Hilary Term
[2026] UKPC 5
Privy Council Appeal No 0077 of 2023

JUDGMENT

Tyson Strachan (Appellant) *v* Albany Resort Operator Ltd (Respondent) (The Bahamas)

From the Court of Appeal of the Commonwealth of The Bahamas

before

Lord Reed
Lord Burrows
Lord Stephens
Lady Rose
Lady Simler

JUDGMENT GIVEN ON
9 February 2026

Heard on 23 June 2025

Appellant
Katherine Deal KC
Rory Turnbull
(Instructed by Sheridans Solicitors LLP (London))

Respondent
Charles Bagot KC
Sara Ibrahim
Giahna Soles-Hunt
(Instructed by Glinton Sweeting O'Brien (The Bahamas) and Sinclair Gibson LLP (as London agents))

LORD STEPHENS:

Introduction

1. This is a second appeal against the dismissal of: (a) a claim in negligence by Tyson Strachan (the plaintiff), for damages for personal injuries and loss and damage sustained by him as the result of an accident which occurred on 11 April 2013 whilst in the course of his employment by the defendant, Albany Resort Operator Ltd ("the claim in negligence"); and (b) the plaintiff's claim that he was "unfairly disengaged" (sic) from his employment by the defendant ("the claim for being unfairly disengaged from his employment").

2. Both claims came on for trial before Bowe-Darville J ("the judge"). At the conclusion of the plaintiff's case, the defendant made a submission of no case to answer. The judge put the defendant to its election, and it elected not to call evidence. In her judgment dated 8 October 2020 (2015/CLE/gen/00452) the judge acceded to the defendant's submission of no case to answer in relation to the plaintiff's claim in negligence. The judge dismissed that claim. The judge also dismissed the plaintiff's claim for being unfairly disengaged from his employment. The judge stated, in para 1 of her judgment, that "the plaintiff claims that he was dismissed while on sick leave". She said, in para 3, that it was "only in counsel's submissions that he addresses the unfair dismissal". In para 7 of her judgment, in a passage which refers to the claim in negligence, but which on a fair reading it is appropriate to read across to the plaintiff's claim for being "unfairly disengaged", the judge stated that "the plaintiff is under a duty to set out all the particulars … of his claim in his pleadings". As the Board sets out below, there were in effect no particulars in relation to this claim.

3. On appeal, the Court of Appeal (Isaacs, Crane-Scott and Jones JJA) dismissed the plaintiff's appeal against the dismissal of his claim in negligence: SCCivApp No 67 of 2021. In relation to the plaintiff's claim for being unfairly disengaged from his employment the Court of Appeal held, at para 2 of the judgment of the court delivered by Jones JA, that the defendant "severed the [plaintiff's] service after making the required statutory payments to the [plaintiff]". Thereafter, the Court of Appeal also dismissed the plaintiff's appeal against the dismissal of his claim for being unfairly disengaged.

4. The plaintiff appeals as of right to the Board.

Factual background

5. Between 9 September 2010 and 2 December 2013, the plaintiff was employed by the defendant as a housekeeping supervisor at its Albany holiday resort ("the resort") on the island of New Providence in The Bahamas.

6. The resort offers residents and visitors not only accommodation and guest services but also the opportunity to enjoy a selection of amenities including the use of the swimming pool near where the plaintiff's accident occurred.

7. The defendant, as the plaintiff's employer, was bound to use reasonable care to provide safe premises for the plaintiff to work in and to use reasonable care to keep them safe. The area of the swimming pool was an area in which the plaintiff was required to work. Therefore, the defendant owed the plaintiff a duty to use reasonable care to provide the pool area as a safe place for the plaintiff to work in and to use reasonable care to keep the pool area safe. In order to perform that duty, the defendant employed members of staff, including the plaintiff. It was part of the plaintiff's job to check for hazards including slipping hazards in the area of the pool and to take precautions by, for instance, drying the affected area and/or erecting warning signs.

