

SUPREME COURT OF NOVA SCOTIA

Citation: *Smith v. Ricksons Enterprises Ltd.*, 2026 NSSC 18

Date: 20260116

Docket: Hfx No. 522033

Registry: Halifax

Between:

Robert Smith

Plaintiff

v.

Ricksons Enterprises Ltd. O/A Double D Grocery

Defendant

DECISION

Judge: The Honourable Justice Peter P. Rosinski

Heard: October 20, 21, 22 and 23, 2025, in Halifax, Nova Scotia

Counsel: Jeff T. Mitchell and Logan Clark-Kenney for the Plaintiff
Christine Nault and Katie Merchant for the Defendant

By the Court:

Introduction

[1] Ricksons Enterprises Ltd. operates a popular convenience store and bakery under the colloquial name, the “Double D Grocery” (hereinafter “the Double D”) alongside Hwy. #1 in Granville Ferry, Annapolis County, Nova Scotia.

[2] Greg and Sue Marshall were at all relevant times the *de facto* owners/operators of the Double D.

[3] Between January 14 and 16, 2022, there was a very stormy weather system in the area of the Double D which deposited significant amounts of sleet/snow and ice over those multiple days in sequence.

[4] On Saturday, January 15, Greg and Sue decided to not open the Double D as a result of weather conditions.

[5] On January 16, 2022, at 3:30 pm, Robert Smith (“Robert”) fell and injured himself while getting out of his vehicle parked immediately in front of the Double D.

[6] Robert sued Ricksons for its alleged negligence in not maintaining a sufficiently safe premises, pursuant to the duties imposed upon Ricksons by the *Occupiers’ Liability Act*, R.S.N.S. 1996, c. 27.

[7] I heard the trial in relation only to the issue of liability, as I understand the nature and amount of damages are not contested.

[8] There were a number of items which were of contested admissibility – specifically Tabs 12 through to and including 19 in the Joint Exhibit Book (“JEB”):

1. The statements of Greg and Sue Marshall who are mere witnesses not parties, are not admissible for the truth of their contents;
2. Sue’s Discovery evidence is admissible by the Plaintiff per CPR 18.20;
3. The transcription of purported conversations on November 9, 2022, between insurance adjusters and Sue and Greg and Jackie Doiron are

hearsay and not admissible for the truth of their contents or otherwise proved to have circumstantial guarantees of trustworthiness, for reasons including that the transcription has not been authenticated and certified as to accuracy, no oath or affirmation was used and that these persons were witnesses at trial, so the statements are not “necessary” either. The “statements” of Sue Ellen’s brother; Ricky Longmire, Sue Ellen and Jackie of February 23, 2022; Greg’s of January 27, 2023 are similarly inadmissible as are any to Laura Miettinen.

4. Therefore, Tabs 12, 13, 14, 15, 16 and 17 are hearsay and not admissible for the truth of their contents or otherwise proved to have circumstantial guarantees of trustworthiness, for reasons including that the transcription has not been authenticated and certified as to accuracy;
5. Tabs 18 and 19, being the parking lot, and walkway, logs, are admissible as an exception to the hearsay rule whether as “business records” under the Nova Scotia Evidence Act, RSNS 1989, c. 154, or the common law, but the weight to be attributed to them is, as always, a matter for the Court to determine. I bear in mind that in relation to the parking lot plowing and salting logs, Greg did not have an independent recollection of what occurred on any of those days as a result of his ongoing Alzheimer’s disease medical diagnosis. The logs themselves are minimalist and do not convey much more than that Greg “plowed” and “salted”, which was generically elaborated upon by him, with reference to what he would have done as his general practice. He had no specific reliable recollection of what he did in that regard on January 14, 15 or 16, 2022. I bear in mind that Sue was present with him and testified about the morning of January 16, 2022. Regarding the logs of the cashiers shoveling and salting of the concrete walkway in front of the Double D those likely also qualify as “business records”, but once more the weight to be attributed to those minimalist records is a matter for the Court to determine. These documents collectively are of assistance in relation to assessing what “system” the Double D, had and to what extent was that system followed.

[9] I find that Robert prudently parked close to the cement walkway directly attached to the front of the Double D’s premises (see the photo of a red car parked on page 50 JEB showing how closely he parked to the cement walkway and entrance doors to the Double D).

