S011935
Vancouver Registry

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Chief Justice Esson
Pronounced in Chambers
March 20, 1995

BETWEEN:

**MARLIES MARIA ELISABETH SHORT**

PLAINTIFF

AND:

**NEW WESTMINSTER ROTARY SENIOR CITIZEN'S HOUSING SOCIETY and CITY OF NEW WESTMINSTER**

DEFENDANTS

| | |
|---|---|
| E. Garstin | Appearing for the Plaintiff |
| M. Tweedy | Appearing for the Defendant, New Westminster Rotary Senior Citizen's Housing Society |
| E.E. Vanderburgh | Appearing for the Defendant, City of New Westminster |

**THE COURT:** The plaintiff seeks damages arising from a fall on a sidewalk which borders on property occupied by the

defendant society. The sidewalk is property of the defendant city. The fall took place about 10:00 a.m. on a morning after an overnight snowfall. The defendant society's employees had cleared the snow from the sidewalk several hours earlier. There is a bylaw of the city which requires bordering property owners to clear their sidewalks.

2 Both defendants now apply under Rule 18A for the dismissal of the action. For the society, it is contended that it cannot be held liable as an occupier, for breach of the bylaw or for anything which it failed to do as distinct from something which it did. The plaintiff does not take serious issue with any of that, but her counsel rests her case on the argument that the snow-clearing created a hazard in the form of ice. There is evidence both from the plaintiff and from a defendant's witness that there was some ice present, although they conflict substantially as to its extent.

3 In any event, I think it is clear that it is a possible basis of liability, simply based on the fundamental principle of negligence that if one has undertaken to do something and in doing so has created a risk which comes to pass and which causes injury to another person, that can be a basis of liability. On the evidence here, I simply cannot find the facts which would permit me to resolve that issue one way or the other. It is possible, on the evidence that a foreseeable risk of harm was caused, and that it

caused the injury to the plaintiff. I, therefore, as I indicated earlier, dismiss the defendant society's application, with costs to the plaintiff.

4 As for the defendant city, its defence is simply that it had a policy which was a true policy as defined by the cases, and that it is therefore not open to suit by the plaintiff on this ground. Ms. Vanderburgh has referred me to the decision of Mr. Justice Preston in **Ryan v. Golden Nook Enterprises Limited**, unreported, April 27, 1992, Number 8250 Dawson Creek Registry. I cannot find any material distinction between the facts and issues in that case and in this case. Mr. Justice Preston said at page 6:

> "I am satisfied that the steps taken by Dawson Creek were reasonable and discharged its duty under the **Occupiers Liability Act**. I am satisfied further that the plaintiff is precluded as a matter of law from recovering against Dawson Creek in view of its policy decision, which was reasonable in the circumstances to delegate responsibility to property owners and occupiers, and not to maintain an inspection program."

5 The only difference on the facts here is that the City of New Westminster does maintain a limited inspection program with respect to certain areas, but not the area in question here. I am bound by that decision, with which in any event I agree. It

follows that the defendant city's application succeeds, and that the plaintiff's action against it is dismissed.

Thank you.

**(PROCEEDINGS ADJOURNED)**

W.A. Esson, C.J.S.C.