

IN THE EASTERN CARIBBEAN SUPREME COURT:

IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION

SAINT LUCIA

CLAIM NO. SLUHCV2024/0086

BETWEEN:

TYLUS FANUS

Claimant

-and-

[1] BRIAN PHILGENCE

[2] CEPAL HOLDINGS INC.

Defendants

Before the Honourable Mr. Justice Alvin Shiva Pariagsingh

Appearances:

Mrs. Maureen John – Xavier for the Claimant

Mr. Horace Fraser for the Second Defendant.

2026: February 18 – Hearing
April 14 – Decision

Negligence – Employer’s liability – Workplace accident – Construction site – Scaffold collapse – Employee falling from height – Employer’s non-delegable duty to provide safe system of work – Breach of duty to provide proper materials, equipment and supervision – Precise cause of scaffold collapse not identified – Accident falling within foreseeable risk created by unsafe system – Causation established – Contributory negligence – Employee selecting materials and constructing scaffold according to own judgment despite appreciating risks – Employee not judged with same strictness as independent actor – Volenti non fit injuria – Knowledge of risk distinguished from voluntary waiver of claim – Personal Injuries – Award of Damages

JUDGMENT

INTRODUCTION:

[1] **PARIAGSINGH, J:** - This is a claim in negligence arising out of a workplace accident which occurred on 19 May 2021 at the Micoud Smart Block Project. The Claimant, Mr.

Tylus Fanus, seeks damages for personal injuries sustained when he fell from a scaffold while constructing a scaffold in the course of his employment with the Second Defendant.

FACTS:

- [2] It is not in dispute that the Claimant was employed by the Second Defendant and that on 19 May 2021 he fell from a scaffold that he was constructing on site.
- [3] The Claimant's case is that he was instructed by the First Defendant, whom he understood to be a foreman or supervisor, to construct a scaffold using inadequate and re-used materials. He says that he raised concerns about the absence of proper materials and safety equipment but was instructed to proceed using what was available on site, including used nails which were to be straightened and reused. He further contends that there were insufficient safety harnesses and in any event no proper system for securing them, and that while working at height the wood on which he stood collapsed, causing him to fall and sustain injury.
- [4] The Second Defendant denies liability. Its case is that the Claimant was instructed to construct a scaffold using appropriate dimensions but failed to do so, instead constructing an inadequate platform which caused the collapse.

ISSUES:

- [5] The central issues for determination are whether the Second Defendant owed the Claimant a duty of care, whether that duty was breached, whether any such breach caused the Claimant's injuries, and whether the Defences of denial, contributory negligence, and *volenti non fit injuria* can succeed.

LAW:

- [6] It is well established that an employer owes a personal and non-delegable duty to take reasonable care for the safety of its employees. That duty extends to the provision of a safe system of work, proper materials and equipment, and adequate supervision, particularly where the work involves obvious risks such as working at height. The

authorities of **Wilsons & Clyde Coal Co Ltd v English**¹, **Caswell v Powell Duffryn Associated Collieries Ltd**², and **Paris v Stepney Borough Council**³ illustrate both the scope of that duty and the approach to its application in the employment context.

[7] In relation to contributory negligence, the Court must consider whether the Claimant failed to take reasonable care for his own safety and, if so, the extent to which responsibility should be apportioned. In doing so, the Court is mindful that an employee acting in the course of his duties is not to be judged with the same strictness as a person acting independently, but in light of the realities of the workplace. In cases where conditions include physical fatigue such as factories or mines, it is moreso important to adapt the standard of contributory negligence to the facts; see **Caswell v Powell Duffryn Associated Collieries Ltd** at page 739.

[8] As to *volenti non fit injuria*, mere knowledge of risk is insufficient. It must be shown that the Claimant freely and voluntarily agreed to waive any claim arising from that risk, as explained in **Imperial Chemical Industries Ltd v Shatwell**⁴.

[9] In relation to damages, the governing principle remains that stated in **Livingstone v Rawyards Coal Co**⁵, namely that the Claimant should, so far as money can achieve it, be placed in the position he would have been in had the tort not occurred.

ASSESSMENT OF THE EVIDENCE:

Tylus Fanus (Claimant)

[10] The Claimant's evidence, as set out in his witness statement, presents a clear and consistent narrative in relation to the circumstances of the accident. He states that he was instructed to construct a scaffold but was not provided with proper materials to do so safely. He says that he raised concerns about the adequacy of those materials but

¹ [1938] AC 57.

