

THE EASTERN CARIBBEAN SUPREME COURT

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2009/0352

BETWEEN:

**RICHARD NEESHAM
LARAINÉ NEESHAM**

Claimant

V

HARMONY ESTATES LTD. TRADING AS HARMONY SUITES

Defendants

Appearances:

**Gerard Williams for Claimant
Leslie Prospere for Defendant**

**2012 June 29
2013 July 25**

JUDGMENT

[1] **Belle J:** In February of 2007 Mr and Mrs Neesham (the Claimants) came to St Lucia to enjoy the 25th anniversary of their marriage. They booked a suite at Harmony Suites Hotel where they had stayed before and proceeded to enjoy their holiday. Unfortunately the holiday would end in unhappy circumstances when on the morning of 3rd February at about 1.30 a.m. the couple returned from a night out to their room at Harmony Suites. Both parties accept that the couple was attacked that night and that the Claimant Mr. Neesham suffered injuries for which he had to seek medical treatment at the Victoria Hospital.

[2] As Mr. Neesham describes it, the attack occurred when the couple returned to the hotel to find the front door locked and while attempting to attract the attention of the security guard on duty in the hotel lobby front office (Mr. Neesham refers to it as the back office) someone attacked him from behind and stabbed him. He later

discovered that the same person or some other person had pushed his wife to the ground.

- [3] Eventually Mr Neesham was able to attract the security guard's attention and obtain assistance in calling the police and an ambulance to the hotel. The police came and followed the Ambulance to the Victoria hospital where Mr. Neesham's stab wound was treated.
- [4] A series of events occurred thereafter which are less clear but they included a meeting with the Hotel manager Mrs Hermiston and the hotel agreeing to give Mr. Neesham a discount for the couple's vacation there.
- [5] A Ms. Augustin the front desk manager was also told about the matter. She related some of the facts to a Mr. Monroe a taxi driver and past security guard and private detective.
- [6] When the Neeshams were leaving they sought the services of Mr. Monroe to take them to the airport in Vieux Fort. It was on this drive to the airport that Mr Neesham allegedly related a contradictory story to Mr Monroe about the circumstances of the attack. This alleged incident became a bone of great contention in the case.
- [7] In an exchange of email a few days later Mrs Hermiston the Hotel manager made it clear that if the Neeshams sued the hotel, the hotel would countersue for damages to reputation, and malicious damage, etc. Mr Neesham was surprised at this exchange contending that he had paid his bill.
- [8] After getting nowhere in obtaining compensation from the hotel, Mr Neesham and his wife filed a claim for damages for injuries and loss suffered as a consequence of the February 3rd attack.

The Claimants claimed inter alia

"The assault on the Claimants resulted from the negligence of the Defendant.

Particulars of Negligence

1. *Failing to ensure that the Claimants had reasonable access to the hotel at all times.*
2. *Failing to provide suitable or adequate security for the protection of the Claimants while on the hotel's compound.*
3. *Failing to provide a secured environment*

[9] *As a result of the Defendant's negligence the Claimants trip was ruined as a result of which they suffered loss.*

Particulars of Loss

<i>Airfare from New Castle to London (£260.40)</i>	<i>\$1,328.04</i>
<i>Return flight from London to Sat. Lucia (£3,047.33)</i>	<i>15,541.38</i>
<i>Airfare from London to New Castle (£433.40)</i>	<i>2,210.34</i>
<i>Flight change with Caribbean Airways</i>	<i>1,250.00</i>
<i>Stolen Handbag (£40.00)</i>	<i>204.00</i>
<i>Damaged clothing (£95.00)</i>	<i>486.18</i>
<i>Cash in wallet (£450)</i>	<i><u>2,300.00</u></i>
TOTAL	<u>\$23,319.00</u>

[10] *The First Claimant is self employed in the recycling industry of scrap metal earning a salary of £1,150.00 per week. As a result of the First Claimant's injuries he was unable to work for three weeks thereby suffering a loss of income (£1,150.00 x 3- £3,450.00) - \$17,595.00*

AND THE CLAIMANT CLAIMS

<i>Special Damages</i>	<i>\$40,914.00</i>
<i>General Damages</i>	
<i>Interest</i>	
<i>Costs</i>	

[11] *The Defendant's defence was that it disputed the liability for the damages since the attack did not take place on their premises. In other words they placed full reliance on the evidence of Mr. Monroe who reported that the Claimant Mr*

Neesham informed him in a conversation on the way to Hewanorra International Airport that the attack took place between "The Shore" and "East Caribbean Condominiums" and not on the Harmony Suites premises.

[12] There apparently was a police investigation but it did not get beyond simply confirming the report that was made to the police which is consistent with the position that the Neeshams maintained at trial. As noted this evidence goes only to consistency.

[13] The Defendant set out to show inconsistency on the part of the Neeshams.

The Issues

{14] The issues to be resolved in the case therefore are:

Which story about the alleged attack is true?

If the Neesham's story is true what is the level of liability proved against the Defendant?

If Mr Monroe's story is true or proves that the Claimants cannot be trusted, what is the level of the Defendant's liability?