[10] I am further satisfied more likely than not that Robert had made prudent choices on January 16, 2022: he had appropriate footwear on, and he prudently attempted to exit his vehicle, when he stepped on an icy patch that was not visible as a result of accumulated snow where he placed his foot and weight, which had not been remedied by the removal of the snow and ice, by the application of salt/sand or other reasonable means, and which consequently caused him to violently fall to the ground.¹

[11] I find more likely than not that he was in no measure contributorily negligent.²

[12] Robert testified that he called Sue Marshall on January 18, 2022, about his fall, and she was unaware he had fallen. Notably, Sue does not dispute that she was called and informed but she testified that the call was on January 17, 2022.

[13] Sue confirmed in her discovery evidence that “there was a fair amount of snow and under the snow was ice”. At trial, she did not resile from that statement.

[14] The Double D argues that it had “a system” of monitoring for hazardous conditions in its parking lot and the capacity to take effective remediation steps such that it should not be found liable to Robert, if he is able to establish a *prima facie* case as against the Double D.

[15] I am satisfied that the Double D did have a basic system for the monitoring, inspection and maintenance of the safety of the walkway and parking lot for persons in winter conditions, but that with the foreknowledge, and ongoing knowledge of the exceptional winter snow and ice conditions that impacted the parking lot area of the Double D on January 14, 15 and 16, 2022, the Double D’s reliance upon its basic system on those days, and particularly on that Sunday, January 16, 2022, was not a reasonable response to those circumstances.³

[16] Robert was consequentially injured from the fall.

¹ I accept that, as Robert specifically testified, the ice he slipped on was smooth and there was no salt visible anywhere near where he had fallen, but only “slush and snow”, and that he struggled to stand up because of the slipperiness.

² I carefully observed Robert giving his testimony and scrutinized the content of his testimony, for internal consistency and consistency with other facts which I found had independently been proved or were not contested. I found him to have given his evidence in a credible and reliable manner. I similarly scrutinized Sandra Smith’s testimony and am fully satisfied that she testified in a credible and reliable manner - for example in relation to the fact that she herself was slipping on the ice trying to make her way around the car to get to and assist Robert.

³ See also, as a reference, the Plaintiff’s summary of the negligence asserted at paras. 61-86 and 97-118 of its Trial Brief, the evidence of Robert and Sandra Smith; the evidence of Greg and Sue Marshall, Jackie Doiron, Hannah Bruce and the Exhibits tendered. I respectfully note here that the reliability Greg’s *viva voce* evidence was materially affected by his admitted and obvious difficulty with his memory of the relevant events.

[17] I conclude more likely than not that Ricksons is entirely liable for his consequent injuries.

Why Ricksons is liable

[18] The Defendants suggest that there are four major issues for resolution:

1-Did Robert fall as he and his partner Sandra Smith testified that he did? [Yes, he did.]

[19] I found Robert and Sandra both had a good recall of the material relevant events of January 16, 2022, at the Double D premises, and they testified in an honest and reliable manner.

[20] They did not embellish their evidence and appropriately conceded matters which were brought to their attention by counsel that tended not to favour Robert's position.

[21] Their material evidence was consistent with the independent evidence and presented a simple narrative.

[22] No witness, other than Sandra, testified that they were contemporaneously aware that Robert had fallen.

[23] Robert went inside the premises immediately thereafter and reported to Jackie Doiron that he had fallen.⁴

2-Was Robert's fall caused by an accumulation of ice and snow? [Yes, it was.]

[24] I am satisfied more likely than not that the ice was present and necessary to his falling, but the snow exacerbated the danger posed by the presence of the ice. Thus, they worked together to cause his fall.

[25] On January 15th, Sue and Greg decided to close the Double D all day due to the prevailing weather conditions.

[26] I am satisfied more likely than not that on previous days and January 16, 2022, no sufficient amount of sand/salt had been applied to the parking lot, such that the

⁴ Her shift started at approximately 2:30 PM. No one else was present in the store. No one else was working on the premises. She recorded that he had fallen- "January 16, 2022 – Robert Smith fell out front around 330 – Jackie Doiron" at p 55 JEB. Where their evidence materially differs, I find the evidence of Robert more likely credible and reliable.

effect thereof in the afternoon that day would be to reasonably mitigate the foreseeable danger to customers of the Double D who parked immediately in front of the premises, which one would consider a high traffic pedestrian/vehicle area.

[27] The parking lot in front of the Double D building was in need of ongoing special attention when ice and snow conditions predictably conspired together to continue to make the area hazardous/dangerous for pedestrians.

