IN THE SUPREME COURT OF THE TURKS AND CAICOS ISLANDS

Case No. CL 150/2008

THE HON. MR. JUSTICE CHRISTOPHER GARDNER Q.C.

BETWEEN:

SANDRA ELLIOTT

Plaintiff

-and-

ROYAL BAY RESORT & VILLAS LTD
(dba BEACHES RESORT AND SPA)

Defendant

Hearing: 11 and 12 October 2011

Representation:

Plaintiff: Finbar Grant, Counsel

Defendants: Alexander Heylin, Counsel

JUDGMENT

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1. This is a trial on liability as a preliminary issue. The Plaintiff alleges that on 22 November 2006, when aged 32 years, she slipped and fell in Guiseppe's Restaurant at the Beaches Resort, where she was employed by the Defendant as a hostess. She had been so employed since February 2006. This restaurant is open for breakfast, lunch and dinner. The breakfast session was from 7am until 10.30 am and was served by way of a help-yourself buffet. The Plaintiff told me that at about 10.45am, after the buffet had been cleared away, but when some of the managers were still having breakfast and some waitresses were still around, a guest came into the restaurant wanting breakfast. The Plaintiff told her that breakfast had ended and suggested that she went to the café next door. This did not satisfy the guest who asked for some fruit. The Plaintiff's training was to accommodate the requirements of guests if at all possible, and so she told the guest that she would collect some fruit from the kitchen. She walked into the kitchen by the door with the window, which swings inwards, shown in photograph A51 of the Trial Bundle. She had to go some distance into the kitchen to a serving area next to a large walk-in freezer where the fruit is kept. There was no fruit ready, and so a member of staff had to peel some for her. She then carried this on a plate on a small tray, leaving the kitchen via the door without a window, which swung on a left hand hinge into the restaurant. She had taken about one step, sufficient for the door to swing closed behind her, when she slipped and fell backwards to the floor with her feet pointing towards the

restaurant. She sustained an injury to her back and remembers little thereafter. She was put in a neck brace and carried to an ambulance on a stretcher board.

2. I had a View of the premises. This revealed that there is a wall, about 8 feet long. to the restaurant side of and about 5 feet from these doors to and from the kitchen. This wall is shown in A46 in front of the man h the blue shirt. The wall was obviously intended to screen the traffic of waitresses in and out of the kitchen from the guests using the restaurant. Also located on the kitchen side of the wall was a trolley, the width of which, when placed up against the wall, just enabled the doors, each of which was about 3 feet wide, to swing open. This was very similar if not identical to the trolley shown on the photographs in A 51 and 52. However, at the View the trolley had on it, at the end nearest to the kitchen exit door, a cold water dispenser, from which glasses were filled from a tap at the bottom. Coffee pots and other items had been placed on the trolley prior to being taken into the kitchen. At the other end of the trolley was a free standing ice bucket, which was full of soapy water and a cloth, which was rung out in the bucket and then used to clean the tables. The Plaintiff said that at the time of her accident a receptacle containing soapy water was located on the lower shelf of the trolley. Where I had seen the ice bucket was located a tray stand with a large tray upon it, on which the waitresses would put used dishes, cups, saucers etc. This tray would only be taken into the kitchen when it was full. Mr. Whitehead, the hotel manager, stated that such use of tray stands was standard practice and designed to reduce the traffic in and out of the kitchen. There were other such stands located in the restaurant.

3. The Plaintiff said that she knew that, if there was a spillage, a warning sign should be placed by it until it could be cleaned up and that, if it constituted an immediate risk, it should be cleaned up immediately. Such signs were available by the trolley (see A52). She had been told this at her orientation when first employed in 2005, and was the practice that was used on a daily basis in the restaurant, where there were frequent spillages and breakages in this large family restaurant. In answer to me she said that she believed that she had been in the kitchen for about 10 to 12 minutes, although she said that a time estimate was difficult. It was long enough for her to feel that she was keeping the guest waiting too long and she had asked the person preparing the fruit to hurry up. She said that the member of staff who accompanied her to the doctors told her that she had slipped on coffee, and that coffee was poured from one cup into another on the tray on the stand to maximize the number of empty cups that could be stacked on the tray. Although a statement from that witness had been served, she did not attend to give evidence and no application to admit her statement under the Civil Evidence Ordinance was made. In re-examination the Plaintiff said that her shirt had been taken off at the doctor's and it was wet at the back and had a brown substance on it. Mr. Williams, the duty manager in 2006, who was in the restaurant at the time said that he heard a loud thump and scream and went immediately to the scene where he saw the Plaintiff on the floor, to the right of where the dustpan and brush are shown on photo A50. It looked as if she had just exited from the kitchen. Her feet were pointing towards the restaurant. She was in a lot of pain. She had pieces of fruit on top of her. He stayed until the Plaintiff was carried to the ambulance. He saw no coffee on the floor at that time... He had to write a

log at the end of his shift which would have included a reference to this accident. He did not know where his log was, although he had seen it since the accident.

