IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

CIVIL SUIT NO. DOMHCV2002/0325

BETWEEN:	MAGDALENE VICTOR	Claimant
	AND	
	FORT YOUNG HOTEL LTD	Defendant

Appearances: Mr. Lennox Lawrence, Counsel for the Claimant
Mrs. Francine Baron-Royer, Counsel for the Defendant

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1 and 2 February, 2006

DECISION: 7 April, 2006

JUDGMENT

[1] LEWIS S. HUNTE J. [AG]: The Defendant in this case is a company operating in the Commonwealth of Dominica. It owns and operates a hotel in Roseau, Dominica by the name of Fort Young Hotel. The Claimant was on 18 December, 2000, an employee of the Defendant and was working in the kitchen at the said hotel when she claimed to have slipped and injured herself. She had been working at the hotel since March 1998.

[2] The Claimant says that the injury was caused through the negligence

of the Defendant, in that, the Defendant failed to provide her with a safe working environment. The Defendant, on the other hand, contends that the working environment was safe and that the injury the Claimant suffered was caused wholly or in part, through her own negligence.

[3] By a Claim Form filed on 13 August, 2002, the Claimant seeks the following relief against the Defendant:

> Damages for negligence and for breach of duties …….
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> Damages for personal injuries
>
> Damages for wrongful dismissal
>
> Costs
>
> Further and other relief.

No mention is made of wrongful dismissal in the Statement of Claim and I take it that the Claimant is no longer pursuing that part of her Claim.

[4] There was an Amended Statement of Claim in the Trial Bundle of documents but the Court did not permit the Claimant to rely on it as permission to file it was refused by the Master. The Claimant was allowed to rely on the original Statement of Claim.

[5] The following facts are not in dispute:

1. On 18 December 2000 the Claimant was on duty in the Defendant's kitchen.
2. The kitchen is equipped with a "walk–in" chiller and refrigerators (referred to during the trial as fridges).
3. The Claimant went into the "walk–in" chiller to fetch vegetables
4. On her way from the chiller she slipped and slid along the

floor of the kitchen until she reached the kitchen door.

5. She held on to either the kitchen door or its frame and did not fall.

6. The incident resulted in injury to the Claimant and was reported to management of the hotel on the day it occurred.

[6] The Claimant insists that the floor of the "walk–in" chiller, which was made of aluminium was cracked; that there was a banana box outside the door of the chiller and that there was water on the floor of the kitchen. She admitted that rubber mats were placed on the floor of the kitchen but she stated that they were old and worn. She said that the water was caused by a leak in the "walk-in" chiller and a further leak from a refrigerator. She claimed that, while leaving the chiller, she slipped on the crack in the floor of the chiller, "knocked" her foot against the banana box outside the chiller and slid along the kitchen floor until she held on to the kitchen door.

[7] According to Helius Joseph, an employee of the Defendant, who was present in the kitchen at the time and witnessed the incident, the distance the Claimant slid was about ten (10) feet. Helius Joseph was a witness for the Defendant. He said under cross-examination that the Claimant held on to the frame of the kitchen door and called out to him: "Helius, my waist." I take it that, at that moment the Claimant called out to Helius Joseph, she was experiencing some pain or discomfort in her waist as a result of the slide. It would clearly appear that the floor was, indeed, slippery and that that must have been caused by it being wet, in order for someone to slide along it in that manner.

[8] The Claimant said that as a result of her sliding she was injured and could not bathe herself or perform household chores and had to wear a hip and waist support. In addition, she said that she incurred substantial medical expenditure. Receipts were produced in evidence.

[9] Apart from herself, the Claimant called one other witness. He was Dr Julius De Armas, an orthopedic specialist. Counsel for the Claimant conceded that he did not comply with the Rules of Court that govern the calling of expert witnesses and the Court upheld Mrs. Baron–Royer's objection and ruled that Dr. De Armas could not give evidence as to his opinion. Instead, he was confined to statements of his findings upon examination of the Claimant.

[10] Dr De Armas' evidence was that he initially saw the Claimant at the Accident and Emergency Department of the Princess Margaret Hospital on 18 December, 2000 where she was complaining of intense pain in her lower back. He said that she was treated and discharged.

[11] Dr De Armas further testified he again saw Claimant on 11 November, 2001 at the hospital after she was referred to him for further examination. On that occasion, he admitted her to the hospital. The patient, on this second visit to the hospital, was complaining of severe back pain and Dr De Armas, after submitting her to certain tests, which he described, said he found that:

(a) the astrophy left gastromenius (a muscle in the left calf) showed weakness

(b) the Claimant could not stand on tip–toe

(c) when he asked the Claimant to lie on her back and he

raised the left leg with the knee straight she experienced pain in the back below 45 degrees.

