IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Chin v. 0880984 B.C. Ltd.,*
2023 BCSC 297

Date: 20230302
Docket: M192475
Registry: Vancouver

Between:

Hedy C. Chin

Plaintiff

And

0880984 B.C. Ltd., doing business as a sole proprietorship under the name and style of MCL Motor Cars 2010, and Broadway Properties Ltd.

Defendants

Before: The Honourable Justice Loo

Reasons for Judgment

Counsel for the Plaintiff:	R.C. Brun, K.C.
Counsel for the Defendant, 0880984 B.C. Ltd.:	D. Ellis L.H. Leung
Place and Date of Trial:	Vancouver, B.C. January 16–20, 2023
Place and Date of Judgment:	Vancouver, B.C. March 2, 2023

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[1] This action arises from an incident at the premises of the defendant 0880984 B.C. Ltd. dba MCL Motor Cars 2010 ("MCL") on February 7, 2018, in which the plaintiff fell onto the concrete floor of MCL's automotive shop, injuring herself.

[2] By a consent order made October 26, 2022, the issues of liability and damages in this matter were severed. These reasons relate to liability only. For the reasons stated below, I have found MCL liable for the damages suffered by the plaintiff.

[3] By a consent order dated January 5, 2023, the plaintiff's claim against defendant Broadway Properties Ltd. was dismissed.

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Overview

[4] At the time of the incident, the plaintiff Hedy Chin was 56 years old and was working as a mortgage broker for the Royal Bank of Canada.

[5] On February 7, 2018, Ms. Chin took her 2016 Range Rover into MCL's service centre for repairs. When she arrived at MCL, she parked outside, exited her vehicle and then walked into MCL's reception area. Although there is some debate as to the extent, it was raining that day.

[6] In the reception area, she was greeted by a service advisor, Jackie Lai.

[7] After speaking with Mr. Lai in the reception area, Ms. Chin entered the shop area with Mr. Lai so that they could discuss some of the work required on her vehicle.

[8] In order to enter the shop, Ms. Chin and Mr. Lai passed through a door on which there was a sign stating "employees only beyond this point".

[9] After passing through the door from the reception area, they walked along a concrete or cement path, painted dark grey, which was referred to during the trial as the "walkway".

[10] As Ms. Chin and Mr. Lai walked along the walkway, there was a wall to their left. At the end of the walkway, the wall ended, and perpendicular to the walkway was an area whose surface was light grey in colour, along which vehicles were moved from outside into the shop, in most cases towards the shop's service bays. This light grey area was referred to during the trial as the "driveline".

[11] When Ms. Chin and Mr. Lai entered the shop through the door from the reception area, Ms. Chin's Range Rover was parked on the driveline perpendicular to and to the left of the end of the walkway, with its front end facing towards the walkway. It had been moved inside the shop by an employee of MCL.

[12] Ms. Chin and Mr. Lai circled the vehicle and after a short discussion, walked back towards the door to the reception area. On her way back, Ms. Chin fell and was injured. She was helped up by Mr. Lai and Ron Laing, another employee of MCL. The mechanics of her fall were at issue at the trial.

[13] The employees of MCL moved Ms. Chin on a wheeled office chair to MCL's lunch room, and an ambulance was called. Ms. Chin was taken to the hospital where she spent more than 10 hours. She was then driven home by members of her family.

Legal Principles

[14] This dispute is governed by s. 3(1) and (2) of the *Occupiers Liability Act*, R.S.B.C. 1996, c. 337 [*OLA*]. That section imposes a duty on an occupier of premises:

> **Occupiers' duty of care**
>
> **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, and the person's property, on the premises, and property on the premises of a person, whether or not that person personally enters on the premises, will be reasonably safe in using the premises.
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> (2) The duty of care referred to in subsection (1) applies in relation to the
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> (a) condition of the premises,
>
> (b) activities on the premises, or
>
> (c) conduct of third parties on the premises.

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[15] In this case, it was not contested that MCL was an occupier of premises as defined under the *OLA*.

[16] In *Robinson v. 1390709 Alberta Ltd.*, 2016 BCSC 2459, aff'd 2017 BCCA 175, Justice Gaul cited with approval the following principles regarding the operation of s. 3 in the context of a slip and fall, set out by Justice Preston in *Mainardi v. Shannon*, 2005 BCSC 644 at para. 21:

