IN THE COURT OF APPEAL OF BELIZE, A.D. 2010

CIVIL APPEAL NO. 30 OF 2009

BETWEEN:

ARTHUR BELISLE	**Appellant**
AND	
ANNA CRAWFORD	**Respondent**

—

BEFORE:

The Hon Mr Justice Mottley	**-**	**President**
The Hon Mr Justice Morrison	**-**	**Justice of Appeal**
The Hon Mr Justice Barrow	**-**	**Justice of Appeal**

Ernest L Staine for the appellant.
Anthony Sylvestre for the respondent.

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8 October 2010, 30 March 2012.

MOTTLEY P

[1] I agree with the judgment of Morrison JA and have nothing to add.

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MOTTLEY P

MORRISON JA

[2] On 8 October 2010, this appeal was heard and dismissed, with costs to the respondent, to be agreed or taxed. Reasons were promised at a later date. Before embarking on my reasons for the decision, I wish on behalf of the Court to apologise to the parties and their counsel for the plainly inordinate delay in producing those reasons. By way of explanation, I can point out the obvious, which is that there have been some discontinuities in the Court's personnel over the period, but I could not possibly – and do not – offer this by way of excuse.

[3] This is an appeal from the judgment of Legall J on 16 October 2009, whereby he gave judgment for the respondent against the appellant on her claim for damages in the sum of $41,250.00 for personal injuries and loss arising out of the appellant's alleged negligence. The learned judge also awarded damages in the sum of $7,500.00 to the appellant against the respondent on his counterclaim for rent and on mesne profits. The appellant was also ordered to pay interest on the net sum due to the respondent of $33,750.00 at the rate of 6% per annum from 1 September 2008 until payment, and costs in the sum of $3,000.00.

[4] In October 1999, the respondent entered into a contract if tenancy with the appellant in respect of premises at 202 East Collet Canal, Belize City. (The appellant disputed that this is the correct address of the premises, but admitted the tenancy.) The Tenancy was in respect of the upper flat of the two storey wooden structure on the premises, at a monthly rental of $250.00. She was at that time employed as an office assistant at the Ministry of Housing earning $150.00 per week.

[5] On 30 August 2001, while the respondent was on the wooden verandah of the upper flat, the floor collapsed, causing her to fall some distance to the ground and to suffer serious physical injuries. Those injuries, which included a severely broken leg, required surgical intervention and extensive rehabilitative treatment here in Belize and subsequently, on two separate occasions, in Havana, Cuba.

[6] In her statement (which was filed with the claim from on 1 September 2008), the respondent pleaded a term of tenancy that the premises would be kept in suitable repair by the appellant as her landlord, and she also relied on section 6 of the Landlord and Tenant Act. She had, it was alleged, as early as February 2001, brought to the attention of the appellant the fact that the upstairs verandah needed urgently to be repaired because of the rotten flooring. However, it was not repaired until June 2002 and among the particulars of negligence was an allegation that the appellant had failed "to take any reasonable steps to have the wooden verandah be [sic] repaired property".

[7] The appellant admitted in his defence that the respondent had brought the need for repairs to the verandah to his attention. However, he averred, the respondent was warned not to use the verandah until the repairs were completed and, in particular, "not to do laundry on the said verandah as this was the cause of the rotting". Despite the respondent being in arrears of rent, the repairs were in fact commenced in June 2002, "but could not continue as the [respondent] kept throwing water on the workmen. The respondent ignored the warning not to do laundry on the verandah and continued to do so clandestinely and it was while she was so engaged that the accident, which was admitted, occurred.

[8] The appellant also pleaded that at the time of the accident the respondent was a trespasser at the time of the accident, having been served on 30 June 2002 with notice to quit the premises on 31 July 2002, for failure to pay rent when due. Further, the appellant averred, the respondent was guilty of contributory negligence, had voluntarily consented to accept the risk of injury and her claim was barred by section 4 of the Limitations of Actions Act, all of which were denied by the respondent in her reply. The appellant also counterclaimed for arrears of rent.

