taken reasonable precautions to prevent incidents of this nature from occurring and as such they were not liable in negligence to the Plaintiff.

11. In all the circumstances, I dismissed the Plaintiff's claim and ordered her to pay the Defendant's costs.

Dated this 5<sup>th</sup> July 2004

**Mr. Justice Smith  
JUDGE**

#### Post Scriptum

One final word that I must mention in this matter is that the Plaintiff failed to lead any medical evidence of her injuries so that even if she had succeeded in establishing some negligence in the Defendant, she would not have been awarded anything other than a nominal sum for general damages. Further, I was very dissatisfied with the manner in which the special damages were allegedly proved, namely, by the Plaintiff's oral testimony, especially when bills could and should have been available to this Plaintiff and/or no reason was given why she could not produce such bills.