² [1939] 3 All ER 722.

³ [1951] AC 367.

⁴ [1965] AC 656.

⁵ (1880) 5 App Cas 25.

was nonetheless directed to proceed using what was available on site, including used nails which were to be straightened and reused. He further states that he felt pressured to comply with these instructions and that, while working at height, the scaffold failed beneath him, causing him to fall. This account is internally consistent and aligns with his pleaded case, and it provides a coherent basis for his allegation that the system of work was unsafe.

[11] However, the Claimant's evidence on liability is materially qualified by his concessions under cross-examination. He accepted that he and his co-worker selected the materials themselves, that they chose what appeared to be the better materials available, and that no one gave him detailed instructions as to how the scaffold was to be constructed.

[12] He further accepted that he built the scaffold according to his own judgment. Most significantly, he was unable to identify the precise cause of the collapse, accepting that it could have resulted from a number of possible factors, including the failure of the wood, the nails coming loose, poor construction, or even slipping. These concessions weaken the extent to which his evidence can be relied upon to attribute sole responsibility to the Defendants.

[13] Turning to the Claimant's evidence on injury, he states that as a result of the fall he experienced significant pain and distress. He describes symptoms including hematuria, pain in the scrotum, difficulty with urination, and discomfort affecting his daily life. He also asserts that these symptoms have persisted and have affected his physical activities, including walking, running, and sexual function. On its face, this evidence suggests a continuing impact beyond the immediate aftermath of the accident.

[14] However, this aspect of his evidence was also tested under cross-examination and, in several respects, was not strongly supported. The Claimant accepted that he did not undergo any surgical intervention and that his treatment following discharge was limited, apart from an additional ultrasound.

[15] He further accepted that he had not provided medical reports to substantiate certain aspects of his ongoing complaints, including difficulty walking, inability to engage in

football or sexual activity, or psychological symptoms such as anxiety and fear of infertility. He also accepted that his initial diagnosis was described as a relatively low-grade injury and that the medical report recorded that his hematuria had resolved and that he was discharged in stable condition.

[16] In addition, the Claimant's evidence on the extent of his ongoing symptoms was not supported by independent medical evidence. While he maintained that he continues to experience pain and limitations, the absence of medical corroboration reduces the weight that can be attached to those assertions, particularly where they relate to long-term or significant impairment.

[17] Taking these matters together, I find the Claimant to be a generally credible witness as to the occurrence of the accident and the fact that he suffered a genuine injury requiring medical treatment. His evidence as to the initial pain, discomfort, and distress following the fall is accepted. However, I approach his evidence of ongoing and more serious symptoms with caution. The lack of supporting medical evidence, coupled with the relatively benign findings in the medical report and his own concessions under cross-examination, leads me not to accept the full extent of his alleged continuing disability. I find the Claimant's evidence on the extent of his injuries and continuing pain and suffering to be grossly exaggerated.

Barry Hippolyte

[18] Mr. Hippolyte's evidence is primarily directed to the circumstances of the accident rather than the Claimant's injuries, but it nonetheless has some indirect relevance to both liability and the credibility of the Claimant's account. In his witness statement, he confirms that he and the Claimant were involved in constructing the scaffold and that they used materials available on site. His evidence broadly supports the Claimant's assertion that the work involved a degree of improvisation and that proper materials were not readily provided.

[19] Under cross-examination, however, Mr. Hippolyte made a number of concessions which limit the weight of his evidence. He accepted that he and the Claimant selected the materials themselves, including both the boards and the nails, and that they used what

was available at the site. He further accepted that they decided those materials were suitable for the purpose, at least in the sense that they were the only materials available to them. Importantly, he also accepted that while his witness statement described what happened, it did not provide any explanation as to why the Claimant fell.

[20] This aspect of his evidence is significant. While it supports the Claimant's account of the general working conditions, it does not assist the Court in identifying the cause of the collapse. Like the Claimant, Mr. Hippolyte does not point to any specific defect or failure in the scaffold. His evidence therefore reinforces the conclusion that the precise mechanism of the accident cannot be clearly identified on the evidence.

[21] Overall, I find Mr. Hippolyte as a generally honest but limited witness. His evidence is useful in corroborating the Claimant on the fact that the scaffold was constructed by the workers themselves using available materials, but it carries little weight on the issues of causation and damages.