(d) there was a diminished sensation of the skin in the lateral aspect of the left foot

(e) the Claimant's aguilles (achilles) reflex was weak.

The doctor also said that the Claimant complained of sleeplessness as a result of the pain, she was discharged from hospital on 11 November , 2001.

[12] Under cross-examination by Mrs. Baron-Royer, the Claimant said that she feels less pain now than she previously felt; that she can now bathe herself and that, whereas she used to limp, she no longer limps. She says that she still feels pain in her leg occasionally and that she is not yet able to carry out all of her household tasks properly. While still under cross-examination she admitted that she wore a hip and waist support but was not wearing it in Court. Therefore, from my assessment of the evidence, the Claimant's condition is much improved, when it is considered that she was hospitalized for eleven days.

[13] Apart from Helius Joseph, Bryan Matthews, who at the time of the incident, was Manager of Fort Young Hotel, gave evidence for the Defence. Bryan Matthews did not witness the incident. He did, however, admit that it was reported to him the same day it occured. While he did not specifically deny that there was a crack in the floor of the "walk-in" chiller, he said that he was very familiar with the chiller and never observed any crack or opening at the entrance to it. Neither was Helius Joseph aware of any crack although the Claimant said that it was there for sometime. She could not say for how long it existed before she slipped on it.

[14] Mr. Matthews described the mats on the floor as being in very good condition. He said that they were designed to prevent slipping on wet floors and that, in addition, employees in the kitchen were provided with special rubber made boots to prevent sliding. The Claimant admitted that she was wearing her boots at the time of the incident and that Management made compulsory that the boots be worn. The precautions taken by the management appeared not to have been adequate because, according to Mr. Helius Joseph, the Claimant slid approximately ten feet along the floor before she could hold on to the door of the kitchen.

[15] The Claimant maintained that there was water on the floor of the kitchen at the time she slipped. She also stated that she was in the chiller for no longer than thirty seconds to one minute at the most. Helius Joseph did not examine the floor of the kitchen on the day of the accident and so he was unable to say whether there was water on the floor. It is therefore probable that there was water on the floor but, in view of the short period of time that elapsed between the Claimant's entering and leaving the chiller, it is more likely than not that the water was already on the floor when she entered. She, therefore, knew or ought to have known of its existence and she could have mopped it up, as she agreed that mopping of spills lay within her sphere of duty.

[16] With regard to the banana box which the Claimant said was in her way, there is no evidence as to how it came to be where it was. The witness Helius Joseph saw a box against the wall. It is not clear whether it was the same box that was in the Claimant's way or whether it was placed in her way before or after she slipped. I do, however, find that it is highly probable that it was the same box against which she "knocked" her foot.

[17] In arriving at a finding as to whether there was, indeed, a crack in the floor of the chiller, I note that none of the witnesses for the Defence said that it did not exist: Witness Helius Joseph who worked in the kitchen said in his evidence-in-chief:

> "I do not remember a crack in the floor of the chiller."

Witness Bryan Matthews, also in his evidence-in-chief, said:

> "I was never told of a crack in the floor of the chiller. I was only told about a banana box. I have never seen a crack in the floor of the chiller or in any part of the chiller."

The Claimant, nevertheless, says that it was this crack that caused her to slip. She claimed that the crack was there for sometime and that she had, in fact, reported it to the chef. On a balance of probabilities, therefore, I find that there was a crack in the floor of the chiller. My finding is supported by the fact that about three months after the accident, Management changed the floor of the chiller from aluminium to concrete as part of the overall refurbishment of the kitchen, although witness Bryan Matthews said the refurbishment had nothing to do with the accident involving the Claimant. In the circumstances I hold that there was a degree of negligence on the part of the Defendant and that they owed the Claimant a duty of care, namely, to provide a safe working environment.

[18] The Defence alleged contributory negligence against the Claimant and I find that there is a degree of merit in that allegation. As I earlier indicated, the Claimant knew for sometime of the existence of the crack in the floor of the chiller and had, herself, reported it to the chef. The Claimant having knowledge of the crack, must have avoided it on numerous occasions when entering and leaving the chiller. Also, she

either knew or ought to have known of the water on the floor and did not mop it up although it was within her sphere of duty to do so. In addition, I find it highly probable that she knew that there was a banana box outside the door of the chiller. I find it improbable that someone had placed it there during the minute or less that she spent in the chiller. I therefore, consider the Claimant forty percent to blame for the accident by not taking the care she ought to have taken to avoid the crack in the floor, by mopping up the water or removing the box from where it was, if it posed a danger to herself or others.

[19] There is therefore judgment for the Claimant with damages to be assessed at 60% of the sum assessed unless agreed. Costs to be the Claimant's in the prescribed scale; such costs to be in proportion to the damages awarded to the Claimant.

LEWIS S. HUNTE J. [Ag.]