8. On Thursday 11 April 2013, sometime around 6.30 am, the plaintiff, in the course of his employment, was undertaking his regular duties in an area adjacent to the swimming pool ("the pool attendant's area"). His regular duties included delivering bags of beach towels to a storage room in the pool attendant's area. A standard bag contains 30 folded towels. The plaintiff brought six bags of towels to the outdoor pool tiled area ("the outside area") in a golf cart. Thereafter, the plaintiff moved the bags of pool towels from the outside area into the indoor tiled area ("the indoor area") to store them. To do so he first carried the six bags of towels, one at a time, from the golf cart, and piled them up close to a glass door between the outside and indoor areas. The plaintiff opened the glass door. The plaintiff in his evidence stated that this door "swings quick". To keep it open he placed a bag of towels on the ground adjacent to it so that it acted as a door stop. Whilst carrying the six bags of towels from the golf cart and piling them up close to the glass door, opening the glass door and placing one of the bags of towels against it, the plaintiff had an opportunity to observe the outside area together with the exact point at which he subsequently slipped and fell. However, he did not notice any water or any other substance on the tiles either in the outside area or in the indoor area. If he had done so, then he would have been under an obligation, as an aspect of his job, to dry the tiles by using a mop and a bucket or, for instance, by using one of the towels.

9. After propping the glass door open with a bag of towels, the plaintiff then moved five bags of towels to the indoor area from the outside area. He moved these bags one at a time. This meant that he went over the tiles in the area of the glass door on five occasions

on his way in and on a further five occasions when he came back out again. On each of those ten occasions the plaintiff did not notice any water on the tiles either in the outside area or in the indoor area. On each occasion, without any mishap, he passed over the exact point at which he subsequently slipped and fell.

10. The tiles in the outside area have a surface designed to reduce the risk of slipping accidents occurring. The judge described the tiles as being "stone rough-textured tiles". There was no evidence at trial to suggest that the tiles in the outside area were unsuitable for use adjacent to a swimming pool where it can be anticipated that there will be water on the tiles through persons using the pool.

11. There was no evidence at trial as to the characteristics of the tiles in the indoor area or as to the degree of hazard that they would present if they became wet. The Board is prepared to proceed on the basis that the tiles in the indoor area are standard tiles not designed to reduce the risk of persons slipping on them if wet.

12. The plaintiff stated that, after he had placed five bags in the storage room in the pool attendant's area, he then removed the bag that he had placed on the ground to keep the glass door open. In the statement of facts and issues for the trial court the plaintiff alleged that as he "proceeded to walk from the outdoor pool tiled area onto the indoor tiles area all of a sudden [he slipped] and fell on the wet tiles". In the statement of claim it is asserted that he believed that the wet substance on the tiles was water. He also alleges that, as a result of slipping and falling, "he hit his head, neck and lower back on the tiled floor" sustaining injuries to his neck and back and that, as a result, he had been unable to work. In his witness statement the plaintiff stated that prior to his slipping and falling there were no wet floor notices or signs in the area and he was unaware that the floor was wet.

13. At trial the plaintiff gave evidence that he did not notice any water on the floor before he fell. He accepted that if he had seen water on the floor, he would have cleaned it up. The plaintiff was asked in cross-examination where exactly he fell and where exactly were the wet tiles. He replied that "they were on the outside". He clarified that this was on the outside of the door by which he meant the glass door from the outside area to the indoor area. The plaintiff was then asked whether his foot (or feet) that actually slipped was (or were) inside or outside the door. The plaintiff replied that he could not say. He was asked where the water was that he claimed to have slipped on and he replied that it could have been either on the inside or the outside. Based on this evidence the judge held that whilst the water *could* have been on the inside or outside of the door (para 4 (x)), the wet tiles *were* on the outside of the pool attendant's area (para 4 (viii)). This meant that the wet tiles on which the plaintiff slipped were the rough-textured sandstone type tiles in the outside area. The plaintiff accepted in his evidence that these tiles do not really get slippery when wet.

14. In his evidence the plaintiff stated that he did not know where the water came from or how much water there was. The plaintiff also stated that he did not recall any previous occasion involving water gathering or pooling in the area where he slipped and fell. He also stated that as far as he was aware nobody else had previously fallen in that area.

