

Date of Release: April 19, 1991

No. C881198
New Westminster Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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)	
BETWEEN:)	
)	
AUDREY FULLER)	
)	REASONS FOR JUDGMENT
PLAINTIFF)	
)	
AND:)	OF THE HONOURABLE
)	
THE CORPORATION OF THE)	
CITY OF NEW WESTMINSTER)	MR. JUSTICE CATLIFF
)	
DEFENDANT)	
)	
)	

Counsel for the plaintiff:	B. Bennett & W.G. Cadman
Counsel for the defendant	M.R. McAllister
Date & place of trial:	26 & 27 March 1991 New Westminster, B.C.

Mrs. Fuller is 72 years old. She likes to paint. She attended art classes at Century House, a centre for senior citizens in New Westminster. While there on 18 February 1988 Mrs. Fuller got up from her chair to go and watch a demonstration. As she stepped away from her chair she tripped and fell. It appears probable that she fell over the projecting foot of a mobile chalkboard that was stored along the wall behind her. Mrs. Fuller claims compensation for the injuries she received as a result of her fall.

Mrs. Fuller had attended Century House for about eighteen months. She went there primarily for painting classes. These had

been held on Thursday and Friday for some time, but by February 1988 were being held on Thursdays only. The hours were 10 - 12 noon and from 1 - 3 p.m. The class was held in the crafts room and was given by Mrs. Scott who had been the art instructor throughout Mrs. Fuller's attendance at Century House. For painting classes, the crafts room contained 6 trestle tables arranged in the shape of a horseshoe - two tables for each section of the horseshoe. A maximum of 12 students were permitted to attend the class, so that there were 2 students sitting along the outer side of each of the trestle tables. This gave ample room for each student to paint and set out their painting paraphernalia.

A portable chalkboard was usually in the room. It was used occasionally by Mrs. Scott for art class purposes. It was used more often when the room was used for other instructional purposes. When not in use the board was stored along one wall. When in this position one side of the two triangular shaped steel supports of the board projected some 11 1/2" into the room and beyond the vertical face of the board itself. The wall space where the board was stored was behind one wing of the horseshoe of tables. When stored along the wall the legs of the board would be about 18" from the back of the chair of a person sitting normally at the table. There was no room to move the board more than a few inches along the wall when it was in its usual storage position. If a chair was in front of one of the legs the space between was narrow. One

witness said that to walk by "you would have to walk sideways". "If you walked normally", she said, "you would have to step over the feet (of the board)."

For greater clarity I reproduce Exhibit 5B which is a photograph of the chalkboard in its storage position in the crafts room as it would have been at the time of the accident.

Mrs. Fuller normally sat at a place on the opposite side of the room although she had sat along the wall where the chalkboard was usually stored. She had sat in that place when the chalkboard was behind her "on many occasions". She said she knew that she had to be careful.

It was normal for art students to get up from their seats and move about the crafts room during art class. Mrs. Fuller said she would get up to change her water for painting 3 or 4 times. She would get up to get tea or to stand behind her teacher to watch a demonstration. She would occasionally get up to look at what other students were painting or to pin up a finished painting of her own.

The preponderance of evidence satisfies me that the accident happened at about 2:25 p.m. on 18 February 1988 and not about 1:10 p.m. as Mrs. Fuller suggests.

I find that the chalkboard was in the crafts room on the morning in question. It may have been pushed along the wall towards the window in the morning. I say this because it appears that a portable cupboard (to be seen immediately beyond the chalkboard in Exhibit 5B reproduced above) may have been taken out of the room in the morning for use by a "tiny tots" class. The removal of the cupboard would leave space for the board to be moved nearer the window. Mrs. Fuller said she had not noticed the board

in the morning. She had been up and down to change her water and if it had been behind her "she would have tripped on it". She believes the chalkboard was brought in during the lunch break, put in the corner by the window and that a student subsequently moved it farther down the wall to its usual storage position behind her seat. There was no evidence that this happened. There was evidence that the tiny tots cupboard would have been returned to the crafts room at lunch time and that the chalkboard was not used by the tiny tots class so was likely to have remained in the crafts room in the morning. In any event, the board was in its usual place, I find, at the start of the afternoon class. The accident happened about an hour and a half later. During this time Mrs. Fuller got up at least once - to hang up a picture - and returned to her seat. She had thus negotiated the chalkboard behind her at least once that afternoon before she (presumably) tripped over it.

