

IN OPEN COURT

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN



CAUSE NO: 319 OF 2001

Before: Mr. Justice Sanderson

BETWEEN:

LOUIE MAE PARCHMENT

Plaintiff



AND:

WILMAR LIMITED

Defendant

APPEARANCES:

Ms. S. Brooks for the Plaintiff

Mr. D. Murray for the Defendant

Heard: November 12 & 13, 2002

REASONS FOR JUDGMENT

Louie Mae Parchment was an employee of Wilmar Limited, which owns and operates the Marriott Hotel on Seven-Mile Beach. On June 14, 1999 Ms. Parchment was walking in the corridor on the fourth floor, when she slipped, fell and injured her knee. She sues the Defendant for damages for injuries, which she alleges, were caused by the negligence of the Hotel. This trial was limited to the issue of liability only. The Defendant says that it did not breach the duty of care, it owed to Ms. Parchment. Alternatively, it says that even if it did breach any duty of care, Ms. Parchment made an election to proceed under the

Workmen's Compensation Law and having received money from the Defendant pursuant to that Law, she is not entitled to now claim in negligence.

### **EVIDENCE**

Ms. Parchment is 56 years old. She had been an employee of the Defendant for approximately 2 years prior to the accident. On June 14, 1999, she was a Housekeeping Supervisor. Prior to that she had been a chambermaid.

While on duty of the morning of June 14, 1999, she was walking down the corridor on the fourth floor outside of the elevator banks. She did not observe anything unusual on the floor. She slipped, fell and injured herself, including a broken left knee. The floor outside of the elevators was tiled. She did not observe anything on the floor, which could have caused her to slip. She was wearing Keds sneakers at the time of the fall.

Ms. Parchment knew that on previous occasions, guests of the hotel had gone into the elevator after coming out of the swimming pool. She knew that the elevator floor and the floor areas outside of the elevator were sometimes wet with water from the swimming pool. She did not observe any water on the floor on this occasion.

Mr. Ian Patterson was employed for the Defendant as a house-man in June of 1999. His duties included vacuuming the hallways and cleaning the door

glasses. On the morning of June 14, he saw a guest exit the elevator on the fourth floor and spill a glass of juice on the floor outside the elevator. Mr. Patterson went to the nearest housekeeper on the fourth floor to borrow a mop. He returned and mopped up the spill. He was not satisfied with the work that he had done because the floor was still sticky. He said that he had gotten most of the juice up and the floor was sticky rather than slippery. He returned the mop to the chambermaid and telephoned downstairs to one of the "lobby ladies". He asked a lobby lady to come to the fourth floor to mop up, with a wet mop and to put a wet floor sign in the area. He did not have a two-way radio. He returned to the scene of the spill at which time he saw that the Plaintiff had fallen and injured herself. She was being attended to by a guest who was also a physician. He estimated that 2 to 3 minutes passed between when he mopped up the spill and returned to see Ms. Parchment.

He has been employed by the Defendant since 1995 and has not seen any other similar incident occur at the hotel.

The procedure that was in place at the hotel regarding cleaning up spillage was that it was the duty of the housekeeping supervisor to inspect the common areas on the floor which they were assigned to and to report any unclean or hazardous situations to one of the "lobby ladies" who would then come and clean it up. In this case, it was Ms. Parchment's job to report any hazardous situation on the fourth floor, such as a spill, to one of the "lobby ladies" and arrange to have her

correct it. There were wet floor signs stationed on the third floor. The task of supervising the “lobby ladies” was assigned on the daily basis to the particular supervisor who was the least busy. It was unknown which supervisor was responsible for the “lobby ladies”, on June 14, 1999.

### **ALLEDGED NEGLIGENCE**

The argument advanced by the Plaintiff was that the Defendant failed to have in place, proper procedures to ensure that employees or guest were not injured. The Plaintiff asserts that the Defendant was negligent in five respects. They are:

1. Mr. Patterson was not provided with a radio and therefore, could not radio to the “lobby ladies” to have them come up to clean the spill;
2. The wet floor signs were located on the third floor. The Plaintiff submits that there should have been wet signs located on every floor, so one could have been located and placed sooner;
3. The area outside the elevator was tiled. The Plaintiff asserts that it should have been carpeted;

4. Mr. Patterson should not have left the area unattended after he mopped up the spill. The Plaintiff submits that he should have remained there to warn any person of the hazardous situation;
5. That Mr. Patterson should have requested the chambermaid to place the call to the “lobby ladies” so he could have returned to the elevators more quickly;
6. Finally, that the Plaintiff should have been provided with non-skid shoes.