15. In his evidence at trial the plaintiff stated that, after he had fallen, he could feel what he believed was water, as the back of his shirt was entirely wet.

16. Prior to trial and in the defendant's statement of facts and issues dated 23 July 2019, the defendant accepted that the plaintiff "slipped and fell on wet tiles by the indoor tiled area near the lifeguard area".

17. On the date of the plaintiff's accident Mr Eric Tai was employed by the defendant as a receiving clerk. In his witness statement he recounted that at about 7.30 am on 11 April 2013 he was in the pool area and noticed several people standing around the plaintiff who was lying on the ground near the doorway of the pool office. Mr Tai stated that he noticed that the ground appeared to be wet though the usual "wet floor" signs were not in place. At trial Mr Tai was called as a witness on behalf of the plaintiff. He was asked what part of the ground was wet and replied that most of the area was wet and volunteered that "it had rained earlier that morning".

18. The Board makes several observations in relation to Mr Tai's evidence and the evidence of the plaintiff. First, the only evidence at trial as to the source of the water was from Mr Tai. He attributed the wet surface to rain. Secondly, there was no evidence at trial that the presence of water in the outside area was due to, for instance, any cleaning activity carried out by an employee of the defendant for whom the defendant would be vicariously liable if the employee had negligently failed to erect wet floor signs. The evidence at trial simply remained that the outside area was wet due to rain. It is also fair to record that the defendant could have suggested, but did not, that the reason why the plaintiff fell was that, as he removed the bag of pool towels which was holding the glass door open, it suddenly swung closed causing him to lose his balance and to fall. Such an explanation would have been consistent with the history given by the plaintiff to Dr Ekedede. However, as the defendant chose not to make that suggestion the evidence remained that the plaintiff slipped and fell on a wet surface. Thirdly, the rain fell on the outside area and there was no evidence at trial of any slope down from the outside area to the inside area so that rainwater could have run down and entered the inside area under the glass door causing the tiles in the inside area to become wet. Fourthly, there was no evidence as to when it had rained so that there was simply no evidence at trial that the tiles in the outside area had been wet for a significant period of time such that the defendant, by its servants or agents exercising reasonable care, should have noticed a slipping hazard and erected wet floor signs. Fifthly, there was no evidence that it was reasonably necessary to erect wet floor signs in the outside area if it had rained, given that the tiles in that area were rough-textured sandstone type tiles. Sixthly, there was no

evidence that there were, or were likely to have been, other employees of the defendant in the pool area after it had rained and before the plaintiff slipped and fell. Therefore, even if it was necessary to erect wet floor signs on some occasions after it had rained, there was no evidence that some other employee of the defendant ought to have observed, but did not, that it was necessary to do so and ought to have erected, but failed to erect, warning signs. Seventhly, Mr Tai's evidence that it had rained so that the outside area was wet supported the judge's finding that the wet tiles were on the outside of the pool attendant's area. Eighthly, the amount of rainwater which was present is also to be seen in the context that the plaintiff, who was in the pool area, who had moved six bags of pool towels and whose job it was to check for slipping hazards, did not observe any water let alone that the whole area was wet.

19. After he had fallen, the plaintiff remained on the premises for over an hour. During that time photographs were taken showing him lying on the ground with his feet towards the indoor tiled area and his head just outside the glass door. The plaintiff was transported by ambulance to hospital where he was admitted into the care of Dr Winston Phillips for some six days. After being discharged from hospital, he underwent physiotherapy. At a later date, an MRI of his cervical and lumbar spine was undertaken which, according to the medical report of Dr Ekedede, Consultant Neurosurgeon, confirmed cervical/lumbar spine discogenic stenosis/spondylosis from C4 to C7 and at L3-L4.

20. On 18 March 2014 the plaintiff underwent a cervical laminectomy at C4 to C7 and lumbar decompression at L3-L4.

The claim in negligence

21. In his pleadings and at trial the plaintiff relied solely on the tort of negligence and did not allege any breach of statutory duty.