[9] After a trial over three days which ended on 30 September 2009, Legall J delivered a written judgment on 16 October 2009. The issue of limitation was dealt with on a preliminary point. It was resolved by the judge on the basis of section 55(b) of the Interpretation Act, which excludes from the …… of time for limitation purposes weekend days, with the effect on the facts of the instant case

that it had in fact been filed just within time. Nothing now turns on the judge's ruling on this point, from which there has been no appeal.

[10] Legall J heard evidence from both the appellant and the respondent. In addition to his own evidence, the appellant relied on the evidence of Mr Selvin Hernandez, a carpenter, who testified that in June 2002, while he and the appellant were repairing the appellant's back verandah, they were forced to stop because the respondent "frustrated our efforts by throwing water all over us". Legall J preferred the respondent's evidence on all disputed matters. Thus he disbelieved the appellant's evidence that he had warned the respondent not to use the verandah until he repaired it, he believed the respondent that the repairs were in fact done and accepted that the verandah collapsed because the beams were not repaired, despite the respondent's assumption that they had been.

[11] In any event, Legall J found, even if the appellant had told the respondent not to use the verandah, he was under "a further duty to fence or cordon off the verandah until … [it] was completed repaired; and to tell the [respondent], as he was an experienced builder of houses, that the verandah was liable to collapse if she went thereon" (para. 13 of the judgment). The appellant had failed to exercise his duty to take reasonable care to prevent injury or damage to the respondent and this he had failed to do.

[12] The learned judge rejected the appellant's contention that the respondent had accepted the risk of injury and therefore waived her claim in respect of it, on the ground that there was no evidence of this. However, as regards contributory negligence, he found that the respondent had to some extent to take reasonable precautions for her own safety and found her to be 25% to blame for the accident. On the question of her being a trespasser, Legall J held that, even if a notice to quit had been served on the respondent, which she denied, she did not thereby become a trespasser upon the expiry date of the notice, but held over on a tenancy at sufferance.

[13] The learned judge then gave detailed consideration to the question of damages, taking into account the nature, extent and treatment of the respondent's

injuries, her resultant disability, pain and suffering, loss of amenities and loss of earning capacity. As regards general damages, he considered comparable awards from other jurisdictions (warning himself of the need to bear in mind currency and point in time limitations inherent in such comparisons). In the result Legall J arrived at a figure of $55,000.00 for general damages, inclusive of $15,000.00 for loss of earning capacity, but reduced by 25% on the basis of the respondent's contributory negligence, producing a total of $41,250.00 for ……. damages.

[14] The judge made no award as regards special damages, none having been pleaded.

[15] Finding the counterclaim for $9,625.00 for rent and mesne profits partially proved, Legall J awarded the appellant $7,500.00 and gave judgment in the terms already indicated.

[16] By a notice of appeal filed on 30 December 2009, the appellant challenged Legall J's judgment on five grounds, as follows:

> "The learned trial judge –
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> "(1) Erred in law in determining that the Claimant was not a trespasser.
>
> (2) Never brought into consideration the corroborative evidence of the Defendant's witness re frustration by the Claimant of the defendant's efforts to repair nor the Defendant's offer of similar accommodation to the Defendant until the repairs to the building were completed.
>
> (3) Erred in determining a tenancy existed between the parties re 202 East Collet Canal Street, Belize City.
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> (4) Wrongly accepted evidence of the claimant that she was working and earning $1590.00 per week.

(5) Wrongly accepted evidence re injury to the Claimant."

[17] On ground 1, Mr Ernest Staine, who appeared for the appellant in this court, as he had in the court below, referred us to the evidence given by the appellant that he had personally served the respondent until "written legal" notice to quit on 30 June 2002. Mr Staine submitted that if the appellant was truthful on this point, then after expiry of the notice to quit the respondent became a trespasser and the appellant had a lesser duty of care (in reliance on **British Railways Board v Herrington [1972] 1 All ER 749** and **Pannett v P McGuinness & Co Ltd [1972] 3 All ER 137**).