### **CAUSATION**

In order to sustain a claim in negligence the Plaintiff must prove that the alleged negligent act or acts caused her injury. In this case, the Plaintiff did not see any wet or slippery area on the floor. It was part of her duties to inspect this area for any hazards. She did not testify that the floor was slippery or that anything on the floor caused her to slip. She said that she could see nothing on the floor except the tile. The evidence of Mr. Patterson was that he wiped up the spill with a damp but not a wet mop. He said that he got almost all of the juice up but not a 100%. He said that the floor was sticky but not slippery. He left, returned the mop and arranged to have someone come and wipe up the sticky floor and place a wet floor sign in the area.

The burden is on the Plaintiff to show that there was some hazard, which caused the injury. I am not persuaded on a balance of probabilities that the floor was wet or slippery at the time she fell or that a slippery floor caused her fall. Rather, I am satisfied that the floor was sticky and the reason that Mr. Patterson called the “lobby ladies” was to have the sticky floor cleaned up and then a wet sign placed. I am not satisfied that the fall was caused by a slippery floor.

### **NEGLIGENCE**

If, I am incorrect in my conclusions regarding causation, then having heard the evidence, I think it right that I should state my conclusions on the particular allegations of negligence.

The Plaintiff did not lead any evidence as to what other hotels in Grand Cayman do to prevent guests or employees from slipping and falling. There are thousands of tourists and employees who occupy and work in the hotels on these Islands. I do not know what procedures or practices those hotels or condominiums have in place, in order to prevent or clean up spillage or water on the floor. Accordingly, I must make my determination on what I conclude would be reasonable in the circumstances.

1. Should Mr. Patterson have had a radio? Each housekeeping supervisor carried a radio so that he or she could communicate with others including the “lobby ladies” to clean up spillage. There was a supervisor for each floor. I am not persuaded that it is reasonably necessary to provide all cleaning personnel with radios. That seems to me to be an excessive requirement in the circumstances. It must be recognised that in every hotel or other public facility there is likely to be spillage of some sort on the floor. There was a procedure at the Defendant’s hotel to look out for such hazards and to make arrangements to have them cleaned up. The law does not require that every employer equip all of its employees with short wave radios to advise of potential hazards. It only requires that the hotel take reasonable steps considering all of the circumstances. In these circumstances, I conclude that it was reasonable that the housekeeping supervisor be provided with a radio. If other personnel observed any hazard they had access to telephones and could make a call fairly quickly. That was done in this case.

2. Should there have been wet floor signs available on every floor? Again, I was not persuaded that the requirement to have a wet floor sign available on every floor is reasonable in the circumstances. They were placed on the third floor and could easily have been obtained within a few minutes. There is no evidence that had the wet floor sign been available somewhere on the fourth floor it could have been placed more quickly than retrieving one from the third floor. Further, there is no requirement that such warning signs must be

available instantly. They should be within reasonable proximity. They don't have to be everywhere a spill might occur.

3. Should the floor have been carpeted? There is no requirement that all floor areas be carpeted. The lobby of the hotel was tiled as are the lobbies and other common areas of many hotels in this area. The floor in this case was a non-stick floor designed to prevent such slippage. The fact that the hotel did not provide carpet in all areas does not constitute negligence. The Common Law does not require all floors to be carpeted just because there might be a spill on the floor;
  
4. Should Mr. Patterson have remained in the area? Mr. Patterson wiped up the spill and when he left he felt it was sticky not slippery. He returned to one of the rooms and placed a call to the "lobby ladies" to have the area mopped up. I am not persuaded that he should have remained in this area in these circumstances. He was only gone for 2 or 3 minutes. He went to place a call to have the floor properly cleaned and a wet sign placed. If the floor had been obviously slippery or had posed a substantial risk or hazard then perhaps Mr. Patterson should have stayed, but it did not.
  
5. Should Mr. Patterson have had the chambermaid call one of the "lobby ladies"? There is no evidence that if Mr. Patterson had done this it would have prevented the injury. He placed the phone call and returned to the area of the

spill within the matter of 2 or 3 minutes. The phone call would have taken just a few moments. In the circumstances, I think he acted reasonably;

6. Should the employer have provided non-skid shoes for the Plaintiff? There is no evidence before me that the shoes that the Plaintiff was wearing were any more likely to skid than non-skid shoes. She was wearing Keds sneakers. The floor was a non-stick tile. There was no evidence that if she had been provided with "non skid shoes" it would have made any difference even if the floor had been slippery. Finally, there is no evidence that it is the practice in the industry to provide non-skid shoes to employees.

In conclusion, I am satisfied that the allegations of the Plaintiff do not constitute a breach of duty of care, that is negligence. The duty on an employer towards its employee is described in *Wilson & Clyde Coal Co. Ltd. v English* (1937) 3 All ER 628, where at page 640 Lord Wright stated as follows:

"The obligation is threefold, "the provision of a competent staff of men, adequate material, and a proper system and effective supervision."