22. To establish liability in the tort of negligence the plaintiff must prove that the defendant's careless conduct caused him to sustain damage. Dr Ekedede, the expert medical witness retained on behalf of the plaintiff, did not attend trial and did not give evidence. Therefore, there was no expert medical evidence at trial in relation to the injuries sustained by the plaintiff. One of the reasons advanced by the judge for dismissing the plaintiff's claim in negligence was that, as there was no medical evidence, the plaintiff had not proved any damage. The judge, at para 19, stated: "[The plaintiff] … did [not] call evidence in support of his claim for damages. No medical evidence was adduced [to] substantiate the injuries sustained, prognosis or his inability to work." Similarly, one of the reasons advanced by the Court of Appeal, at para 41, for dismissing the plaintiff's appeal in relation to the claim in negligence was that "there was no medical evidence to prove that there was an injury or that the injury was because of negligence by the [defendant]".

23. The Board respectfully disagrees that the plaintiff had not proved that he had sustained an injury as the result of slipping and falling on 11 April 2013. The plaintiff's evidence was that because of slipping and falling he had acute pain in his neck and back. Consequently, he had to be admitted to hospital for six days and to undergo physiotherapy. This evidence was not only uncontradicted but the defendant in its statement of facts and issues dated 23 July 2019 accepted that, because of slipping and falling, the plaintiff had sustained injuries. The Board accepts that for the plaintiff to establish a causal connection between his fall and the cervical laminectomy and the lumbar decompression, expert medical evidence was required. However, the plaintiff by virtue of his own uncontradicted evidence had established that he had sustained at the very least significant soft tissue injuries to his neck and back. The judge and the Court of Appeal ought not to have dismissed the plaintiff's negligence claim on the basis that the plaintiff had not established damage as the result of slipping and falling.

24. The judge in addressing the plaintiff's claim in negligence stated, at para 6, that it was the plaintiff's responsibility to avert the danger resulting from a wet tile. The judge also stated that the preventative measures "all fall squarely on the plaintiff as an employee of the defendant (servant or agent) who had that responsibility to ensure that none of these dangers were present". The judge's focus at this stage of her judgment was on the plaintiff's carelessness and it might be suggested that she failed to address the anterior questions as to whether the defendant was in breach of its duty to provide and maintain a safe place of work for the plaintiff or whether the defendant was vicariously liable for the negligence of another employee. However, on a fair reading of her judgment the judge did address these anterior questions. She held, at para 6, that the "presence of water at the pool attendant's area did not arise from any want of care on the defendant's part". She also held, at para 19, that the plaintiff had "not presented evidence sufficient to prove the alleged negligence".

25. The Board determines that it was open to the judge to find that the "presence of water at the pool attendant's area did not arise from any want of care on the defendant's part" and that the plaintiff had "not presented sufficient evidence to prove the alleged negligence".

26. On the evidence, rain caused the tiles in the outdoor area to be wet. There was no evidence that some other employee, for whom the defendant would be vicariously liable, caused water to be on the tiles. It was open to the judge to find that the "presence of water at the pool attendant's area did not arise from any want of care on the defendant's part".

27. The area of the glass door was not an area where the defendant knew, or ought to have known, of the likelihood of water being on the tiles and of a danger to employees and guests if the water was not dried.

28. The judge held that the plaintiff slipped on the outside of the pool attendant's area which means that he slipped on the rough-textured sandstone type tiles. The defendant had taken the precaution of putting down tiles in this area which were designed to reduce the risk of slipping accidents occurring. There was no evidence suggesting that this precaution taken by the defendant was insufficient to discharge its duty of reasonable care to provide and maintain a safe place of work for the plaintiff if the tiles were wet. Indeed, the plaintiff agreed that this precaution was effective.

29. There was no evidence that some other employee (for whose negligence the defendant would be vicariously liable) was in, or was likely to have been in, the pool area and had negligently failed to observe the wet condition of the tiles after it had rained and had failed to take precautions in relation to a slipping hazard. Indeed, even if there was some other employee in the area after it had rained, given that the plaintiff, despite having ample opportunity to do so, did not observe the wet condition of the tiles in the outside area, it is hard to see why the other employee would be at fault for not doing so.

