

3 IN THE SUPREME COURT OF BRITISH COLUMBIA
4

5 PRINCE GEORGE, B.C.
6 25 JUNE 1986
7

8 BETWEEN:)

9 NANCY-ANNE HORN)

10 PLAINTIFF))

11 AND:)

12 K MART CANADA LTD.)

13 DEFENDANT))

REASONS FOR JUDGMENT
OF THE HONOURABLE
MR. JUSTICE MURRAY

14 D. BYL, Esq. appearing for the Plaintiff

15 W. BURRIS, Esq. appearing for the Defendant
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18 THE COURT (Oral): On November the 26th, 1984, the plaintiff fell
19 down a flight of stairs and partially through a plate glass
20 door at the foot of those stairs in the defendant's
21 department store in Prince George. She was seriously
22 injured. The issue of liability only is before me at this
23 stage. I accept the plaintiff's version of the accident
24 as she gave it in the witness box. I found her to be a
25 frank and honest witness. I heard several expert witnesses
26 with outstanding qualifications testify that the accident
27 could not have happened in the manner the plaintiff described

1 because of the laws of motion and gravitation. They told
2 me all about complicated formulas involving horizontal and
3 vertical velocity. The only problem with their evidence is
4 that they were not there.

5 I do not accept the evidence of Mr. Swanson that the
6 plaintiff told him that she had tripped on the mat at the
7 foot of the stairs. That is inconsistent with the majority
8 of the other evidence in this case, and it is inconsistent
9 also with her final position with reference to the door. It
10 is significant that Mrs. Lewis, who was there when the
11 alleged statement was made, heard no reference to the mat.

12 The first issue in this case is what caused the
13 plaintiff to fall. She testified that the cause of her fall
14 was the fact that the heel of her right foot caught on the
15 top landing, and her counsel argued that her heel caught
16 because of the condition of the rubber tread on that landing,
17 and in particular there was a foreign substance on the floor.

18 Dr. Templer testified that it was more likely that the
19 cause of the fall was the plaintiff's misjudgment as she was
20 taking her initial step to go down the stairs. That theory
21 was impressively advanced by Dr. Templer, who was an architect
22 with an international reputation. And I might well have
23 totally accepted it were it not for the fact that the
24 plaintiff called similar fact evidence.

25 On August the 21st, 1984, Monica Yeatman fell down the
26 same stairs after her foot "stuck" on the stair tread; and
27 early in December, 1984, Olive Miniaci fell on the stairs

1 when "something pulled at the toe" of her right shoe.

2 The tread on the stairs themselves is made of the same
3 material as that on the landing. The tread itself consists
4 of a rubbery material with a pattern of slightly raised
5 disks. Mr. Ernest, an architect called by the plaintiff,
6 questioned the use of this material but merely described it
7 as "not an informed choice."

8 On this branch of the case, while I suspect that it was
9 a defect in the flooring material or a foreign substance on
10 the floor caused the fall, I cannot find that the plaintiff
11 has proved that fact on a balance of probabilities. On the
12 other hand, the defendant has not satisfied me that the
13 plaintiff was guilty of misjudgment. That by no means ends
14 the matter, however, because there are several other
15 allegations to be dealt with.

16 There was no handrail on the left-hand side of the
17 stairs, although it was called for in the original plans of
18 the building and it had originally been installed but it
19 was later removed for some unknown reason. The absence of
20 such a handrail is a clear breach of the building code in
21 force in the city of Prince George at the time. The other
22 matter which is relevant is the fact that the -- that
23 ordinary plate glass was installed in the door through which
24 the plaintiff fell rather than safety glass. Safety glass
25 is now required by the building code. It was not required
26 when the doors were installed.

27 This case falls to be decided under the provisions of

1 section 3 of the Occupiers Liability Act, Revised Statutes
2 of British Columbia, 1979, Chapter 303. That section reads
3 as follows:

4 "(1) An occupier of premises owes a duty to take
5 that care that in all the circumstances of the case
6 is reasonable to see that a person, and his property,
7 on the premises, and property on the premises of
8 a person, whether or not that person himself
9 enters on the premises, will be reasonably safe
10 in using the premises.

11 (2) The duty of care referred to in subsection (1)
12 applies in relation to the

13 (a) condition of the premises;

14 (b) activities on the premises; or

15 (c) conduct of third parties on the premises.

16 (3) Notwithstanding subsection (1), an occupier
17 has no duty of care to a person in respect of
18 risks willingly accepted by that person as his
19 own risks.

20 (4) Nothing in this section relieves an occupier of
21 premises of a duty to exercise, in a particular
22 case, a higher standard of care which, in that
23 case, is incumbent on him by virtue of an
24 enactment or rule of law imposing special standards
25 of care on particular classes of person."

26 Were these premises reasonably safe for the plaintiff
27 when they did not provide a handrail to at least give her
a chance to arrest her -- or slow down her fall and when
they provided ordinary plate glass at the foot of the stairs
when safety glass was available as an alternative? I do
not think so. The mere fact that the building code did not
require safety glass does not relieve the defendant from
liability. In my view, it created a hazardous condition
when it installed and maintained ordinary plate glass at the
foot of this particular flight of stairs. With the
thousands of people using those stairs over the years, it
was inevitable that some day someone would fall down the

1 stairs and be cut by the glass in the door. If armoured
2 safety glass had been used, the plaintiff would not have
3 suffered the cut to her neck which is the subject of this
4 action.

5 I think, too, that the failure to supply a handrail
6 on the left-hand side of the stairs contributed to the
7 failure of the defendant to make the premises reasonably
8 safe. In the particular circumstances of this case, there
9 is a clear causal connection between the plaintiff's injury
10 to the lack of a handrail.

11 I specifically find also that Mrs. Yeatman complained
12 earlier in the -- about the lack of a handrail. This was
13 sometime in August of 1984, a short three months before the
14 accident I am dealing with.

15 It is really a combination of the two factors; namely,
16 the failure to install the handrail and the failure to
17 install the safety glass that in my view casts liability
18 for the plaintiff's injuries on the defendant. The absence
19 of safety glass must not be considered in a vacuum. It must
20 be considered in conjunction with the location of the stairs
21 and in conjunction with the absence of a handrail.

22 I have already indicated that I find the defendant has
23 not proved contributory negligence on the part of the
24 plaintiff, and I accordingly find 100 per cent liability
25 on the part of the defendant.
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