Mrs. Fuller has good eyesight. She wears glasses only occasionally for reading or crochet work. She has taken medication for years, but this does not affect her balance. Before the accident Mrs. Fuller was an active person. She acted as an assistant caretaker in the apartment building she lived in, maintaining the hallways and doing garden work.

The duty of the defendant to the plaintiff is set out in s. 3(1) of the Occupiers Liability Act.

3(1) An occupier of premises owes a duty to take that care that in all the circumstances of the case is reasonable to see that a person...will be reasonably safe in using the premises.

The plaintiff alleges that the defendant failed in the circumstances to see that she was reasonably safe in using the premises. It is submitted that the defendant placed an unusual danger behind the plaintiff's chair making the premises unsafe for her when she sought to move from her seat.

In my view the presence of the chalkboard was not an unusual danger. It had been placed in its usual storage position in the room. The plaintiff was quite familiar with the board - she had seen it during the eighteen months or so she had attended classes. She was familiar with the protruding leg supports. She had sat in front of the board on many occasions. She admitted she knew she had to be careful moving around it. Mrs. Scott had warned the class about that "dratted board" - wishing", she said, according to Mrs. Fuller, "that they would find another place for it". To the art class who used the board only occasionally its presence in the room was more of a nuisance than a helpful instructional aid. Nevertheless, stored against the wall, it was out of the way as much as it could be in the room. The students knew it was there and took pains to avoid tripping over it. No one before Mrs.

Fuller had had an accident involving the chalkboard. There was no evidence that anyone had ever tripped over it before.

I accept Mrs. Cole's evidence that after the accident Mrs. Fuller said she should have known the chalkboard was there and that it (to trip) was a silly thing to do. (There was evidence that Mrs. Fuller was wearing sling-back open-toe shoes on the day of the accident. Mrs. Fuller denies this, but in any event there is no evidence from which I can conclude that Mrs. Fuller's shoes caused or contributed to her fall.)

I bear in mind that the circumstances referred to in s. 3(1) include in this case the fact that the art class was made up of senior citizens who may be considered less mobile or agile than younger art students. Nevertheless, I remain of the view that the presence of the chalkboard with its protruding legs behind Mrs. Fuller's chair on the day in question was not a breach of the defendant's s. 3(1) duty.

Of the cases to which I was referred by Mr. Cadman the most factually relevant is *Mackie v. Stamps Landing Neighbourhood Pub Ltd.* B.C.S.C.: 14 March 1988: Van. Reg. #C860080. In *Mackie* the plaintiff caught his foot under a dishwasher which protruded into a passageway used by the patrons of a bar. The defendant was found wholly liable. In my view, *Mackie* can be distinguished on its

facts. In Mackie, although the plaintiff was aware of the presence of the dishwasher, there is no mention of his being aware of the 4 3/4" gap at the base under which he caught his prosthetic leg. Mrs. Fuller was fully aware of the protruding legs of the chalkboard. In Mackie, too, there was evidence that three other persons had caught their feet under the dishwasher before the plaintiff's accident. In the present case the evidence was that there had never been an accident involving the chalkboard.

Mrs. Fuller suffered a bad fall. The consequences have been serious and one can only feel sympathy and express regret for what happened. But I am unable to find that responsibility for the accident has been brought home to the defendant. The action must be dismissed - with costs, if they are sought, on Scale 3.

18 April 1991
Vancouver, B.C.

"Catliff, J."