Date: 19980319
Docket: S03331
Registry: New Westminster

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LAURA MAY PERRETT

PLAINTIFF

AND:

THE CITY OF PORT MOODY

DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE SATANOVE

Counsel for the Plaintiff:	Dana Graves
Counsel for the Defendant:	David McKnight
Place and Date of Hearing:	Vancouver, B.C. March 9, 1998

[1] On January 22, 1996 at approximately 11:15 a.m. the plaintiff slipped and fell in the parking lot of the Port Moody Recreation Centre (the "Recreation Centre"), suffering a broken tibia and fibula of her left leg. She had travelled to the Recreation Centre with the intention of taking her dog for a walk. She deposed that she got out of her van with her dog on the leash, took about two steps and felt her legs go out from under her. The dog had not been jumping or pulling and the plaintiff was wearing proper footwear.

[2] She sued the City of Port Moody for negligence in failing to maintain the parking lot in safe condition free from snow or ice, or alternatively failing to warn that the parking lot was not safe to walk on.

[3] The City defended on the basis that it adhered to its policy of snow removal and that the policy was a reasonable one in light of all the circumstances.

[4] The parties agreed that the issue of liability should be heard by way of summary trial and so the defendant brought an application pursuant to Rule 18A for dismissal of the plaintiff's claim.

[5] It became apparent during the hearing that the defendant conceded that the cause of the plaintiff's fall was the condition of the parking lot due to prevailing climatic

conditions, although there was a dispute as to the state of the parking lot pavement. Similarly, the plaintiff conceded that the City's policy of snow removal was *bona fide*, but she complained that the system employed was inadequate or inadequately carried out.

[6] Therefore, the real issue was whether the defendant implemented properly its snow removal policy. This was largely a question of fact which had to be decided by reference to the affidavit evidence.

[7] Mr. Reichelt, Director of the Parks, Recreation and Cultural Services with the City of Port Moody deposed that the City of Port Moody allocated $3,336,056 to Parks and Recreation Services. As part of this budget, funds were allocated to each City park to cover expenses associated with general maintenance, including snow and ice removal, salting and sanding. The parking lot of the Recreation Centre is considered part of the Town Centre Park to which the sum of $33,317 was allocated to general maintenance and servicing, including snow and ice removal services for the Recreation Centre parking lot. In 1996, four Parks and Recreation employees undertook snow and ice removal services through the use of a one-ton dump truck with plough and sanding attachments, and a tractor with a front end loader.

[8] In addition to the Recreation Centre parking lot, Parks and Recreation was responsible for snow and ice removal at five other parking lots. Mr. Reichelt deposed that it was the policy of parks and recreation to assign a snow plough operator to plough these parking lots commencing in the early morning hours following a snow fall. In addition to plowing the snow in the parking lots the operator was to spread a mixture of salt and sand from the rear of the one-ton dump truck using a spreader unit. The operator usually commenced ploughing at the Recreation Centre parking lot and then moved on to plough the remaining parking lots. As the weather conditions required, and as time allowed, the employee would then return to each site for further clearing throughout the course of a day. In addition, other parks and recreation department staff would undertake shovelling, sanding and salting of the sidewalks adjacent to and in the vicinity of the civic buildings and recreation centres.

[9] The snow plough operator who had been assigned to plough, salt and sand the Recreation Centre parking lot on the day in question was Deanne Deppiesse. She had no independent recollection of the work she performed that day, but her employment records indicated that on January 22, 1996 she undertook snow removal and sanding operations for a period of approximately eight hours. She deposed that her usual practice was to commence work shortly after 7 a.m. using either a one-ton dump truck, or a tractor with a front end loader.

[10] Both Mr. Reichelt and Tom Hunt, Director of Operations for the City of Port Moody, deposed that they arrived at the Recreation Centre parking lot at approximately 7:30 a.m. on January 22, 1996 and observed Ms. Deppiesse operating the one-ton dump truck to plough the snow from the parking lot and to spread salt and sand onto the newly ploughed surface from the rear hopper of the dump truck.

[11] Ms. Deppiesse deposed that when she finished ploughing one parking lot, and spreading the salt and sand mixture, her practice was to move to the next site. Subject to the weather conditions and her time constraints she would return to each site in rotation throughout the course of the day.

[12] The plaintiff testified on her examination for discovery that when she arrived at the Recreation Centre she pulled in and out of her parking space twice to ensure her van would not get stuck and there was not any ice. She determined there was no ice. In her affidavit of February 25, 1998 she said there was snow left on the surface of the parking lot and it was "somewhat compacted in most areas". She deposed that she did not recall seeing any salt or sand on top of the snow or seeing any areas of bare pavement where salt had melted the snow. On discovery she said she had not "noticed any salt".

[13] Ms. Ward, an independent eye witness who observed the plaintiff lying on the ground after she fell deposed that the

parking lot had been cleared of most of the snow. She deposed that there were some patches of ice, but she did not see if there was any ice around where the plaintiff had fallen.