Daniel Cepal (Second Defendant's Representative)

[22] Mr. Cepal's evidence differs in character from that of the other witnesses. He was not present at the time of the accident and did not witness the events in question. His account is based on information provided to him by others within the company and is therefore indirect.

[23] In his evidence, he advances the position that the Claimant was instructed to construct a scaffold using a 2" x 4" platform but instead chose to construct it using a 2" x 2" platform, which was insufficient to support his weight and caused the collapse. This forms the central plank of the Defendant's case on liability, namely that the accident was caused by the Claimant's failure to follow instructions.

[24] However, the weight to be attached to this evidence is limited. As it is not based on direct observation, it depends on the reliability of the information communicated to Mr. Cepal by others who were not called to give evidence. Further, under cross-examination he says it was contained in a report from his supervising staff which has not been produced before the Court. In contrast, the Court has before it the direct evidence of

the Claimant and Mr. Hippolyte, who were present and involved in the construction of the scaffold. In those circumstances, I prefer the direct evidence where there is a conflict.

[25] Additionally, Mr. Cepal's evidence must be considered in the context of the Defendant's broader position, which, as noted earlier, has elements of inconsistency. The Defendant has at different points suggested both that the Claimant was not acting under proper instruction and that he negligently performed an assigned task. This lack of a consistent factual position diminishes the persuasive force of Mr. Cepal's account.

[26] In relation to injury and damages, Mr. Cepal's evidence does not directly address the nature or extent of the Claimant's injuries. However, his case implicitly challenges the seriousness of those injuries by suggesting that the accident was the result of the Claimant's own actions and by highlighting the limited medical treatment received. To that extent, his evidence supports a more conservative approach to the assessment of damages, though it does not provide independent medical insight.

[27] Overall, I treat Mr. Cepal's evidence with caution. It is accepted as providing context as to the Defendant's position and the intended method of construction, but it does not displace the direct evidence of the eyewitnesses or to carry significant weight in determining either causation or the extent of the Claimant's injuries.

ANALYSIS:

[28] In light of those findings, the Court is satisfied that the Second Defendant owed the Claimant a duty of care and that the work being undertaken was inherently hazardous. In such circumstances, the employer was required to provide proper materials and ensure that the work was carried out within a safe system, using appropriate materials and with adequate supervision.

[29] The evidence does not support a finding that such a system was in place. The Claimant was left to construct a scaffold using materials available on site, even after he protested they were inappropriate, without clear guidance or oversight. That constitutes a failure to provide proper materials, a safe system of work and adequate supervision and therefore a breach of duty.

[30] As to causation, although the precise mechanism of failure cannot be identified, the Court is satisfied that the unsafe system materially contributed to the accident. The risk of collapse was foreseeable in the absence of proper materials, structure, and supervision, and the accident that occurred falls squarely within that risk.

[31] At the same time, the Claimant's own role cannot be ignored. He exercised judgment in selecting materials and constructing the scaffold and proceeded despite recognising that conditions were less than ideal. His conduct therefore contributed to the risk which materialised.

[32] In all the circumstances, the Court finds that the accident was caused by a combination of the employer's breach of duty and the Claimant's own actions within that unsafe system.

CONTRIBUTORY NEGLIGENCE:

[33] The Court turns to the question of whether, and to what extent, the Claimant contributed to his own injury. The applicable approach in such cases, particularly in the employment context, is well established. The Court must consider whether the Claimant failed to take reasonable care for his own safety and, if so, what proportion of responsibility should fairly be attributed to him. In doing so, the Court is mindful of the guidance in **Caswell v Powell Duffryn Associated Collieries Ltd**, that an employee acting in the course of his work is not to be judged with the same degree of strictness as a person acting entirely for his own purposes, but in light of the realities and exigencies of the workplace.

[34] In the present case, the Claimant's own evidence establishes that he played an active role in the construction of the scaffold. He accepted that he selected the materials, chose what appeared to be the better options available, and constructed the scaffold according to his own judgment, in circumstances where no detailed instructions were provided. He further accepted that the materials available were not ideal, yet he proceeded to carry out the work. These matters demonstrate that he was not merely a passive participant but was directly involved in the creation of the structure from which he ultimately fell.

