IN THE SUPREME COURT OF SEYCHELLES

Murielle Confait-Anscombe **Plaintiff**

Of Roche Bois, Mahe

v/s

Dockland Supermarket Limited **Defendant**

Of Victoria, Mahe, herein represented
By Robert Morgan, the director.

Civil Side No.: 319 of 2010

Mr. W. Lucas for the Plaintiff

Mr. C. Andre for the Defendant

JUDGMENT

DODIN J.

On the 19th day of December, 2009, the Plaintiff went to do some shopping at the Dockland Supermarket, situated on the ground floor of the Dockland Complex, New Port, Victoria. Whilst the Plaintiff was in the process of entering the supermarket, another person who entered the same supermarket ahead of the Plaintiff released the swing door which closed catching the Plaintiff's left little finger between the doors and injuring the finger which required the Plaintiff to seek medical assistance at English River Health Centre were her injury was

sutured and she was placed on antibiotics for 8 days. She had to attend clinic 5 times for dressings as well as having to undergo a further procedure to remove excess skin which had been pushed under the fingernail of that finger.

The Plaintiff now claims damages against the Defendant in the sum of Rs 55, 350- maintaining that her injury was caused by the negligence or carelessness of the Defendant which failed or neglected to equip the said entrance door with an appropriate stopper to prevent it from swinging closed on the finger of the Plaintiff causing her the injury complained of.

The Defendant does not deny that on the said date, 19th December, 2009, the Plaintiff was injured whilst she was at the entrance of the premises of the Defendant as per the report submitted by the 1st Plaintiff's witness, Doctor Barun Kumar Saha. The Defendant nevertheless maintained that the said injury to the Plaintiff's finger was caused entirely by the negligence of the Plaintiff who failed to take proper care by talking to other people whilst she was entering the Defendant's supermarket. The Defendant maintained that it had taken reasonable steps to ensure the safety of all its customers who enter the shop and that the Plaintiff is the 1st person who through her own negligence has met with this incident. The Defendant hence moved this Court to dismiss the Plaintiff's claim with costs.

The Plaintiff testified that she had come on holiday to Seychelles from England, her country of residence and was hoping to enjoy the Christmas and New Year holidays with his family in Seychelles. On the 19th December, 2009, she went to Dockland Supermarket at around 11.15 am and as she was approaching the door of the supermarket a man ran in ahead of her and pushed the door which then bounced back trapping her little finger which started to bleed. She testified that at the time she did not see anyone from Dockland Supermarket except a lady who wanted to put some liquid on the wound which she refused. A lady from a nearby

take-away came and assisted her. She then drove to English River Health Centre where her finger was sutured and she was given some medication including antibiotics for 5 days and released the same day. She had to go for dressing 5 times. On the same day she returned to the supermarket but nobody there wanted to assist her so she went to make a report to the police.

She testified that the incident was the result of the negligence of the Defendant and as a result of the incident she endured pain and suffering and moral damage and her holiday were spoilt. She denied that the accident occurred because she was negligent and did not take proper care when she was entering the supermarket. She moved Court to give judgment in her favour as per her prayer.

Danny De Lafontaine testified that on the 19th December, 2009, he was doing some fundraising for the Roundtable organization near the entrance of the Dockland Supermarket when he saw the Plaintiff about to enter the supermarket. He asked the Plaintiff some questions and at the same time the Plaintiff had one hand on a door of the supermarket. Then the door was pushed back by someone and the Plaintiff's finger was caught in the closing door and injured. He noticed a lady from the take away outlet who came to assist the Plaintiff but he did not recall if anyone from the supermarket came to her assistance.

The defence called Captain Robert Grandcourt who testified that he is the Manager of Dockland Supermarket and works at Naval Services. On the 19th of December 2009 he was working at Naval Services when he got a call that a lady had injured her finger and she had refused first aid and said that she was going to the doctor. He went to Dockland and spoke to Vincent Leon who was the manager on duty that day and asked him to make a report. He testified that this was the first incident of this kind to happen since he has been Manager of

Dockland Supermarket. He testified that he knows many other places with similar type doors which are spring loaded to keep them closed once opened. He testified that subsequently to the incident he received a claim from a lawyer and he also contacted a lawyer who advised him not to pay as it was the negligence of the Plaintiff which resulted in her injury.

Joe Louis Barbe testified that on the 19th of December 2009 he was working at Dockland from 7:30am to 1pm. On that day there were some activities at Dockland where members of the Roundtable Club were collecting money for less fortunate children. At the time a man went in and the Plaintiff was coming in after that man. She placed her hand on the door and turned back and talked to somebody else. The door swung back and caught her finger. He offered to take her to the manager but she refused any assistance and said that she was going to the Doctor and then her lawyer. Then she left. He made a report orally to the duty manager then he called Mr Morgan who arrived at the shop within 15 minutes and he briefed Mr Morgan on the incident. He saw the lady sometime later with bandage on her finger. In cross-examination he maintained that he could not recall who was the other man who entered the shop but he recalled the Plaintiff. He maintained that if the Plaintiff was paying attention and was not talking and looking back the incident would not have happened.