The English Court of Appeal in *Wilson v Tyneside Window Cleaning & Co.* (1958) 2 All ER 265 considered the judgment of Lord Wright in *Wilson & Clyde Coal Co. Ltd. v English* (supra), and Pryce LJ in giving judgment for the Court stated at page 271:

“Now it is true that in *Wilson & Clyde Cole Co. Ltd v English*, Lord Wright divided up the duty of a master into three main headings for convenience of definition or argument; but all three are ultimately only manifestations of the same duty of the master to take reasonable care so to carry out his operations as not to subject those employed by him to unnecessary risk.”

The Common Law of negligence recognises that the world is not risk free. Hotels, supermarkets, department stores, movie theatres, gas stations and all other manner of public and private buildings present every day potential hazards. Spillage is not uncommon. There is a duty upon employers and the owners and occupiers of such premises to act reasonably to ensure that the premises are safe for those who visit them or work there. The law does not require that there be a cleaner or attendant at every area. It does not require that the premises be kept 100% risk free. It requires that the master take reasonable care so as not to subject those employed by him to unnecessary risks. In the present case the employer has satisfied that requirement.

### **WORKERS COMPENSATIONS CLAIM**

The Defendant submits that even if it was negligent and its negligence caused the Plaintiff's injuries, the Plaintiff's claim is nevertheless bared by virtue of Section 19 (1) and (2) of the Workmen's Compensations Law (20 of 1964) (1996 Revision). Section 19 provides as follows:

- (1) When the injury was caused by the personal negligence or wilful act of the employer or of some

person for whose act or default the employer is responsible, nothing in this Law shall affect any civil liability of the employer, but in that case the workman may, at his option, claim compensation under this Law, or take proceedings independently of this Law, but the employer shall not be liable to pay compensation under this Law and damages.

- (2) The workman may elect whether he will institute proceedings for damages against his employer or will institute proceedings for compensation under this Law, and if he institute proceedings for damages he shall be debarred from instituting proceedings under this Law in respect of the same accident or if he institute proceedings under this Law he shall be debarred from instituting proceedings for damages against his employer in respect of the same accident. Any written application lodged by the workman with the Clerk of the Court under section 28 shall be deemed to be an institution of proceedings under this Law, and if the workman and the employer agree in writing as to the amount of compensation to be paid under this Law, he shall be deemed to have elected to take proceedings and to recover compensation under this Law, and the workman and his dependants shall be bound by the election.

The Defendant says that the Plaintiff made an election to claim under the Workers Compensation Law and was in fact paid several weeks wages pursuant to that claim. The Defendant relies on Exhibits 1, 2 and 3. Exhibit 1 is a Workman's Compensation Claim Form and it is apparently filled out and completed by a Ms. Ramoon who was an employee of the Defendant who interviewed Ms. Parchment shortly after the accident.

Exhibit 1 does not purport to be signed by Ms. Parchment.

Exhibit 2 is a single page form headed Workers Compensation. It says it is to be completed by the INJURED EMPLOYEE. This document appears to bear the signature of the Plaintiff, Louie Mae Parchment. However, the document was put to her in evidence and she said that although the signature looks like hers, she did not sign it. She did testify that she did sign some sort of insurance document while she was in the hospital. She thinks she signed something either the day of her surgery or the day after surgery. Her surgery was on June 15, 1999. The document appears to be dated June 16, 1999. No other document signed by Ms. Parchment has been produced by the Defendant or Plaintiff. She described the document she signed as being very short with just a few lines on it. Exhibit 2 contains more than a few lines.

The Defendant did not call Ms. Ramoon to testify to the circumstances of obtaining this document. No one testified that it was signed by Ms. Parchment. Although the circumstance indicate that Ms. Parchment may have signed this document on June 16, 1999 she emphatically denies it. While I have doubts that the signature on this document is not Ms. Parchments, the only evidence that I have before me is hers and she categorically states she did not sign it and it is not her signature. Mr. Murray advised me that the reason that Ms. Ramoon was not called was because she was not willing to give evidence. There was no evidence of any handwriting expert to the effect that this was or was not Ms. Parchment's signature. Accordingly, on the evidence before me I cannot be satisfied that this document has been proved or that the document contained Ms.

Parchment's signature. For that reason it is not been proved that Ms. Parchment made any election to accept money under the Worker's Compensation Legislation. Her explanation at trial was that she thought she was signing some form of insurance form and that she was being paid insurance proceeds.


The defence based on the Workers Compensation Law is therefore not established.

### CONCLUSION

The Plaintiff's claim is dismissed on the basis that:

1. The Plaintiff has not proved that her injuries were caused by a slippery floor, and;
2. Alternatively if the injuries were caused as a result of a slippery floor, the Defendant was however, not in breach of its duty, in that it took adequate steps to provide reasonably safe working premises for the Plaintiff.

Dated this 25<sup>th</sup> day of November 2002



Mr. Justice Sanderson  
Judge of the Grand Court