[35] At the same time, those findings must be considered against the broader context in which the work was undertaken. The Claimant was engaged in the course of his employment and was required to carry out a task which was inherently hazardous. The evidence shows that he was left to improvise using available materials, without a clearly defined system of work, proper guidance, or adequate supervision. In such circumstances, the Court is slow to place excessive responsibility on an employee for risks arising out of an unsafe system imposed by the employer.

[36] Weighing these matters together, the Court is satisfied that the Claimant failed to take reasonable care for his own safety to some extent, but that the greater share of responsibility lies with the employer whose duty it was to ensure that a safe system of work was in place. Doing the best it can on the evidence, the Court assesses the Claimant's contributory negligence at 25%.

VOLENTI NON FIT INJURIA:

[37] The Second Defendant also relies on the defence of *volenti non fit injuria*, contending that the Claimant voluntarily accepted the risk associated with the work he was undertaking.

[38] The principles governing this defence are well settled. It is not sufficient that a claimant had knowledge of a risk; it must also be shown that he freely and voluntarily agreed to waive any claim in respect of it. In the employment context, the courts have consistently treated this defence with caution, recognising that the existence of an employment relationship often limits the extent to which an employee can be said to have acted voluntarily in accepting risk.

[39] In the present case, the evidence does not support a finding that the Claimant freely and voluntarily accepted the risk in the sense required by the doctrine. While he may have appreciated that the materials were not ideal and that the work carried some degree of risk, he was nevertheless carrying out a task in the course of his employment and within a system not of his own making. There is no basis for concluding that he agreed, expressly or impliedly, to absolve the employer of responsibility for his safety.

[40] The Court therefore rejects the defence of *volenti non fit injuria*.

DAMAGES:

[41] The Court now turns to the assessment of damages. The applicable principle is that stated in **Livingstone v Rawyards Coal Co**, namely that damages should, so far as money can do so, place the Claimant in the position he would have been in had the tort not occurred. In applying that principle, the Court must assess the nature and extent of the injuries actually proved, rather than those alleged.

[42] It is not in dispute that the Claimant sustained an injury as a result of his fall. The medical evidence confirms that he suffered hematuria secondary to trauma and was treated at hospital, including catheterisation and bladder irrigation. The Court accepts that this was a painful and distressing experience, and that the Claimant would have endured discomfort and inconvenience during the immediate aftermath of the accident.

[43] The Court therefore accepts, without hesitation, that the Claimant sustained a real injury accompanied by pain and suffering. This is not a case where the injury itself is in doubt.

[44] The difficulty arises in relation to the **extent and duration** of the alleged ongoing symptoms. The Claimant asserts that he continues to experience pain, functional limitations, and other difficulties affecting his daily life. However, those assertions must be assessed against the totality of the evidence.

[45] The medical evidence indicates that, on follow-up, the Claimant's condition had improved, with resolution of the hematuria and no indication of ongoing structural injury. He was discharged in a stable condition and did not undergo further significant medical intervention.

[46] In addition, the Claimant accepted under cross-examination that he had not provided medical reports to substantiate several aspects of his ongoing complaints, including difficulty walking, inability to engage in sporting activity, and other functional limitations. While the Court does not disregard his subjective experience, such claims require some degree of objective support, particularly where they are said to persist over time.

[47] The Court is therefore unable to accept, on a balance of probabilities, that the Claimant suffers from significant or long-term disability arising from the accident. Rather, the evidence supports a finding that he experienced an acute injury, followed by a period of recovery, with some residual but non-disabling discomfort.

[48] In this regard, the Court considers the well-known principles of **Cornilliac v St. Louis**⁶ that in assessing general damages, the court has to consider: (i) the nature and extent of the injuries sustained; (ii) the nature and gravity of the resulting physical disability; (iii) pain and suffering; (iv) loss of amenities; and (v) the extent to which pecuniary prospects were affected.

[49] The Court is further guided by the need for moderation and proportionality in awards for general damages, as emphasised in **Ward v James**⁷. While the Court also bears in mind, as noted in **Paris v Stepney Borough Council**⁸, that injuries arising in hazardous work contexts may carry serious consequences, the award must ultimately reflect the injury actually proved on the evidence.