[18] On ground 2, Mr Staine referred to the evidence of Mr Hernandez to support the complaint that Legall J had failed to take it in account as "corroborative evidence", and submitted that, the respondent having failed to accept the appellant's offer of "other accommodation" until the completion of the repairs, she had accepted the risk of injury.

[19] On ground 3, Mr Staine submitted that there was no corroboration of the respondent's evidence that she was a tenant at 202 East Collet Canal Street and that the appellant's assertion that he had let to her premises at 19 Zeitown Street, Belize City had not been disputed.

[20] On grounds 4 and 5 Mr Staine's submission was that the respondent's evidence as to both her earnings (allegedly $150.00 per week) and her injuries was not sufficiently probative.

[21] Mr. Sylvestre, who had also appeared for the respondent at the trial, was content to support Legall J's judgment on the basis that the judge was correct for the reasons that he gave in his judgment.

[22] In my view, this appeal cannot succeed on any of the grounds filed. As regards ground 1, **British Railways Board v Herrington**, upon which Mr Staine relied, established that although, as a general rule, a person who trespassed on the land of another did so at his own risk, and the occupier of the land did not owe him

the common duty of care owed to persons lawfully on the land, it did not follow that an occupier was never, in any circumstances, under a duty to take steps to protect the trespasser from potential danger. Where an occupier knew that there were trespassers on his land and also knew of facts giving rise to potential dangers to persons on the land who were unaware of those facts, he was under a duty to take reasonable steps to enable the trespasser to avoid the danger.

[23] In other words, it is not the law that no duty of care is owed by an occupier of land to trespassers. In the contrary as Lord Denning MR put it in **Pannett v P McGuinness & Co Ltd**, the other case cited by Mr Staine on this point (at page 141), "[t]he long and short of it is that you have to take into account all the circumstances of the case and see then whether the occupier ought to have done more than he did".

[24] In the instant case, on the evidence which the judge accepted, the respondent remained on the premises after June 30, 2002, believing that the verandah had been properly repaired, which it had not been. This, in my view, created a clear potential of danger to the respondent, which it was the appellant's duty to take reasonable care to protect her against and which he failed to do, as the judge found. So that, it seems to me, even on the appellant's case, he would still be liable.

[25] But in any event, I am also clearly of the view that the respondent after expiry of the notice to quit, even if it was in fact served on her (and the judges does not appear to have made a specific finding on this), she would not thereby become a trespasser. She would, as the judge found, have held the premises on a tenancy at sufferance.

[26] On ground 2, it is true that, as Mr. Staine submitted, Legall J made no specific reference in his judgment to Mr Hernandez's evidence in support of the appellant on the question of whether the respondent had deliberately frustrated the repair efforts. However, it is clear from the finding he did made regards the appellant's account of what had taken place that he rejected that version of events entirely, preferring the respondent's evidence to the contrary. Implicit in this finding, therefore, it seems to me, is an equal rejection of Mr Hernandez's evidence.

[27] Similarly, in respect of the appellant's evidence that he had offered the lower flat on the same premises to the respondent, the judge again made no specific finding. However, it is again in my view plainly implicit in his emphatic rejection of the appellant's evidence that the respondent had been warned not to use the verandah, and of the plea of *volenti*, that Legall J also rejected this evidence.

[28] As regards ground 3 (202 East Collet Canal Street v 19 Zeitown Street), it is entirely unclear to me why it is still being persisted with. While there may obviously have been some confusion in the respondent's mind as to the exact street address of the flat which he rented (and in this regard, it is, I accept, the appellant who would know the true position), there is no dispute that she did rent a flat from the appellant and that she suffered injuries as a result of a fall through the upstairs verandah floor of that flat. The persistence in this ground in this ground therefore rehearses, it seems to me, a plainly barren controversy.

[29] Grounds 4 and 5 raise pure credibility issues, in respect of matters on which Legall J heard and saw the evidence being given by the respondent. He accepted her evidence and this Court cannot in those circumstances, as a matter of longstanding principle interfere with his findings.

[30] These then are my reasons for concurring in the decision of the court which was announced on 8 October 2010.

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MORRISON JA