

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**COMMON LAW AND EQUITY DIVISION**  
**2004/CLE/GEN/00586**

**between**

**RHONDA GAUL**  
**Plaintiff**

**and**

**OTTERSHAW INVESTMENT LIMITED**  
**d/b/a SANDALS ROYAL BAHAMIAN RESORTS & SPA**  
**First Defendant**

**and**

**SANDALS RESORTS INTERNATIONAL LIMITED**  
**Second Defendant**

**BEFORE:** His Lordship The Honourable  
Mr Justice K Neville Adderley

**APPEARANCES:** Mr Anthony McKinney, Ms Kari Sherman with him, for  
the Plaintiff

Mr Randol Dorsett for the Defendant

**24 June 2008 and 8 October 2009**

**DECISION**

## **Adderley, J**

The plaintiff and her husband had arrived in The Bahamas the night before. This was their first visit to The Bahamas and they were paying guests of the defendant's Hotel ("Sandals"). On 5 February 2004 after breakfast about 9:00am, they wanted to see the beach. They then left their room and walked across the pool patio in the direction of the beach. To reach the beach they had to descend to a lower deck on the patio. That was accessible either by a stairway with three steps or an immediately adjacent ramp. They used the ramp instead of the stairs. The plaintiff who was following her husband down the ramp slipped when her right foot stepped on the ramp, fell, and injured her right ankle. They never got to see the beach. She now sues Sandals for negligence.

2. The adjacent stairway had a railing which ran the full length of the stairway but the railing of the ramp did not run the full length of the ramp. The ramp was used on a daily basis by the bar and water sports attendants taking trolleys with supplies and equipment to the lower deck. It was also for use by persons in wheelchairs. There was a bright yellow line at the entrance to the ramp. The yellow line was meant to indicate the entrance to the ramp but no signage warning of danger or advising persons to take the stairway instead of the ramp was in place.

3. According to Mr Ali Bain, the manager of the hotel, there was a cone nearby which read ("Caution Wet Floor"). He examined the area about 10 minutes after the accident and found no misplaced objects or adverse condition of the ramp that could have caused or contributed to the accident. He stated that he was with the company for 10 years and the ramp has been in the same condition since then and they have never had an accident on it. The plaintiff weighed 250-300 pounds and admitted she had broken her right leg before. According to her she was wearing footwear made for walking and hiking not for

smooth surfaces. There was no one else out and about in the area of the stairs or ramp or on the patio at that time of the morning.

4. Mr Dunkin R. Bowe, beverage manager, who had worked with the hotel for 11 years confirmed that there had never been an accident on the ramp, that it was used frequently several times a day by staff, and by persons in wheelchairs, and that the surface was not slick or uneven. He stated that the ramp is near the beach. It was possible that sand could be deposited on it from time to time but there was a routine cleaning of the area at 7:30am each morning and thereafter regularly throughout the day.

5. Pictures taken by Mr Gaul the day following the accident showed what appeared to have been repairs to the ramp and from the pictures the texture of the repaired part on the right side appeared to be a smother texture of cement than the original finish. Mr Gaul was also able to comment on this from his experience as a contractor.

6. It was agreed that only the issue of liability would be decided at this time. The parties agree that the hotel owed the plaintiff a duty of care.

## **THE LAW**

7. The plaintiff was an invitee of Sandals. The common law duty which an occupier owes to an invitee is succinctly summarized in Halsbury's Laws of England 1912 Edition Volume XXI at paragraph 656 as follows:

“656. The duty of the occupier of premises on which the invitee comes, is to take reasonable care to prevent injury to the latter from unusual dangers which are more or less hidden, of whose existence the occupier is aware or ought to be aware, or, in other words, to have his premises reasonably safe for the use that is to be made of them. If this duty is neglected, an invitee who is injured thereby can recover damages in respect of his injuries...”. See for

example *Indermaur v Dames* (1866) L.R. 1 C.P. 274 and *Griffiths v London and North-Western Rail. Co.* (1866) 14 L.T. 797 cited by the plaintiff.

8. The invitee also has a duty. He cannot recover damages against an invitor if he makes unreasonable use of the premises and thereby suffers injury. In ***Hillen and Pettigrew v I.C.I. (Alkali), Ltd.***, [1936] A.C. 65 at p. 69 Lord Atkin (Lords Thankerton and Wright concurring) gave this opinion:

“My Lords, in my opinion this duty to the invitee only extends so long as and so far as the invitee is making what can reasonably be contemplated as an ordinary and reasonable use of the premises by the invitee for the purposes for which he has been invited... As Scrutton L J has pointedly said “when you invite a person into your house to use the staircase you do not invite him in to slide down the banister”

9. In ***London Graving Dock Co. Ltd. v Horton*** (1951) A.C. 737 (per Lords Porter, Normand, Oaksey, MacDermott and Reid) the court unanimously accepted the view that an unusual risk is one which is not usually found in carrying out the task which the invitee has in hand. Lord Porter at p.745 went on to say that he was not prepared to accept the view that “unusual” is to be construed subjectively as meaning “unexpected” by the particular invitee concerned.

## CONCLUSION

10. Decisions such as this must so often depend on their own special facts. Is an occupier to be held liable for someone slipping on a ramp that is or ought to be well known to be for use by wheelchairs and the like when a stairway with a handrail was immediately adjacent and no one was present to obstruct their use of it?

11. The burden of proof is on the plaintiff to prove on the balance of probabilities that Sandals, its servants or agents were negligent. There was no

evidence to show that the ramp constituted an unusual danger and the very fact that Sandals provided a stairway immediately adjacent is evidence that they took reasonable care to ensure that invitees would not be forced to walk down ramps which were not made for that purpose. Furthermore there is evidence that the ramp was cleaned that morning at about 7:30 am and there were no other persons out and about on the patio at that time of the morning. Mr Bain's examination of the ramp ten minutes after the accident revealed no unusual conditions that would cause or contribute to the accident. There was no previous known accident on the ramp which was in existence for over 11 years. In these circumstances an argument that the defendant knew or ought to have known that the ramp was unsafe or dangerous, or indeed that it was in fact unsafe or dangerous, or any unusual risk requiring a warning cannot be sustained. Even if a portion of the ramp was smoother it is immaterial that that fact was subjectively unexpected by the plaintiff because she ought reasonably to have used the stairs.

12. Not every accident that happens on premises is caused by negligence of the owner or occupier his servants or agents. The occupier's duty is not to prevent accidents, persons must have regard for their own safety as well. In my view this is one such case.

#### **RULING**

13. For the reasons above, the court finds that the plaintiff has not proved on the balance of probabilities that the defendant is liable for negligence and I dismiss this action with costs to be taxed if not agreed.

Dated the 8th day of October 2009

**K Neville Adderley**  
**Justice**