[50] Moreover, the Court is minded that awards in personal injury cases are to be informed by judicial experience and by awards made in comparable cases; see **Ward v James**. However, the Court also acknowledges the unavailability of directly comparable cases within the jurisdiction. While the Claimant sought to rely on the case of **Mr Malcolm Richard Snow v Royal United Hospitals Bath NHS Foundation Trust**⁹, the Court does not consider that authority to provide an accurate measure for the assessment of damages in the present case, as the damages there were awarded for permanent impotence and bladder dysfunction, circumstances materially different from those arising in the present case.

⁶ (1965) 7 WIR 491.

⁷ [1966] 1 QB 273.

⁸ [1951] AC 367.

⁹ [2023] EWHC 42 (KB).

[51] In the circumstances, the Court has regard to the case **Harvey Taliam et al v Kurt Duncan et al**¹⁰, where the Claimants suffered soft tissue and musculoskeletal injuries attended by pain and discomfort, but the evidence disclosed substantial recovery and no established permanent disability, with the claimants being discharged within a relatively short period. In those circumstances, awards of \$25,000.00 and \$15,000.00 were made for general damages. While the mechanism of injury in that case differs from the present claim, the authority is of assistance in illustrating the moderate range of awards where a claimant sustains a genuine injury requiring treatment and causing pain and inconvenience, but where the evidence does not establish significant long-term impairment.

[52] By contrast, the Court has considered the decision in **St. Kitts Nevis Anguilla Trading Development Company Limited v Jennifer Archibald**¹¹, where the claimant's injuries included an intersomatic disc posterior annular tear, sacroiliac dysfunction, bursitis and osteoarthritis and was further diagnosed with fibromyalgia as a result of the injury stemming from her slip and fall incident. The court awarded general damages for pain, suffering and loss of amenities in the sum of \$65,000. The authority is not directly comparable on the medical facts. It is, however, useful by way of contrast, demonstrating that awards in the higher range are generally associated with ongoing structural injury, persistent symptoms, or more substantial long-term impairment. No such level of continuing disability or loss of amenities was established on the evidence before this Court.

[53] It is my opinion the present claim falls within the mild to moderate category. Taking all of the abovementioned factors into account, the Court assesses general damages in the sum of **\$25,000.00**.

[54] This figure reflects the initial injury, the invasive nature of the treatment, and a period of recovery involving pain and discomfort, but does not include a significant element for long-term disability, which has not been established.

¹⁰ SLUHCV2018/0418.

¹¹ SKBHCVAP2022/0003.

[55] The Claimant also claims special damages in the sum of **\$660.00**. These have been specifically pleaded and have not been meaningfully challenged. The Court is satisfied that these expenses were incurred as a result of the accident and awards them in full.

[56] The Claimant has not established a sufficiently particularised or supported claim for loss of earnings or loss of earning capacity. The evidence indicates that he returned to work within a relatively short period and subsequently engaged in other employment. In the absence of adequate proof, no separate award is made under this head.

[57] The total damages assessed are therefore \$25,660.00. Applying the reduction of 25% for contributory negligence, the net award is \$19,200.00.

[58] The Claimant is entitled to interest on special damages at the rate of 3% per annum from the date of the accident to the date of judgment, and thereafter at 6% per annum until payment in full. Interest on general damages shall be awarded at the rate of 6% per annum from the date of judgment until payment.

[59] In relation to the First Defendant, the Court notes that the Claimant's case proceeded on the basis that he was a foreman or supervisor who gave instructions on site. However, the evidence does not establish with any sufficient clarity the nature or extent of the First Defendant's role, nor does it demonstrate that he assumed personal responsibility for the system of work under which the Claimant was operating.

[60] The deficiencies identified by the Court relate to the absence of a safe system of work, proper materials, and adequate supervision, matters which fall within the non-delegable duty of the employer. In those circumstances, the Court is not satisfied that any separate or independent liability on the part of the First Defendant has been made out.

ORDERS:

[61] Accordingly, I make the following orders:

- 1) Judgment is entered for the Claimant against the Second Defendant.
- 2) The Claimant is awarded damages in the sum of \$19,200.00, together with interest on special damages at the rate of 3% per annum from the date of the accident to the date of judgment, and thereafter at 6% per annum until payment in full. Interest on general damages shall be awarded at the rate of 6% per annum from the date of judgment until payment.
- 3) The Second Defendant shall pay the Claimant's costs, on the prescribed scale.

**Alvin Shiva Pariagsingh
High Court Judge**

By the Court,

Deputy Registrar of the High Court