Vincent Leon testified that on the 19th December 2009 whilst working he was approached by security guard Barbe who reported that the Plaintiff has stuck her finger in the door. She came inside and was offered first aid but she refused, she

said she was going to her lawyer and the doctor. He wrote a report and submitted to Captain Morgan the director.

Learned Counsel for the Plaintiff submitted that it is not disputed that the Plaintiff suffered injury. The evidence of the doctor and the witnesses and the report dated the 19th of December 2009 showed that the Plaintiff suffered injury to her finger. The issue to be determined is who is responsible. The Plaintiff testified that the functioning of the double glass doors and a 3rd party, who ran by her, pushed the door which had no stopper and it bounced back and caught the Plaintiff's finger between the door. The security supervisor tried to explain how the Plaintiff's finger was stuck but his assessment shows that it was impossible for the Plaintiff to suffer injury to her small finger. He submitted that the shop manager and Mr Barbe gave contradictory testimonies as to whether the Plaintiff accepted first aid or not. He submitted that under Articles 1382, 1383 and 1384 of Civil Code of Seychelles a person is liable not only by his own act but also where injury is caused by things in his custody. He submitted that the management of Dockland failed to take proper precaution with the door to control it so as to prevent the door from bouncing back and causing injury to the Plaintiff who was lawfully on the premises. He moved Court for judgment in favor of the Plaintiff with cost.

Learned Counsel for the Defendant submitted that the evidence showed that the Plaintiff was not paying attention when she approached the door of the shop as she was distracted by the Roundtable members to whom she was talking whilst

placing her hand on the door. He submitted that even the witness of the Plaintiff gave evidence that at the time of the incident he was talking to the Plaintiff and the Plaintiff was looking at him.

Learned counsel further submitted that the evidence of the Plaintiff contains much contradiction such as her testifying that someone rush into the shop in front of her whilst her witness, Mr De Lafontaine testified that he did not see anyone entering the shop in front of the Plaintiff at the time. Learned counsel submitted that even if the Plaintiff testified that she was on antibiotics until after Christmas the evidence showed that she was only on antibiotics for 5 days which she should have completed 2 days before Christmas. Learned Counsel further submitted that the Plaintiff could not have been telling the truth when she said that she did not receive any assistance from the staff of Dockland Supermarket because the defence witnesses categorically stated that she was offered assistance which she declined. Learned Counsel hence moved Court to find the Defendant not liable for the injury suffered by the Plaintiff and to dismiss the claim with cost.

In order to establish negligence as a cause of action under the law, a plaintiff must prove that the defendant had a duty to the Plaintiff, the Defendant breached that duty by failing to conform to the required standard of conduct, the defendant's negligent conduct was the cause of the harm to the Plaintiff, and the Plaintiff was, in fact, harmed. A person has acted negligently if that person has departed from

the conduct expected of a reasonably prudent person acting under similar circumstances. The hypothetical reasonable person provides an objective by which the conduct of others is judged. In law, the reasonable person is not an average person or a typical person but a composite of the community's judgment as to how the typical community member should behave in situations that might pose a threat of harm to the public. The law considers a variety of factors in determining whether a person has acted as the hypothetical reasonable person would have acted in a similar situation. These factors include the knowledge, experience, and perception of the person, the activity the person is engaging in, the physical characteristics of the person, and the circumstances surrounding the person's actions.

The law takes into account a person's knowledge, experience, and perceptions in determining whether the individual has acted as a reasonable person would have acted in the same circumstances. Conduct must be judged in light of a person's actual knowledge and observations, because the reasonable person always takes this into account. Thus, if a driver sees another car approaching at night without lights, the driver must act reasonably to avoid an accident, even though the driver would not have been negligent in failing to see the other car.

In a case for negligence, the plaintiff has the burden of proving that the defendant did not act as a reasonable person would have acted under the circumstances. Even if a plaintiff has established that the defendant owed a duty to the plaintiff,

and that he had breached that duty, and proximately caused the defendant's injury, the defendant can still raise defenses that reduce or eliminate his liability. These defenses include contributory negligence. The doctrine of contributory negligence seeks to keep a plaintiff from recovering from the defendant where the plaintiff is also at fault. However if the Plaintiff is found not to have been negligent then the court need not consider the issue of contributory negligence at all.

In the case of *Anns v Merton London Borough Council [1978] A.C. 728* which was decided in the House of Lords, Lord Wilberforce gave a good elucidation of how to determine whether in a set circumstance negligence can be proved and contributory negligence could be ascertained.

