

fall in med-
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Canada

PROVINCE OF BRITISH COLUMBIA

SMALL CLAIMS DIVISION

In the Provincial Court of British Columbia

(BEFORE THE HONOURABLE JUDGE D. L. SPERRY)

No. 5976

Rosland, B.C.
19 November 2001

BETWEEN:

PAULINE TINA SIMPSON

CLAIMANT

AND:

THE CORPORATION OF THE CITY OF TRAIL

DEFENDANT

PROCEEDINGS AT

REASONS FOR JUDGMENT

APPEARANCES:

Jenny Ghilarducci,
John H. Grover,

for the Claimant
for the Defendant

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Reasons for Judgment
(D.L. Sperry, P.C.J.)

1 THE COURT: Rossland Registry, Small Claims action 5976
2 between Pauline Tina Simpson and the Corporation of
3 the City of Trail. These are reasons for judgment.

4 The claimant, seventy-two-year-old Pauline
5 Simpson is suing the City of Trail for damages for
6 injuries sustained by her when she slipped, fell
7 and broke her left fibula and sustained soft tissue
8 injuries to her left knee and hip on the 4th day of
9 December, 1999.

10 About 1:30 p.m. on that dry early winter day,
11 Ms. Simpson left her home on Hendry Lane in West
12 Trail to meet friends at the bottom of her hill and
13 then to walk downtown with them to a tea at the
14 Eagles Hall. She was carrying a shoulder bag style
15 purse and a grocery bag with a dozen muffins for
16 the bake sale at the tea. She was wearing low
17 loafer style shoes with a non-aggressive tread.
18 There is no sidewalk and Mrs. Simpson has been
19 walking up and down the seventeen percent grade of
20 her hill, Hendry Lane for the thirty-four years she
21 has lived there.

22 The photos entered in evidence shows that
23 Hendry Lane is only a few feet from her door. She
24 saw that the street had recently been sanded and
25 that the gravel particulate portion of the dressing
26 on the asphalt roadway was larger than she had
27 previously recalled seeing. She said there was
28 coarse gravel and she said she knew she had to be
29 careful. She had picked her way about three-
30 quarters of the distance down the hill, when her
31 right foot slipped causing her to fall down on her
32 left knee and ankle. This fall broke her left
33 fibula above the ankle in an essentially
34 undisplaced fracture and bruised her left knee and
35 hip.

36 That evening, she attended the emergency
37 department of the Trail Regional Hospital where her
38 ankle was x-rayed and a fibreglas cast was applied.
39 She wore the cast for seven weeks and still has
40 some relatively minor, but troubling complaints
41 with respect to pain in her left knee and left hip.
42 She has continued to see health care professionals
43 until this fall. She is not a malingerer and her
44 complaints are not psychosomatic.

45 In the early spring of the year 2000, Ms.
46 Simpson picked up gravel samples from her street.
47 These samples, she, her husband, Chester Simpson,

2
Reasons for Judgment
(D.L. Sperry, P.C.J.)

1 and her wonderful ninety-year-old friend, Jessie
2 Lloyd, who was watching for her at the bottom of
3 the hill on the day of the accident, all say could
4 only have come from the City of Trail sand trucks
5 during the winter. This gravel sample has been
6 marked as an exhibit in these proceedings.

7 Mr. Larry Abenante, the City of Trail, works
8 manager since 1996, testified for the defendant
9 City. He testified that Hendry Lane was sanded
10 December 3rd, 1999, and sometime either before or
11 after Ms. Simpson's accident on the 4th of
12 December, 1999, in conformance with city policy.
13 He said that in 1999, the city contracted for its
14 sand and gravel. Before winter started the city
15 bought its seasons supply from a private
16 contractor. The specifications in the contract
17 limited the maximum size of the gravel particulate
18 to one-half inch or twelve point five millimetres.
19 He said that he examined the roughly one thousand
20 cubic metre supply that fall and even took an early
21 representative sample which he kept, to ensure that
22 the contractor met the city specifications
23 throughout the total amount supplied. He examined
24 the sample marked as an exhibit and said it did not
25 come from the city's winter supply of sand and
26 gravel.

27 In January of 2000, the City of Trail retained
28 Woods Associates Engineering of Castlegar to do an
29 independent analysis of the City's sand pile. In
30 that sample, all gravel was a maximum of one-half
31 inch or twelve point five millimetres with thirteen
32 point one percent in between nine point five
33 millimetres or three-eighth of an inch and one half
34 inch or twelve point five millimetres.

35 The three witnesses for the claimant were all
36 credible honest witnesses. Mr. Abenante was a
37 credible honest witness. All were forthright
38 answering questions both in examination in chief
39 and in cross examination in a frank manner. None
40 of the witnesses, either for the complainant or for
41 the defendant bore any of the little indicia that
42 can lead a judge to question their credibility. My
43 task would be impossible if I needed to decide if
44 the gravel marked as an exhibit, in fact, came from
45 the City's stockpile.

46 The City acknowledges a duty of care to Mrs.
47 Simpson. Mrs. Simpson, however, was not trapped by

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Reasons for Judgment
(D.L. Sperry, P.C.J.)

1 the City's conduct. She saw what she perceived to
2 be a dangerous situation when she left her house.
3 She knew there was loose gravel on the hill. She
4 knew the hill was very steep for a city street.
5 She knew there was no sidewalk and no handrails.
6 She knew she was wearing low shoes with no ankle
7 support and with what, on examination, I find to be
8 a non-aggressive tread. She chose to walk down the
9 hill and, in my view, assumed all of the risk of so
10 doing.

11 I am attracted to the reasoning of Justice
12 McEwan in Oser v. Nelson (1997) B.C.J. number 2809
13 Nelson Registry, and to the reasoning of the Court
14 of Appeal in Malcolm v. B.C. Transit (1988) 32
15 B.C.L.R. (2d) 317, judgment number 1945, where
16 Chief Justice McEachern said at page 2 of the
17 judgment:

18
19 "In my respectful view, it is not negligence
20 or a breach of any duty, not to warn an adult
21 person not suffering under any disability of
22 the ordinary risks arising out of the
23 exigencies of everyday life. Any such adult
24 person without being warned, knows and accepts
25 the risks of falling on a steep, wet, grassy
26 slope or a path, and it was not necessary, in
27 my view, to give a warning of such common
28 everyday risk."
29

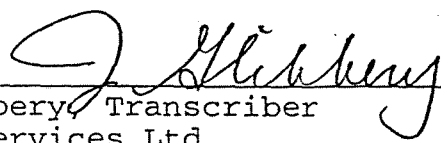
30 I would substitute the words, "steep, winter road
31 carpeted with gravel". The decision must be
32 dismissed. If I am wrong in this finding, I would
33 assess Ms. Simpson's general damages at fifteen
34 thousand dollars. Special damages are agreed
35 between the parties at five hundred dollars. The
36 defendant will have the cost of filing and serving
37 the statement of defence. Thank you.
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39 (PROCEEDINGS CONCLUDED)

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41 30 November 2001/jlg
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I hereby certify the foregoing to be a true and accurate transcript of the evidence recorded on a sound recording apparatus, transcribed to the best of my skill and ability.



J. L. Glibbery, Transcriber
for Echo Services Ltd.