

Date: 19980330
Docket: 23520
Registry: Kamloops

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WILLIAM LLOYD FUNNELL

PLAINTIFF

AND:

CITY OF KAMLOOPS

DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE BLAIR

Counsel for the Plaintiff: David A. McMillan

Counsel for the Defendant: Dennis K. Hori

Place and Date of Hearing: Kamloops, B.C.
March 27, 1998

[1] The plaintiff William Lloyd Funnell sustained injuries on June 29, 1994, when he slipped and fell in the men's changing room at the Brocklehurst Arena and Pool complex owned and operated by the defendant City of Kamloops ("the City"). The parties bring separate motions under Rule 18A of the Rules of Court with Mr. Funnell seeking judgment against the City and the City seeking dismissal of the action.

[2] Mr. Funnell's accident occurred some two months after City employees repainted the floor in the change room with a combination of paint upon which was scattered a sand-like substance to provide grip in the slippery environment associated with a swimming pool. Mr. Funnell, aged 73 years at the time of the accident, pleads that the City breached its obligation to him as a user of the pool facility under the **Occupiers Liability Act**, R.S.B.C. 1996, c. 337.

[3] Mr. Funnell deposed that he went for a swim at the pool on June 29, 1994, accompanied by a family friend, Darren Robin Belanger, from Alberta. He swam for 30 to 45 minutes and then returned to the change room where he slipped and fell, fracturing his left hip. Mr. Funnell, in his affidavit sworn and filed March 6, 1998, described the accident as follows:

6. That at the time of my slip and fall I had been walking at a cautious pace. I had suffered a serious fracture of my left leg below the knee in a motor vehicle accident in June of 1990. Although I recovered well from this previous accident I have

always walked slowly and cautiously ever since then. At the time of my slip and fall, I did not step on or trip over any foreign object, nor was I interacting in any way with any other persons using the facility at the time. I had simply finished my swim, had entered the shower area and taken a shower and had proceeded approximately three or four steps into the locker room area when I slipped and fell.

[4] Lifeguard Dawn Williams attended to Mr. Funnell in the change room and deposed in her affidavit, sworn March 16, 1998, and filed March 17, 1998, that the pool's change rooms had been repainted during the spring of 1994. At paragraph 6 she stated:

After these floors were repainted, there were some areas that were slippery, especially when wet, and other areas which were less slippery.

She continued at paragraph 7:

That the floors in the change room areas were often wet because people who had used the swimming pool or the showers often entered the change room areas while dripping wet.

[5] Mr. Belanger, called to the change room area following Mr. Funnell's accident, stated that upon entering the change room area he too slipped and nearly fell. He described the floor as wet and extremely slippery at this location. Ms Williams confirmed in her affidavit that she observed Mr. Belanger slipping on the change room floor.

[6] Certain statements attributed to Ms Williams are found in the affidavits of Mr. Funnell and his daughter, Lynne Koziol, the latter's affidavit being sworn and filed on March 6, 1998. In my decision I place no reliance upon those statements, nor does the City's resurfacing of the change room floor subsequent to Mr. Funnell's accident affect the outcome of these proceedings.

[7] The City relies upon the evidence of its' employees, Kenneth Raymond Olm, a recreation facility supervisor, Robert Wolfer, a recreation facility attendant, as well as several life guards who had worked at the Brocklehurst pool during the period of Mr. Funnell's accident. The life guards echoed a similar refrain in their various affidavits, the message being that as far they could recall there were no problems with the floor surface in the change room of the Brocklehurst pool, that the floors were not unusually slippery, and change rooms are always somewhat slippery because they are wet. Messrs. Olm and Wolfer resurfaced the change room floor in the spring of 1994 with an epoxy paint, following by the distribution of sand over the wet paint with the intention of providing a slip resistant surface. They depose that upon inspection following the resurfacing they were satisfied that there was a proper slip resistant surface on the change room floor.

[8] Counsel for the City submits that the efforts of the City's employees in resurfacing the change room floor satisfied

the standard of care expressed in s. 3 of the ***Occupiers Liability Act*** which requires the City to take that care that in all the circumstances of the case is reasonable to see that a user of the facility, such as Mr. Funnell, will be reasonably safe in using the premises.

[9] I am satisfied that Mr. Funnell moved prudently as he entered the change room and that in spite of his caution he slipped and suffered injury. He was followed into the change room by his younger companion, Mr. Belanger, who also slipped, but avoided injury. The life guard, Ms Williams, then attending to Mr. Funnell, observed Mr. Belanger slipping, and noted that in the change room some areas were slipperier than others, suggesting there were differences in the floor surface. Mr. Olm allowed in examination for discovery that he had no particular expertise in the resurfacing of swimming pool floors and, further, that it was possible that the sand was distributed unevenly upon the paint surface. I conclude from Ms Williams's evidence regarding differing slipperiness in the floor areas together with Mr. Olm's evidence regarding the possibility of an uneven sand distribution, that the sand was not applied consistently, resulting in differing degrees of slipperiness in the change area. That conclusion explains why Mr. Funnell, moving prudently, was able to walk three or four steps in the change room before slipping in an area which I find had not been adequately covered with sand. I find the City's resurfacing, particularly the sand application, was not

carried out with the care required in order to provide for the reasonable safety of pool users such as Mr. Funnell.

[10] Mr. Olm also stated that his inspection of the change room floor following its resurfacing occurred when the floor was dry, not wet. Mr. McMillan, counsel for Mr. Funnell, submitted the inspection was clearly deficient as it involved a dry rather than a wet floor such as would be the situation when the pool was in use and was the case when Mr. Funnell slipped. Counsel observed, somewhat drily, that one does not observe signs in a swimming pool stating "Slippery When Dry". There is also evidence that the City was or should have been aware that the slip resistant surface applied to the Brocklehurst pool change room might be deficient. Although the City received no complaints about the floor after it was resurfaced in April, 1994, two slip and fall accidents occurred at the City's McDonald pool, the first on June 9, 1994, and the second on June 27, 1994, both prior to Mr. Funnell's accident. Mr. Olm acknowledged the April, 1994, resurfacing procedure was identical at both the McDonald and Brocklehurst pools.

[11] I conclude that the City's efforts in resurfacing the change room floor failed to meet the standard of care required to ensure that Mr. Funnell and other users would be reasonably safe in using the change room area. I find the City liable. Counsel made no submissions that Mr. Funnell was contributorily negligent, but without deciding the issue I do note there was

nothing in the material before me to suggest contributory negligence on Mr. Funnell's part.

[12] I am not seized of the issue of quantum which is set for hearing on April 14, 1998. The plaintiff will have his costs of this application at scale 3.

"R.M. Blair"

BLAIR J.