[14] The records of Environment Canada showed below freezing temperatures and heavy snow in the Port Moody area throughout a 24 hour period, but the records alone did not establish whether it had snowed between the time Ms. Deppiesse had left the parking lot and the time of the accident.

[15] Larry Cardus, with the Port Moody Fire Department, deposed that it was snowing at approximately 9:30 a.m. on January 22, 1996 in Port Moody. In responding to two other slip and falls in Port Moody that morning he placed snow chains on the fire truck tires to provide better traction in the snow. He deposed to having attended on the plaintiff at approximately 11:23 a.m. but his affidavit does not mention the state of the parking lot at that time or whether it was still snowing.

[16] The plaintiff also tendered incident reports from the British Columbia Emergency Heath Services crew and Parks and Recreation but these are hearsay, and in the case of the Emergency Crew Report, the comments may even be double hearsay. A Rule 18A summary trial results in final judgment and the usual evidentiary rules barring hearsay apply to render these documents inadmissable.

[17] I find it is clear from those parts of the affidavit evidence which I have referred to above that:

1. Ms. Deppiesse did attend at the parking lot in the early morning of January 22, 1996 and did operate her truck and hopper to plough the parking lot and spread a salt and sand mixture on the ploughed surface;
2. Between the time Ms. Deppiesse finished her work on the parking lot and the time of the plaintiff's fall, there was likely recurring snow fall;
3. At the time of the plaintiff's fall there was some snow and perhaps small patches of ice on the parking lot; and
4. It is more likely that the plaintiff slipped on snow than ice.

[18] The plaintiff submitted, and the defendant conceded, that as an occupier under the ***Occupiers Liability Act***, the defendant owed a duty of care to the plaintiff to take reasonable steps to make the parking lot safe. The plaintiff conceded that there clearly was a system of snow and ice removal put in place by the defendant but it was inadequate in that there was no inspection or monitoring component to ensure that the system was effective. Further, the plaintiff submitted, there was no plan to remedy any problems if the system was not working or to warn potential visitors of any hazards that the defendant had been unable to remove. The plaintiff submitted that "the ice

and snow removal was simply not properly carried out on the morning of the plaintiff's accident" and that "a proper attempt to de-ice the parking lot, or sand the iced sections of the parking lot, should have cleared this hazard which ultimately caused the plaintiff's fall".

[19] The flaw in the plaintiff's argument is that it is not supported by the evidence, or the facts as I have found them. The plaintiff relied heavily on the assertion that she slipped on ice and said that if the parking lot had been salted and sanded three and a half hours earlier, no ice would have remained. I have already found that the plaintiff has not established, on a balance of probabilities, that she slipped on ice. Further, there is no evidence before me how long it would take ice to disappear entirely after the defendant's efforts to plough, sand and salt. The plaintiff's argument on this ground is really one of *res ipsa loquitur*. She says she fell, therefore there was ice, therefore the defendant is negligent in its snow and ice removal system. This position does not accord with the law.

[20] The law is clear that the defendant is not an insurer of the plaintiff's safety. It must take reasonable steps to keep its parking lots free of dangerous conditions, but if, despite those reasonable steps, a person still falls and is injured, the defendant is not necessarily liable.

[21] The failure of the defendant to keep the parking lot completely clear of snow, does not in and of itself mean that the defendant's system is inadequate. The assessment of the adequacy of the defendant's snow and ice removal system must be measured in light of all the surrounding circumstances including budgetary restraints, the availability of qualified personnel and equipment, geographical location, time of year and prevailing weather conditions. (***Just v. R. in Right of British Columbia*** (1989), 41 B.C.L.R. (2d) 351 (S.C.C.); and ***Holbrook v. Argo Road Maintenance Inc.*** (20 August 1996) Prince George 27237 (B.C.S.C.)).

[22] Viewing the evidence in its totality, the plaintiff has not discharged the burden of proof upon her to prove, on a balance of probabilities, that the defendant breached its standard of care in the circumstances. The defendant adhered to its policy of ploughing, sanding and salting the parking lot. It carried out its operation early in the morning. The preponderance of evidence establishes that the snow removal operator performed her task in her usual manner, which appears quite thorough. She then moved on to attend to the other five parking lots within the care of the defendant. Her usual procedure was to return to each lot for further work if required and if time allowed. It is likely that there was further snow fall between the time the operator worked on the Recreation Centre and the time when she was able to return to the parking lot. In the interim the plaintiff slipped and

fell. It was an unfortunate accident but I cannot say it was due to any neglect on the part of the defendant to fulfill its policy of reasonable maintenance of the parking lot. In the words of Mr. Justice Cory in ***Brown v. British Columbia (Minister of Transportation and Highways)*** (1994), 89 B.C.L.R. (2d) 1 at p. 13 substituting the word "snow" for ice:

> ... [snow] is a natural hazard of Canadian winters. It can form quickly and unexpectedly. Although it is an expected hazard it is one that can never be completely prevented. Any attempt to do so would be prohibitively expensive. ...

[23] The plaintiff's case is dismissed. Subject to Rule 57, the defendant is entitled to its costs on a party/party basis, scale 3.

"D. Satanove, J."

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