[28] I am keenly aware that the Double D is not to be considered as a guarantor or insurer of its customer safety in such circumstances.

[29] However, I am satisfied more likely than not that the ongoing presence of ice and/or compacted snow (“skim”) underneath the accumulated more recent snow was widespread in the parking lot area that day, including where Robert fell, and that the presence of ice/skim under the snow was actually known, and generally reasonably foreseeable, to be present, by both Greg and Sue Marshall.

[30] I infer the same state of knowledge to Hannah Bruce and Jackie Doiron who worked the morning and afternoon shifts respectively. Hannah and Jackie were responsible for the safety of the walkway only.

[31] In her Discovery evidence, Sue was asked and stated:

Q. (pg. 25) Are the cashiers in attendance expected to salt and shovel anywhere beyond the sidewalk in front of the building?

A. No.

...

A. (pg. 30) So after each snow you just have the ice underneath. And we salted and plowed to the best of our ability... There was ice beneath the snow... ice there had been built up.

[32] On January 14, 2022, Greg plowed the parking lot only once – at 6:30 am.

[33] Greg next plowed the parking lot at 7 am on January 15, 2022. Ricksons decided to close the store that day. Greg next plowed on January 16, 2022, between 7 and 8 am.

[34] I am satisfied that Greg knew, or ought to have known, that this meagre pattern of plowing/salting, as it did, was likely to create hazardous conditions for pedestrians in the parking lot area as a result of the continuing widespread prevalence of

undisturbed built-up ice and accumulations of more recent snow after each plowing/salting.⁵

[35] The evidence which I accept causes me to conclude more likely than not that there was little sunlight or insufficiently warmer temperatures between January 14 and 17, 2022, to abate the risk of the accumulated ice/skim.

[36] I conclude that Greg himself recognized that his simply plowing as he did at least ¼ inch off the pavement, and his salting of the parking lot, would be largely ineffective later during the business day on January 16, 2022, given the accumulated hazards to pedestrians created by the weather conditions on January 14, 15 and 16, 2022.

[37] Furthermore, I accept that the spreading of granules of sand are more effective in such conditions when salt is less effective in reducing the slipperiness of ice and hard compressed snow, but that that was not the first choice preferred by Greg in part because the salt spreader was available and easier to use than the dispersion of sand by hand.

[38] Yet, after Greg had an opportunity to make a close inspection of the evolving parking lot conditions on the morning of January 16, 2022, the Double D decided to open the store as usual at 8 am.

[39] The presence of ice underneath the accumulated snow where and when Robert fell, and the other evidence I heard, leads me to conclude that the continued presence of hazardous remanent ice/skim under the snow was widespread in the parking lot area that day, after Greg plowed and salted.

[40] I am satisfied more likely than not that in the morning and afternoon of January 16, 2022, the parking lot had, and should have been expected to have, similarly dangerous spots.

[41] I am further satisfied more likely than not that on January 16, 2022, between 7 and 8 am and Robert's fall at 3:30 pm, an insufficiently reasonable amount of care had been taken (whether by plowing, ice removal or salting/sanding or otherwise – including closing the store that day) in that area of the parking lot where he fell, such

⁵ When I refer to “plowed”, I accept Greg’s evidence that, unless he stated otherwise, he plowed and then he manually salted the entire Double D parking lot with a salt spreader. I also accept his evidence that, in his experience, salt will be largely ineffective on ice or similarly hard compressed snow if it is not exposed to sunlight and/or sufficiently warmer temperatures.

that the effect thereof was to leave known conditions that created a foreseeable danger to customers of the Double D, including Robert, who parked in what he knew to be the parking area provided for customers immediately in front of the premises, and which the Double D (Greg and Sue as well) would intend and reasonably expect to be an ongoing pedestrian/vehicle area when the business was open.

[42] On January 16, 2022, that area was in need of ongoing special attention, as it was more likely than not foreseeable that the continuing ice and snow conditions would otherwise conspire together to make/keep the area dangerous for pedestrians.

[43] I am satisfied that, between the time of Greg's plowing and salting the parking lot in the morning and Robert's fall, further snow had fallen such that, in total, the remanent ice/compressed snow and additional snow/slush had accumulated to a depth of 4 to 5 inches.

[44] The ice/skim underneath the freshly fallen snow remained intact, in part, as a result of Greg's intentional ongoing decisions, *inter alia*, to reduce the wear and tear on his snow removal blade by the use of steel pads underneath the blade (Photos Tab 5 JEB) which caused his blade to hover continuously at least ¼ inch above the asphalt or the layer of ice/skim atop of it, as the case may be.