> [21] …
>
> (1) The plaintiff bears the onus of proving on a balance of probabilities that the occupier breached his or her duty of care.
>
> (2) A presumption of negligence is not created by the fact that the plaintiff was injured. The plaintiff must establish that some act or failure to act on the part of the occupier resulted in his or her injury: (***Bauman v. Stein*** (1991), 78 D.L.R. (4th) 118 (B.C.C.A.)).
>
> (3) The duty of care imposed by the ***Act*** does not require the occupier to remove every possibility of danger – the test is one of reasonableness, not perfection: (***Gerak v. British Columbia*** (1984), 59 B.C.L.R. 273 (C.A.) (leave to appeal to S.C.C. refused; ***Carlson v. Canada Safeway Ltd.*** (1983), 47 B.C.L.R. 252 (C.A.)).
>
> (4) The Court is not entitled to resort to speculation when determining the cause of the plaintiff's fall and subsequent injury. The plaintiff must prove the nexus between his or her fall and the occupier's failure to discharge his or her duty of care: (***Cropley v. Daishinpan (Canada) Ltd.,*** 2002 BCSC 1477 [para.] 22).
>
> (5) The care that an occupier must take differs according to the nature and use of the premises: (***Kayser v. Park Royal Shopping Centre Ltd.*** (1995), 16 B.C.L.R. (3d) 330 (C.A.)).
>
> (6) The ocupier need not, in all cases, show that he or she had a specific policy in place to deal with the maintenance of the portion of the premises where the fall occurred. The nature of the premises will determine whether or not a maintenance scheme will be required: (***Leduc v. Goodwill Investments Ltd.,*** [1997] B.C.J. No. 1709 (S.C.) [para.] 20).

[17] As stated in point 4 above, the Court is not entitled to resort to speculation when determining the cause of the plaintiff's fall and subsequent injury. Further, an occupier does not constitute an insurer against every eventuality that may occur on the premises: *Barr v. The Owners, Strata Plan LMS 2286,* 2019 BCSC 917.

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[18] On the other hand, in *Barr*, this Court also held:

> [30] This is not to say that a finding of negligence requires direct evidence of the cause of an accident. The trier of fact may reasonably draw an inference of causation based on all of the evidence, assessed through the application of logic and common sense. There is a difference between speculation and conjecture on the one hand and rational conclusions that flow logically and reasonably from the evidence on the other: *Druet v. Sandman Hotels, Inns & Suites Limited*, 2011 BCSC 232 [*Druet*] at para. 34; *Goddard v. Bayside Property Services Ltd.*, 2019 BCCA 148 at para. 4.

[19] The standard of care under the OLA and under common law principles of negligence is the same: it is to protect others from an objectively unreasonable risk of harm: *Agar v. Weber*, 2014 BCCA 297 at para. 30.

[20] In order to succeed in her claim, the plaintiff must first show what hazard or condition caused her slip and fall. Second, the plaintiff must show that the defendant's breach of their duty of care caused the hazard or condition to be present: *Hamilton v. The Owners, Strata Plan VIS3782*, 2018 BCSC 1585 at para. 49; *Thomas v. The Roman Catholic Archbishop of Vancouver*, 2016 BCSC 1466 at para. 42.

Issues and Framework of Analysis

[21] In my view, this claim is to be determined by asking the following questions:

a) How did Ms. Chin fall?

b) Why did Ms. Chin fall?

c) Assuming that the cause was within the control of MCL, what steps or what system did MCL have in place to prevent such a fall from happening, and did it adequately follow those steps or that system?

[22] Before turning to the issue of liability, I will address the credibility and admissibility of the evidence of the lay and expert witnesses.

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Lay Witnesses

[23] Ms. Chin was the only lay witness called at trial on behalf of the plaintiff. In total, MCL called five lay witnesses:

a) Jackie Lai, the service advisor who escorted Ms. Chin into the shop;

b) Ron Laing, a valet attendant;

c) Khaled Barbour, an automotive mechanic;

d) Kris Duchnych, who worked in the parts department and was MCL's first aid attendant; and

e) David Campbell, MCL's service manager.

[24] For the most part, I found that the lay witnesses answered the questions asked of them in a straightforward manner and did the best that they could. The one exception was Mr. Barbour who was confrontational and argumentative during his testimony. His behavior on the stand reflects poorly on the credibility of his evidence.

[25] As will be seen below, I have made most or all of the necessary factual findings in this case without relying solely on the credibility of the witnesses. In this regard, it is important to recall the words of Mr. Justice O'Halloran in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.):

> **11** … In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. …

Expert Witnesses

[26] The plaintiff sought to call Dr. Amrit Toor as an expert. The defendant sought to have the court admit the evidence of three experts: Craig Brown, Dennis Chimich, and Jeff Hall.

[27] In the course of the trial, objections were raised by both parties regarding the admissibility of the other's experts. At the time, I decided that Dr. Toor's report would be admitted with the exception of three conclusions, that Mr. Brown's report and Mr. Chimich's report would be admitted in their entirety, and that Mr. Hall's report would be excluded in its entirety. I advised counsel that brief reasons for my decisions regarding these reports would be included in these reasons for judgment.