> *"'Through the trilogy of cases in this House, Donoghue v Stevenson, Hedley Byrne & Co Ltd v Heller & Partners Ltd and Home Office v Dorset Yacht Co Ltd, the position has now been reached that in order to establish that a duty of care arises in a particular situation, it is not necessary to bring the facts of that situation within those of previous situations in which a duty of care has been held to exist. Rather the question has to be approached in two stages. First one has to ask whether, as between the alleged wrongdoer and the person who has suffered damage there is a sufficient relationship of proximity or neighbourhood such that, in the reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the*

latter, in which case a prima facie duty of care arises. Secondly, if the first question is answered affirmatively, it is necessary to consider whether there are any considerations which ought to negative, or to reduce or limit the scope of the duty or the class of person to whom it is owed or the damages to which a breach of it may give rise'."

Whilst the case of *Hedley Byrne & Co Ltd v Heller & Partners* Ltd was held as an example of a case in which there was a reduction in the scope of the duty of care, the case of *Anns v Merton London Borough Council* established a two stage test which requires;

- firstly a 'sufficient relationship of proximity based upon foreseeability'; and
- secondly considerations of reasons why there should not be a duty of care.

Weintraub C.J. in the case of *Goldberg v Housing Authority of the City of Newark* (1962) 186 A. 2d 291 , at page 293 gave a plain and more succinct interpretation of the process:

"Whether a duty exists is ultimately a question of fairness. The inquiry involves a weighing of the relationship of the parties, the nature of the risk, and the public interest in the proposed solution."

The facts of this case have not particularly been contested except on one issue. That is how the Plaintiff's little finger came to be caught in the closing door of the Defendant's supermarket. The Plaintiff maintained that it was due to the lack of a stopper which allowed the door to swing back unexpectedly when a person she did not know push past her and entered the supermarket. The Defendant maintained that the Plaintiff failed to take proper care in entering the supermarket because she was talking to some persons outside the supermarket whilst placing her hand on the door with her finger in the gap where the swing doors meet.

It is not in dispute that the Defendant owes a duty of care to each and every person who is invited onto the premises of Dockland Supermarket. Hence I safely conclude that the Defendant owed a duty of care to the Plaintiff as pleaded. The question to be determined now is whether that duty of care as provided by the Defendant was or was not to the standard of the duty of care expected of the Defendant in the circumstances of this case and if the Defendant breached that duty by failing to conform to the required standard of care which ultimately was the cause of the harm to the Plaintiff.

The facts of the case showed that the door in question has been in existence for many years and that the Defendant's establishment is not the only establishment fitted with such swing doors. The facts also showed that until the date the Plaintiff was injured, there had been no complaint concerning the swing doors which have been commercially approved to be fitted as the Defendant had fitted them.

However the fact that nobody had been harmed by the existence or use of the swing doors on the Defendant's premises does not automatically mean that the Defendant could not have been negligent. The test is foreseeability of the risk that such doors may pose to an ordinary visitor to the Defendant's premises. The onus is on the Plaintiff to bring sufficient evidence to show that the doors were inherently dangerous to an ordinary person using the same despite the fact that no person had been injured until then.

The Plaintiff brought no evidence to show that the doors were fitted in such a way that they were not or could not have been the standard setting for such doors and hence were a risk to visitors the Defendant's premises. On the other hand, there is evidence to show that the Plaintiff was distracted by some persons raising funds for the Round Table immediately before the injury was caused to the Plaintiff's finger. The Plaintiff's own witness Danny De Lafontaine testified that on that day he was asking the Plaintiff some questions and at the same time the Plaintiff had one hand on a door of the Dockland Supermarket when a door was pushed back by someone and the Plaintiff's finger was caught in the closing door. According to the Plaintiff, it was the action of an unknown person who forced one door open and caused it to close on the Plaintiff's finger due to the fact that it had no stopper. According to the Defendant, if the doors were fitted with stoppers, they would not have served their purpose of closing automatically as they were designed to do.

Considering the evidence adduced, and balancing the risk that the said doors could pose to an ordinary person using the same, I must conclude that there is a much higher probability that the Plaintiff was not paying sufficient attention to the movement of the doors of the Defendant's supermarket than the doors themselves being lacking in setting and safety features. I am therefore satisfied that there are considerations based on the facts adduced in evidence which negativate the risk the doors could have posed to the Plaintiff and in fact eliminated the cause for claim of damages which the Plaintiff has pleaded.

Consequently, I find that the injury to the finger of the Plaintiff was not the result of the Defendant's negligence and therefore the claims by the Plaintiff for damages fail accordingly. The Plaintiff's claim is therefore dismissed with costs to the Defendant.

C.G. DODIN

JUDGE

Made on this 18th day of October, 2012