Is there a case for arguing contributory negligence on the part of the Claimants?

What level of damages would the court award if the claimants prove that the Defendant is liable and there is no contributory negligence?

What level of damages would the court award if the claimants prove the defendant is liable but the defendant proves contributory negligence?

Analysis of facts

[15] Firstly it is important to critically analyse the Claimants' evidence. One of the main strictures on the evidence of the attack is that the Defendant claims that the Claimant Mr. Neesham could not have seen the Defendant's security guard in the back office of the hotel lobby from the closed front door.

- [16] The court visited the scene and accepts that the Claimant would have encountered some difficulty seeing the security guard in the back office of the Defendant's lobby. Mr Neesham was adamant that the front lobby area has been changed. Mrs Hermiston admitted some changes but denied that there was a renovation of the front lobby area which added ten feet to the area, bringing the entrance 10 feet closer to the road and making it more difficult to see the area where the security guard had been seated. This would mean that the view at the site visit would not have been the view which the Claimant had of the lobby in February of 2007.
- [17] While it remains the court's view that the Claimant would not have been able to see all of the security guard's body from the front door situated as it is now, it is evident that depending on where and how he was sitting one would have been able to see a part of the security guard's body. It would not have been possible to ascertain that he was asleep from that distance but the presumption is reasonable in the circumstances since he was not alerted by the sounds of the attack if one is to rely on the Claimant's version of events.
- [18] I must say that even if the security guard was not sleeping the court is satisfied that he was not alert and capable of in anyway assisting a guest being attacked at the locked front door.
- [19] Other evidence led, leads to the conclusion that the security guard was asleep. He had worked a 15 hour shift between 4 pm on 1st February and 7 a.m. on 2nd February. He was a man in his sixties, who had retired. He was sitting in a chair which is provided for the comfort of the front desk clerk. He was not in a position according to Mrs Hermiston to see what was going on outside.
- [20] I therefore conclude that even if Mr Neesham is wrong about the renovations to the front of the building, it being probable that he is wrong about this, on a balance of probabilities he was right to presume that the defendant's security guard was asleep and unable to assist him.

[21] Mrs Hermiston points to two other factors, apart from Monroe's evidence, in challenging the evidence of Mr Neesham. She insists that there was another security guard on duty that night from a private firm. However there was no evidence led in court to support her assertion. No-one came from any other security guard company to account for the presence of another security guard on site that night. Additionally when asked if a log was kept on the incident Mrs Hermiston said yes. But this log was not produce in evidence in the case. I also note that Mr. Burton the security guard who is accounted for did not come to court to give evidence. Indeed his witness statement was withdrawn.

[22] Mrs Hermiston also speaks about the security notices posted around the hotel. There is a notice on the back of the door of the hotel suite similar to that occupied by the Claimants. There are also notices on the notice board of the hotel which is situated in the lobby.

[23] The Neeshams say that they did not see these notices. Although this is hard to believe I conclude that it is possible that they saw the notices but did not read them, because they were not concerned about security. I conclude that although there may be a general level of concern the couple relied on what they were told by the travel agent, and by the Foreign office in England about crime in Saint Lucia. They thought it was safe. In my view the evidence about not paying attention to signs goes to contributory negligence on the part of the Neeshams. This head will be addressed later.

Evidence of Mr. Monroe

[24] Mr Monroe was the taxi driver who came to court and gave evidence that the Claimant told him that he was attacked somewhere between "The Shore" and East Caribbean Condominiums" and not at the front of Harmony Suites Hotel. Mr Monroe claimed that he had delivered Mr Neesham and Mrs Neesham to and from the hospital but apparently had no conversation with them at that time about the way in which the attack took place. Conveniently the conversation about which

he reports, took place on the way to the airport when the Neeshams would be unable to see him face to face soon thereafter, and deny the allegation since they would have already departed from Saint Lucia.

[25] It is also notable that the Claimants were never called to a meeting with the security guard to face him and make the allegation that he was asleep on the night of the 2nd February 2007. The Defendant's manager believed Mr. Monroe who worked for the hotel and disbelieved her guests.

[26] I find it strange that a person who would apparently be planning to extort money from the hotel would tell a taxi driver who was in some way attached to the hotel that his story about being attacked at the hotel was false and he was interested in knowing the value of the hotel.

[27] I found the witness Mr Monroe to be a shifty witness who showed no real conviction in the way he gave his evidence. He knew what he came to say and he said it. But on a balance of probabilities I conclude that he was not a witness of truth.

[28] In my view had the attack happened in the way that the Claimant Mr Neesham allegedly told Mr. Monroe, this should have been apparent to the security guard, and the security guard in turn would have reported that this was the way the attack happened. Thereafter the security guard would then have told the police. This would have occurred prior to the Neeshams' departure. But the security guard could not assist because he was asleep.

[29] Secondly I can see no reason for the Claimant to place the blame for the attack on the hotel if it had truthfully happened this way. I dismiss the extortion story as far fetched.

[30] I found the Neesham's on balance of probability to be much more convicted in their evidence than Mr. Monroe and even if they were mistaken about the notices

in the hotel and the exact position of the security guard these mistakes are understandable.