[45] Greg's ongoing operational practice and decisions (plow and salt) made removal of the ice/skim to be unlikely without further deliberate action, which he did not take, although I find Greg was well aware that the snow blade likely would have passed at an even higher level than ¼ inch off of the pavement where, as was acknowledged to be the case generally and specifically on or about January 15 – 16 2022, it was entirely foreseeable that in large areas of the parking lot the "skim" and/or ice had accumulated atop of the asphalt.

[46] I am satisfied more likely than not that, on January 16, 2022 before Robert fell at 3:30 pm, Sue and Greg Marshall had sufficient bases upon which they knew or ought to have known of the presence of remanent ice and compacted hard snow under the freshly fallen snow, which created an ongoing danger to pedestrians in random spots of the Double D parking lot, and particularly in the area where they provided parking for customers immediately outside the front entrance to the Double D.

3-Did the Defendants have a reasonable system for the monitoring/inspection /maintenance of the safety of the parking lot to safeguard persons that entered onto the premises, and if so, did the Defendants reasonably follow the system?

[There was such a basic system, but it was not suitable by design, for the foreseeable weather conditions and consequences thereof between January 14 – 16, 2022; nor did the Defendants reasonably respond to those foreseeable and hazardous conditions on January 16, 2022.]

[47] Let me briefly address the credibility of the Defence witnesses. Jackie Doiron admitted that she did not cross the parking lot on her way to work that day even though she lives only five minutes away nor did she testify about whether she crossed the parking lot and what she experienced when she left work to return home. Nevertheless, she gave a strident opinion about the slipperiness of the parking lot; namely, that she was not slipping when she was in that area where Robert fell. Of course, she had been forewarned that it could be slippery and may have adjusted her walk with that in mind. Moreover, I found her testimony consistently bending in a manner to place Greg and Sue in a positive light. One example is her testimonial reference that the area where Robert had fallen appeared to be like a “paper sized... smudge in the snow”, so as to make it seem insignificant, and perhaps contradictory of his claim that he had fallen onto his back in that place. It was pointed out in cross-examination that that she had not included such references in her pre-trial November 9, 2022, statement. She also conceded that there was packed snow and ice present and it could have been more prevalent in the parking lot than she could superficially have seen on January 16, 2022: I generally found her evidence to be oriented in favour of her employers, Greg and Sue Marshall, who had been very good to her, and antagonistic towards Robert. For example, she denied his testimony was truthful when he testified that she had told him that she did not believe he had fallen in the parking lot, and she declined his offer to feel his coat which was wet and covered with slush. I found Sandra to be credible, and she testified that his coat was soaking wet from the slush, which is consistent with all the other evidence that I accept, including that of Sandra. Jackie also agreed that, in an earlier statement, she had stated that: [January 16, 2022] “was sort of icy that day”. She similarly conceded that regarding the parking lot: “it wasn’t scraped to the pavement level”. Briefly in relation to Hannah Bruce, she admitted she had no independent recall of how widespread the snow accumulation on the parking lot was on January 16, 2022. Her evidence tended to be generalized rather than specific. Regarding Greg and Sue, during her testimony, and particularly in cross-examination, she gave the distinct impression that she wished to present them and their actions/inactions in a positive light. In relation to the suggestion that Robert had fallen as a result of slipping on ice after she had left the premises, she commented: “thinking it odd, quite odd that someone had slipped and fallen ... out of character for the conditions when I left [3 pm January 16, 2022, which was 30 minutes before Robert fell]”. I found Greg’s

evidence to be generally unreliable because of his lack of independent recall due to his medical circumstances, unless clearly supported by other credible evidence. Sue's evidence was oriented around the general operation of the Double D, since she was not present during operating hours on January 16, 2022. Overall, her evidence was generally credible.

[48] Greg and Sue Marshall are the *de facto* owners of Ricksons, and manage as well as work for the Double D.

[49] Greg is responsible for the maintenance of the facility and premises. Greg is sporadically there as needed. The evidence suggests he was only present when his plow and salt log records he was there.

[50] In winter, Greg is responsible for maintaining in safe condition the parking lot, whereas working staff are only responsible to maintain in safe condition the concrete walkway in front of the Double D.

[51] Greg has a truck with a mounted snow plow (photos at Tab 5 JEB) which he maintains and operates, as well as a hand-operated salt spreader, and he has access to snow shovels and sand etc. as required.

