IN THE SUPREME COURT OF BELIZE, A.D 2003.

ACTION NO. 94 OF 2003

(BEVERLY TEMTE	**CLAIMANT**
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(AND	
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(UETA FREE ZONE COMPANY	**DEFENDANT**
(OF BELIZE LIMITED	

Ms. D. Arzu for the claimant.
Mr. J. Courtenay for the defendant.

AWICH .J.

15.3.2006. JUDGMENT

1. *Notes:* *Duty of occupier to customers at a shopping store. The duty of an occupier owed to an invitee, and the duty owed to a licensee are now the same, it is now simply the duty owed by an occupier to a lawful entrant or a person lawfully on the premises.*

2. Ms. Beverly Temte, the claimant, fell at the exit of a store in the Corozal Freezone, Santa Elena, Corozal. She tripped on what was described as "a metal tract" for a gate. The store belonged to UETA Freezone Company of Belize Limited, the defendant company. It was open for customer business, the claimant was a customer. She sustained injuries in the left elbow. The injuries were serious. She was admitted to hospital and surgery was carried out. The claimant has brought a claim in "negligence", to this Court on 28.2.2003, against the defendant.

3. The defendant admitted that the claimant fell off her feet on exiting its store, but denied negligence on its part. It denied that construction or renovation work was being carried out at the store at the time. It also denied that a metal tract for the gate was placed negligently and was dangerous to customers. It contended that the claimant fell because she was looking for her driver who remained outside the store, the claimant did not pay attention as she walked down the ramp and exited. The defendant admitted that it did not display a warning sign at the metal tract, but contended that the metal tract was the normal size protruding only one-quarter or one-half of an inch above the levelled surface, it posed no danger and there was no need to place a warning sign at it, and further, that there was no construction or renovation work at the store for a warning notice to be displayed.

4. Once the defendant denied the claim in negligence and the consequences to the claimant, she had the burden to adduce evidence to prove her claim to a level of persuation that meets the standard of a balance of probabilities. She relied on her own sole testimony, for proof of the conditions at the scene,

and of the facts of the occurrence of the accident. A single testimony is, in law, adequate to prove a claim, but the claimant runs the risk that there will be no other testimony from which omitted details may be obtained, and any vague statement may be explained better.

5. The claimant particularized the negligence that she said was occasioned by the defendant as follows:

> " The defendant or its servants/agents were negligent in:
>
> (a) Allowing the metal tract to be placed immediately infront of the exit ramp in a manner which was unsafe.
>
> (b) Failing to post a sign alerting the plaintiff of the unsafe hollow in the gate tract and its location.
>
> (c) Failing in the premises to take any and all reasonable care to ensure the safe exiting of the plaintiff".

6. The claim herein is more accurately described currently as a claim based on the duty of an occupier of premises, owed to *lawful entrants or persons who are lawfully on the premises* he occupies (not necessarily owns). The duty arises from the fact of occupying or having possession and therefore having control over the premises, even if only for the time being. The duty of an occupier is a special subhead of the general doctrine of negligence. The special rules about the duty of an occupier were originally referred to as the rule in, ***Indermour v Dames (1866) L.R. 1 C.P. 274.*** That was a case of a workman who fell down a shaft and got injured when he went to check a gas

regulator that his employer had fitted earlier. In the case, it was decided that the workman was an invitee, whose presence was incidental to the earlier work done at the request of the defendant, so he was there for the benefit of the occupier, and that the duty of the occupier was to *"to use reasonable care to prevent damage from unusual danger which he knows or ought to know"*. Such reasonable care included guarding, fencing, lighting and displaying notice, which the occupier failed to do. Also see; ***Commissioner for Railways v McDermott [1967] 1 A.C. 169.*** The original duty of the occupier in Common Law was of three kinds depending on whether the claimant was an invitee or a licensee or a trespasser. The duty of an occupier-licensor to a licensee was that the occupier-licensor was to take reasonable care in regard to only concealed danger of which he actually knew. The case of ***Slater v Clay Cross Co. Ltd. [1965] 2 QB. 264***, outlined the rules regarding the duty owed to an invitee, a licensee or a trespasser.

7. The duty owed to an invitee and the duty owed to a licensee were gradually merged by decisions of courts over the years. By the time ***Slater v Class Cross Ltd*** was decided, the Court of Appeal was able to regard an invitee and a licensee as *persons lawfully on the premises*. The Court stated that the common duty of an occupier to persons lawfully on the premises, *"is nowadays simply to take reasonable care to see that the premises are reasonably safe for people lawfully coming onto them"*. That statement of the Common Law is the law in Belize and many Commonwealth Caribbean countries today. The law in England is now regulated by the Occupier' Liability Act, 1957.

