

Citation: Brownlee v. City of
Port Coquitlam

Date: 20080502
File No: C7178
Registry: Port Coquitlam

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
(Civil Division)

BETWEEN:

AMY BROWNLEE

CLAIMANT

AND:

CITY OF PORT COQUITLAM

DEFENDANT

**EXCERPT FROM PROCEEDINGS
REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE ANGELOMATIS**

Counsel for the Claimant:

D. O'Donnell

Counsel for the Defendant:

E. Walton

Court Recorder:

C. Burke

Transcriber:

S. Wilson

Place of Hearing:

Port Coquitlam, B.C.

Date of Hearing:

May 2, 2008

Date of Judgment:

May 2, 2008

[1] **THE COURT:** The case before me is one that should attract sympathy.

[2] An elderly lady, now 88 years old, was in the course of going to the Bank of Montreal which was on the same side of the street as the City Hall in Port Coquitlam. Ms. Brownlee had, on numerous occasions in the prior past, utilized the means of transportation that she had, that is, walking on the pavers.

[3] Pavers are a series of distinct blocks that are set in an even fashion for the purpose of replacing either concrete, stone or other means of surface.

[4] Ms. Brownlee had evidently over the last many years traversed uneventfully while walking that route. Since the event she has now chosen not to go on that surface but attends the Bank of Montreal by going a different route so she is not walking on the pavers.

[5] The pavers have been portrayed in Exhibits 1 and 2. They appear to be relatively even bricks that are set on a surface which I understand is sand. The pavers are not completely evened out; there are noticeable lips in areas where someone could conceivably trip.

[6] On January 1st, 2005, the City of Port Coquitlam adopted a policy whereby the City staff attributed hazards based on the varying heights between surfaces. That is, if a slab of concrete had a certain height differential, it was given a level

1 rating which is less serious and would not require immediate attention; level 2 a higher degree of potential danger, but again not attracting or needing immediate attention; level 3 was a depth of displacement which required immediate attention. The policy was drawn up to reflect the number of people they had to do the work, the cost of repairs, and the budget they were operating on.

[7] Yearly inspections are carried out by both Mr. McWilliams, a City worker, classified as a level 3 carpenter tradesman and by Mr. Dundee, the City's head foreman.

[8] The incident in question occurred on August 8th, 2005, and was witnessed by a Ms. Harwood who saw the woman walking away from her and who saw the woman collapse, equating it really to watching a tree fall, that is, that she fell from a perpendicular position to a horizontal one on the ground.

[9] Ms. Brownlee tried to break her fall by putting both arms up. She suffered considerable damage to her jaw, breaking a mandible, and evidently suffering severe damage to and problems with her dentures, and also to her wrists.

[10] The area where she fell was not immediately apparent to Ms. Brownlee, but it appears to be an area existing between the curb and a number of trees that are recessed on the City's lot. Those trees are in contact with the pavers immediately adjacent to the earth.

[11] The City staff were cross-examined about the prevalence and the number of defects in that immediate area, and I am satisfied that both Mr. McWilliams and Mr. Dundee gave their evidence in a concrete, believable and non-biased manner. They did not try to minimize the problems that are inherent with the area but had been -- from their own personal experience over the last several years -- aware of the surface area there.

[12] The surface area to the eye appears to be one that should be apparent to anybody that it is not completely level and that there is a problem because some of the stones are lipped and unless one lifts their leg in an attempt to not catch their toe, somebody could trip.

[13] I find that Ms. Brownlee was not aware of the problem except to the extent that when she demonstrated how she walked in court, she had herself lifting her toes up and lifting her legs up.

[14] It is clear that she tripped on one of these stones however I believe that is as a result of her own contributory negligence.

[15] The policy adopted by the City to rate hazards was all that could be asked for under the circumstances, and I am not satisfied that the City was negligent on the balance of probabilities.

[16] Perfection is not possible in this world, and it would be

impossible for the City of Port Coquitlam in the circumstances under which this paving block was laid to have a situation where someone would not fall.

[17] I also wish to address the argument made by Ms. O'Donnell to the effect that there was some delay or some hitch and no awareness of this incident came to the City's attention until the letter informing the City of potential litigation was received.

[18] Internally, Ms. Harwood had reported to a Kathleen Benson who supposedly works in communications. How that would necessarily be someone who could bring the matter to the attention of the proper authorities is not known to me. Ms. Harwood was working under a private contract. How communication equates with the legal department or to departments who would remedy the problem is not known to me, and I am not drawing any adverse inference from the fact that nobody is able at this stage on behalf of the City to say when they received the final word.

[19] There was attention given relatively soon -- at least within a month and a few days -- by the City in that they had Mr. Dundee assess the area, as well as communications ensued between Ms. Brownlee and the City.

[20] The other aspects of this case attract sympathy, that is, that nobody consulted Ms. Brownlee to find how she was

improving, nobody said a word of sympathy or condolence, but that is not a legalistic resolution for me to follow.

[21] Not finding the case proven, I am not going to award costs to anybody.

(ORAL REASONS FOR JUDGMENT CONCLUDED)