4. The Plaintiff's evidence as to her clothing and her estimate of time in the kitchen, submitted Mr. Heylin, on behalf of the Defendant, was clearly untrue and should cause the Court to reject her evidence in toto. The Incident Report Form (A27) refers to a report being made of the accident by radio at 10.45. There is also a reference to 10.50. These suggested that the Plaintiff's estimate as to the time she spent in the restaurant was deliberately over-estimated. I reject that submission. Timing estimates are always difficult and often unreliable. Further, the time that she spent in the kitchen does not assist at all as to the length of time that a spillage may have been on the floor near to the exit door. Having seen the Plaintiff give evidence and be cross-examined, I am quite satisfied that she was doing her best to tell me the truth, and that the evidence was entirely consistent with her having slipped. The floor tiles were standard for restaurant user. They became slippery when wet, hence the need for a warning sign when they were wet. The Plaintiff fell to the floor in a manner consistent with slipping and immediately complained of slipping. Further, I am satisfied that the floor in this confined area was at a greater risk of spillages than in the public area of the restaurant, whether from the high traffic of staff carrying items into and out of the kitchen, the accumulation of items, some of which would contain liquid, on the trolley and/or the tray, or from the water dispenser, or from the wringing out of a cloth which I observed during the View.

5. I am therefore also quite satisfied that the slip was caused as a result of a spillage. Mr. Heylin accepted that a spillage in that area, to which the public would not have access, would, on the balance of probabilities, have been caused by a member of staff. He was right to do so and such member of staff should have been aware of that spillage if taking reasonable care and, as Mr. Whitehead stated, he would have expected staff to have been vigilant in that area of high traffic and to have been cleaned up any spillage as quickly as possible. Unfortunately that did not happen. It should have.

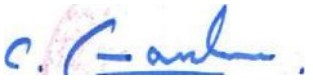
6. In those circumstances, I find on the balance of probabilities that the spillage and therefore the accident was caused by the negligence of an unidentified member of staff for which the Defendant was vicariously liable. Although the Plaintiff is unable to show for how long the spillage had been there, if it had only just occurred and there had been insufficient time to clean it up, a warning sign was readily available at the location. Such was necessary to give warning of a spillage just the other side of a door out of which staff would be exiting the kitchen. Without it, I do not consider that it was contributorily negligent of the Plaintiff not to have seen it.

7. These findings are sufficient to determine this action. However, it should be noted that there was no evidence before me of any investigation of this accident by the Defendant. The Incident Report Form does not bear the name or otherwise identify the person responsible for doing so. There was no explanation as to why not. No risk assessment of the restaurant or of this area of the restaurant, either before or after the accident, was produced. Such an assessment should have been done and, had it been, I consider that it would have identified this area as a high risk area, particularly as staff,

often carrying items, would be exiting the kitchen through a solid door, with little or no opportunity to see any spillage on the floor. This is likely to have led to a modification of the working practices in this confined area by the reduction of the risk of spills and/or by specific instructions to the staff, whether at staff line up or some other time, of the need for particular vigilance in this area, to seek to avoid spills and to identify them and deal with them immediately that they occurred. Although many documents were produced, including part of a Health and Safety Manual supplied to senior staff, where the need for spills to be wiped up immediately and a warning sign placed until this had occurred was spelt out, I heard no evidence to confirm that the particular need for vigilance in this area had ever been drawn to the attention of the staff. Being satisfied that the Defendant should have foreseen the likelihood of a spillage in this area, I am unable to find that the Defendant was able to satisfy its evidential burden of showing on the balance of probabilities the accident would have occurred irrespective of any inadequacy in its system of work or training (see Megaw LJ in Ward v Tesco Stores Ltd. (1976) 1 WLR 810 at 816).

8. There was much consideration during the hearing as to whether one cleaner on duty, to cover Giuseppe's, the café and the large outside area, was sufficient, but I do not consider that such is relevant to this accident, as the spillage in the confined area of high traffic by the kitchen doors needed cleaning up immediately by whoever caused it. It could not wait for the cleaner to be found or for him to discover it on his rounds.

9. In the result I find the Defendant liable for this accident and give Judgment for the Plaintiff for damages to be assessed, together with the costs on the standard basis of the liability trial to be assessed if not agreed. The Plaintiff should seek Directions in relation to the assessment of damages within 28 days hereof.



Justice Chris pher Gardner QC

1 November 2011