8. The duty of an occupier to a trespasser has remained unchanged. The general principle is that a trespasser enters premises at his own risk. The occupier owes no duty to a trespasser other than the duty not to inflict damage intentionally or recklessly on a trespasser known to be present. See ***Commissioner for Railways v Francis John Quilan [1964] A.C. 1054,*** a case in which a trespasser hit by the occupier's train succeed at trial and on first appeal, but lost on appeal to the Privy Council. It was held that mere failure to exercise reasonable care was not a basis for claim by a trespasser, there must, *"be injury due to some willful act involving something more than the absence of reasonable care. There must be some act done with deliberate intention of doing harm or at least act done with reckless disregard of the presence of the trespasser, - reckless disregard of ordinary humanity towards him"*.

9. The imprecise description, in this case, of the nature of the claim in law cannot, however, be the basis on which this case will be decided. Much depends on the facts proved or not proved. The facts must show a breach of a duty of the defendant, owed to the claimant, and which breach caused injuries to the claimant.

10. The defendant admitted that it carried on business at the store, so it admitted that it was an occupier, that is, a person who was in occupation or in possession or had control of the store - see ***Hartwell v Grayson, Roll and Clover Docks [1947] K.B. 907*** and ***Wheat v Lacon & Co. Ltd [1966] A.C. 552.*** The claimant was a customer and therefore deemed an invitee not a licensee, and certainly not a trespasser. The store was open for business, and

customers including the claimant, were deemed "invited" to enter, in the interest of the defendant, the occupier, because customers would do business with the defendant to its benefit. They would take their custom to its store. The claimant must be regarded as a person who *was lawfully on the premises*. The duty of the defendant as an occupier, to persons lawfully entering or on the premises, was *"to take reasonable care in the circumstances prevailing to see that the premises were reasonably safe for the people when they use the premises for the purposes for which they have been invited or permitted onto the premises"* -see ***Slater v Clay Cross [1956] 2 Q.B. 264***.

11. The testimony of the claimant was that on 8.2.2003, she travelled to the Freezone in a vehicle driven by her driver, Mr. Wade. She alighted at the defendant's store and went in. The store had two levels. She went up the stairs and returned by a side rump. On the right, she saw "a raised metal tract, it looked like it had just been put in". She did not state how high the metal tract was above the levelled surface. She described the accident in these words: "I looked to the right. They had a raised tract, it looked like just put in. I thought I cleared it when I reached for the railing. Obviously, I didn't, my foot got caught and I went down". She fell on the side walk just outside the exit. She said that the store was under major construction and there was rubble. There was no warning sign at the metal tract. The claimant said it was necessary to display a warning sign at the scene, but she agreed that it was unnecessary to display a warning sign at the place when the work was completed. She added that if the tract was on her premises, she would display a warning sign.

12. In addition to the testimony of the claimant, two medical reports were included in the evidence. The contents were not contested. In crossexamination the claimant admitted that she had suffered injuries in an earlier motor accident, but that the injuries had long healed. The defendant contended that there had been a lingering injury.

13. After the defence had presented testimonies of its three witnesses, the claimant's testimony left much to be explained in her case. It was not clear how she would "clear" the tract which must have been at or after the exit, and after the ramp, and still try to reach for the railing. By her own testimony it seemed the railing ended short of the exit. The pictures disclosed by her and included in evidence as exhibits during crossexamination, confirmed that. She, however, denied that the picture exhibits depicted the scene at the time of the accident. She said the pictures showed the scene as completed. On the other hand, witnesses for the defence said that the pictures were of the scene at the time of the accident and even at the time of the trial, there had been no change since August or September 2001, when construction work was finished.

14. Perhaps Mr. Wade, the claimant's driver, would have swayed the balance of probabilities about the scene and about how the claimant fell, in favour of the description given in the claimant's testimony, or would have provided a clearer account of the accident.

15. Moreover, a case was not made in the testimony of the claimant that it was

reasonably foreseeable that if a warning sign was not displayed at the metal tract, there would be danger that people might trip on the tract. In my view, that would be the evidence to prove that the defendant failed to take such care as in the circumstances of this case was reasonable to see that persons, such as the claimant who were lawfully on the premises, would be reasonably safe in using the premises for the purpose for which they were on the premises, namely shopping.

16. The evidence does not persuade me that the duty of care owed by the defendant, the occupier (and owner) of the store, to the claimant, an invitee and a person lawfully on the premises, had been breached and negligence was occasioned by the defendant.

17. The claimant's case is dismissed with costs to be agreed or taxed.

18. Delivered this Tuesday the 25th day of March 2006.

At the Supreme Court

Belize City.

Sam Lungole Awich

Judge

Supreme

Court of Belize.