30. For those reasons and for the reasons set out in para 18 above, the judge was correct to dismiss this claim, and the Court of Appeal was correct to dismiss this aspect of the plaintiff's appeal.

The claim for being unfairly disengaged from his employment

31. The pleading of the plaintiff's claim that he was unfairly disengaged from his employment was inadequate. The only pleading in the statement of claim was the allegation, at para 6, that: "… the plaintiff was unfairly disengaged from his employment whilst on sick leave as a result of an industrial accident". The Board observes that no particulars were given as to whether this was a claim for breach of contract, or whether it was a statutory claim for unfair dismissal, or whether it was a claim for loss of earnings consequent on the injuries he received in the accident. Furthermore, no particulars were given as to why it was alleged that the so-called disengagement was unfair or as to the remedy being sought by the plaintiff. At the hearing before the Board Mr Turnbull, on behalf of the plaintiff, clarified that the claim was not a claim for loss of earnings consequent on the injuries the plaintiff had received in the accident nor was it a statutory claim for unfair dismissal. Rather, it was a claim for breach of the plaintiff's contract of employment. Mr Turnbull correctly accepted that at common law, absent any specific contractual terms, the defendant was entitled to terminate the plaintiff's contract of employment by giving notice to the plaintiff and either employing and paying him during the notice period or terminating his employment and making a payment to the plaintiff in lieu of notice.

32. By letter a dated 2 December 2013, which, on the plaintiff's evidence, was given to him in February 2014, the defendant informed the plaintiff of the termination of his employment "with notice" "effective December 2nd 2013". The letter stated:

> "In compliance with the Employment Act 2001, Part VII, section 29(b) please find enclosed the company's cheque in the amount Nine Thousand Six Hundred and Seven Dollars and Eight cents ($9,607.08) which represents FULL AND FINAL SETTLEMENT of the terms of your employment as noted below:-
>
> | | |
> |---|---|
> | Earned Vacation Pay W/E: (2013–2014) | $987.98 |
> | Notice Pay | $2,140.62 |
> | Severance Pay | $6,803.08 |
> | Less Medical Insurance | $324.60 |
>
> (The Medical Insurance will be paid until the end of December)."

33. Mr Turnbull stated that on the evidence at trial the termination of the plaintiff's employment was retrospective in the sense that he was informed in February 2014 that he had been dismissed on 2 December 2013. As a result, Mr Turnbull asserted that whilst the plaintiff had received notice pay of $2,140.62, this may have been inadequate in that it may not have covered the period between 2 December 2013 and February 2014. Furthermore, the plaintiff might have been entitled to medical insurance payments between 2 December 2013 and February 2014 and additional vacation pay. The claim was therefore for forms of remuneration to which the plaintiff might have been entitled, but which he had not received. The Board observes that prior to trial it would have been a simple matter for the plaintiff to have calculated the amount of notice pay which he ought to have received, or the additional cost of medical insurance or the amount of the additional vacation pay. Thereafter, it would have been a simple matter to set out these amounts in the plaintiff's pleadings. If the plaintiff faced any difficulties in calculating any of these amounts, then he ought to have taken the matter up in correspondence with the defendant and he ought to have sought and obtained discovery from the defendant. Moreover, at trial the plaintiff could have given evidence that the notice pay was inadequate, or that he ought to have been covered by medical insurance between 2 December 2013 and February 2014, or that he ought to have received additional vacation pay. He did not do so. There was no such evidence. At the conclusion of the plaintiff's

evidence his claim for being unfairly disengaged remained wholly opaque, completely unparticularised, and without any evidential foundation. Indeed, the lack of particularisation continued before the Board as, for instance, Mr Turnbull was unable to state what was the plaintiff's notice entitlement. It is elementary that a claim must be particularised and there must be evidence to support it. The judge was correct to dismiss this claim, and the Court of Appeal was correct to dismiss this aspect of the plaintiff's appeal.

Conclusion

34. The Board will humbly advise His Majesty to dismiss the appeal.