[52] Sue worked Mondays to Saturdays at the Double D, although the store was also open Sundays from 8 am to 8 pm. Sue is responsible for the bakery operation, as well as the employees who assist with the operation of the Double D.

[53] January 16, 2022, was a Sunday, so neither Sue nor Greg were scheduled to be there that day during open hours, and only one cashier works at a time as opposed to two for the remaining days of the week.

[54] Greg and Sue did attend at 7 am, when he plowed and salted the parking lot, and she shoveled and salted the concrete walkway in front of the store.

[55] Hannah Bruce was working alone as a cashier from opening until approximately 2:30 pm, when Jackie Doiron took on her responsibilities, filling in for an unexpectedly absent cashier.

[56] Generally speaking, in winter Greg and Sue would monitor weather conditions (by visual inspection and news sources) from their home approximately a five-minute drive from the Double D.

[57] The basic system of “inspection, monitoring and maintenance” for the Double D’s parking lot was as follows:

- the cashiers are responsible to keep the concrete walkway in front of the store clean and safe; and
- the cashiers are primarily responsible, when Sue and/or Greg are not on the premises, to monitor the parking lot and be on the lookout for anything that could be dangerous. If there is snowfall in amounts more than over the ankle height of the cashier, then Sue/Greg should be notified so action can be taken; the cashiers are also responsible to report any other remarkable matters or if they require anything to ensure the safety of customers on the premises.
- The cashiers and Sue confirmed that if there was something of concern the cashiers could telephone Sue or send her a photo thereof, or both as the case may be, so she could make a decision about what is to be done.

[58] On January 16, 2022, neither cashier Hannah Bruce nor Jackie Doiron called or communicated with Sue/Greg before Robert had fallen.

[59] I heard no evidence that while at work January 16, 2022, either cashier went beyond the concrete walkway after they arrived for work, although Hannah Bruce left at approximately 2:30 pm and likely crossed over some portion of the parking lot surface.

[60] Furthermore, the cashiers were not tasked with, nor did they examine or test how slippery the parking lot area was, particularly immediately adjacent to the concrete walkway they were responsible for, where customers inevitably were likely to park and exit their vehicles.

[61] I am satisfied more likely than not that the accumulated snow on the parking lot generally was similar to where Robert fell – i.e. 4 to 5 inches accumulation. This amount of snow accumulation likely should have been communicated by the cashiers to Greg and Sue, as being at or above ankle height.

[62] The basic system also suffered from a design flaw, in that it accepted the ongoing risk, that the morning plowing would continue to leave at least a residue ¼ inch off the parking lot surface, and presumed the mere application of salt onto the parking lot by Greg in the mornings, would render sufficiently and reasonably less

dangerous any existing and foreseeable further ice/snow accumulation thereon, throughout the entire business day.

[63] However, as Greg testified, from his experience, sunlight and warmth are required to activate the salt to effectively render the ice reasonably harmless. Those conditions were not present on January 16, 2022.

[64] The circumstances here have satisfied me more likely than not that the plowing and application of the salt on earlier days and on January 16, 2022, between 7 and 8 am, including the other aspects of the inspection, monitoring and maintenance “system”, did not reasonably render the known and foreseeable ice/skim underlying the snow to no longer be a material hazard to pedestrians in the area immediately in front of the Double D premises.

Conclusion

[65] On January 16, 2022, with his actual knowledge and the foreseeability of ongoing hazards arising from the weather conditions that day, the failure of Greg to initially and throughout the day more proactively take further measures to reduce the ice/skim and snow hazard that existed, and was likely to continue to exist on the parking lot of the double D, was not a reasonable response to those known and foreseeable exceptional weather conditions.

[66] The basic system used by the Double D which required that the only employee present should personally monitor and inspect the parking lot on January 16, 2022, (which she did not reasonably do in any event) did not reasonably respond to the known and foreseeable exceptional weather conditions that day.

[67] *Inter alia*, these two failures combined underlie my conclusion that Ricksons did not reasonably respond to the known and foreseeable hazards presented to their customers’ safety on their parking lot, and specifically in relation to Robert, who himself acted prudently.

[68] I find Ricksons 100% responsible for Robert’s injuries.

Costs

[69] If the parties cannot agree on costs, I order that the Robert file his costs submissions (maximum 10 pages) within 7 days of the release of this decision and Ricksons file its submissions (maximum 10 pages) within a further 7 days.

Rosinski J.