[31] But the story which asks the court to conclude that the Claimant gave conflicting information about the attack to Mr. Monroe is so significant it must be treated either as a factor that draws the court to the conclusion that the Neesham's are lying or that Mr Monroe is lying. I prefer the latter inference on the basis of what I have said earlier.

[32] Another reason why I prefer the latter inference is that the Defendant failed to provide a log of the incident even though she had persons who were paid on staff who could have provided such a report clarifying the security guard's view of what had taken place, not just for the present case, but for the future security of the property and in the interest of protecting the business from future false allegations.

[33] There was no log, no information about the second security guard and no evidence from Mr. Burton at the trial. Heavy reliance was placed on Mr. Munrose and the position that the Claimant could not see the security guard asleep on the night of the attack.

[34] Based on this analysis of the facts the court finds that the Claimant has proved liability of the hotel in negligence in failing to ensure the safety of guests once they are its premises. Although the hotel owners have shown that some attempt was made to ensure the safety of guests and the security of their property on the hotel's premises, the hotel failed to ensure that a guest arriving late at the front door would be speedily admitted to the premises and not exposed to possible attack while waiting outside.

[35] Rehead, J.A in **Grenada Breweries Limited v Godwin Griffith Civil Appeal** No. 2 of 2002 was of the view that the Appellant in that case may have taken steps to prevent goods from being stolen but did not take sufficient steps to protect their employees from injury.

[36] The situation at the entrance to the hotel premises left a guest exposed to attack while being on the premises. In **Grenada Breweries** Readhead J.A stated at paragraph 45:

"In my judgment it ought to have been in the contemplation of the appellant's mind that those same thieves who broke into its premises to steal may have come upon the respondent and in an attempt to make good their escape and avoid detection would do physical injury to him."

Contributory Negligence

[37] However I also find that the Hotel has made out a case of contributory negligence. The Neeshams should have made themselves aware of the possible incidence of crime and that they were vulnerable walking alone in the wee hours of the morning to the hotel after spending cash in a bar. The possibility of an attack in those circumstances was foreseeable. See: **Alphonso and Others v Deodat Ramnath** (1997) 58 WIR 183. I assess this contribution at 25%.

[38] I take the point that at that time of night it would have been prudent to take a taxi in spite of the short distance, this would have diminished the likelihood of being followed and the likelihood of being attacked at the premises, although an attack would still be possible as long as the guests were not admitted to the hotel on arrival.

[39] At the site visit it was admitted that there was a passage way in front of the hotel from which the assailant could have gained the element of surprise in attacking the Neeshams. This raises the likelihood that the Neeshams were followed and then approached from the passageway after they had failed to gain entry to the hotel immediately.

[40] I therefore find for the Claimant that they were attacked on the Defendant's premises and suffered loss as a result of the said attack. The Defendant is 75% liable for the loss and damages proved.

Specific Damages

[41] I think that proving the loss of cash taken from a cash machine is a matter of whom to believe. Mr Neesham spoke of his £500 sterling limit. I believe him. No evidence has been led to show that this may not be true. However it is unlikely that he would still have had the full amount on him after going out that night. I deduct approximately half of it which Mr Neesham says he spent as a habit per night while he was on holiday. He can therefore only be awarded EC\$1600 under this head.

Costs of Clothing

Again it is unlikely that someone would keep a receipt for the value of clothing purchased some time before. I would award the Claimants the costs of the clothing in the sum of \$486.00. Mrs Neesham also claimed to have lost her handbag worth \$204 .00. I would also award this sum even though there is no receipt.

[42] Mr Neesham failed to provide proof of his work and therefore cannot be awarded any sum for loss of earnings.

[43] Mr Neesham tried to mitigate his loss by seeking medical attention and was told to stay on a few days. He should not be forced to pay the cost of his extended stay. Secondly he should be compensated for the cost of paying for the change of the airline ticket in the sum of \$ 1250.00.

[44] The Claimant had claimed the full costs of return flights to London and on to Newcastle. I do not think this claim is justified since the holiday though spoilt was not entirely lost and there was some contributory negligence. This is not a case where the parties missed the opportunity to stay at the destination or hotel of choice. They were able to obtain what they paid for albeit with the disruption of the unfortunate incident. In any event his issue was not addressed by counsel on either side and was probably considered unimportant.

- [45] Consequently special Damages are awarded in sum of \$3540.18 with interest awarded at the rate of 3% per annum from the date of the attack to the date of the claim and at 6% per annum from the date of the claim to the date of payment.
- [46] I also award the First Claimant \$10,000.00 for the personal injury he suffered. I find this to be a fair assessment for a stab wound for which no medical evidence was presented. The Claimant is awarded this sum with interest at the rate of 6% from the date of the judgement to the date of payment.
- [47] The total sum awarded is therefore \$13,084.00 which sum is reduced by 25% representing the Claimants' contributory negligence.
- [48] I also award costs to the Claimants in accordance with part 65 of the CPR 2000.


Francis H V Belle
High Court Judge