[28] The principles regarding the admissibility of expert evidence are set out in *Maras v. Seemore Entertainment Ltd*., 2014 BCSC 1109 at paras. 11–13:

> [11] The starting point governing the admissibility of expert opinion are the guiding principles set out in *Mohan* at 20:
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> a) relevance;
>
> b) necessity in assisting the trier of fact;
>
> c) the absence of any exclusionary rule; and
>
> d) a properly qualified expert.
>
> [12] To be necessary, expert evidence must likely be outside the experience and knowledge of a judge or jury, and must be assessed in light of its potential to distort the fact-finding process: *Mohan* at 23-25; *ter Neuzen v. Korn*, [1995] 3 S.C.R. 674 at para. 55. As well, the evidence must be of assistance to the trier of fact: *Mohan* at 34-37.
>
> [13] *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, 3d ed. (Markham: LexisNexis, 2009), beginning at para. 12.48, provides a helpful analysis of the admissibility criteria. Opinion evidence must have some probative value to make the existence or nonexistence of a material fact more probable or less probable than it would be without the evidence. Expert evidence that does not achieve this purpose will not satisfy the criteria of relevance and necessity in assisting the trier of fact.

[29] Dr. Toor is a mechanical engineer whose report addresses the "dynamics" of Ms. Chin's fall. There was no objection to his qualifications, but MCL attacked parts of his report on the basis that it did not provide technical assistance and engaged in advocacy. His report purported to contain four conclusions, one of which was not a conclusion at all, but rather a restatement of an assumption. Two of the conclusions were, in my view, argument in the guise of expert evidence and of little assistance to the court, and I ruled them inadmissible. The parts of Dr. Toor's report which dealt with the biomechanics and "dynamics" of Ms. Chin's fall were admitted into evidence.

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[30] Mr. Brown is an engineer who performed slip resistance testing and lighting measurements at the subject property. His report also provided information about the walkway width as compared to safety requirements.

[31] In the course of submissions, counsel for the plaintiff pointed out a number of ways in which Mr. Brown's report might be attacked. For example, Mr. Brown's testing of the surface was done after the floor was wiped down, and it used a standard material for friction testing which apparently differed from the surface of the plaintiff's shoe. The wet testing was performed with distilled water and did not account for any possible contaminants.

[32] Ultimately, some of these attacks were cogent. However, I concluded that these matters ought to go to weight, and that the report was sufficiently relevant, necessary, and helpful to be admissible in its entirety.

[33] Mr. Chimich is a biomechanical engineer who opined about slip and fall mechanics. Broadly speaking, the subject area addressed by Mr. Chimich was similar to that covered by Dr. Toor. Although one or two of Mr. Chimich's conclusions came close to the line in terms of usurping the court's role, I found that his report was sufficiently relevant, necessary, and helpful to be admissible in its entirety.

[34] Mr. Hall is a certified master automotive technician and a certified automotive engineer. He was asked by counsel for the defendant to perform five tasks:

a) *Describe the automotive shop area*. In order to carry out this task, he attended the shop on June 10, 2021. He described parts of the shop and took photos which were reproduced in his report.

b) *Advise whether the automotive shop is safe, according to industry standards and practices*. In answer to this question, he listed eight points. The two points most possibly relevant to the issues at hand were: "The shop area appeared clean, tidy and free of debris" and "Passageways were wide and clear of obstacles".

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c) *Advise of the likelihood of oil or other substances spilling onto the floor and why*.

d) *Advise of the likelihood of oil or other substances being in the area of the passageway leading to the door depicted in the enclosed photographs*.

e) *Advise whether it is appropriate for a service advisor to take a customer into the shop area*.

[35] I concluded that sections (a) and (b) were not helpful or necessary. Mr. Hall's observations were more than three years after the incident and the shop area was described by five witnesses who actually worked at MCL at the time. The two most relevant points concerning whether the shop was safe were particularly temporary in nature: the evidence that the shop area appeared clean, tidy and free of debris, and the passageways were wide and clear of obstacles was of little use given that Mr. Hall's observations were more than three years after the incident.

[36] I concluded that sections (c) and (d) were also unhelpful and unnecessary, and that these parts of the report constituted argument in the guise of expert evidence. Whether a spill is likely or the likelihood of oil or other substances being in the walkway area is not an issue upon which the court requires assistance.

[37] I concluded that section (e) was argument in the guise of expert evidence. That section did not refer to any industry standards. For those reasons, among others, it was neither helpful nor necessary.

[38] Further, it appears from Mr. Hall's C.V. that between 1987 and 1997, he worked in car dealerships. Between 1997 and 2009 he taught automotive mechanics at a high school, at BCIT and VCC. Between 1995 and the present, he had a consulting business in which he performed forensic mechanical inspections. Based on his C.V., I was not satisfied that Mr. Hall had special knowledge sufficient to perform the tasks asked of him.

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[39] For these reasons, I held that the report of Mr. Hall was inadmissible in its entirety.

The Circumstances of Ms. Chin's Fall

Did Ms. Chin Trip or Slip?

[40] Ms. Chin testified that as soon as she went through the doorway from the reception area to the shop, she could immediately see her Range Rover, parked in front of her with the front end of the vehicle just in her line of sight.

[41] She said that she and Mr. Lai moved around her vehicle in a clockwise fashion, first walking towards the right passenger side rear of the vehicle, before turning around the rear of the Range Rover and walking back towards the front of the vehicle, on the driver's side.

[42] Ms. Chin testified that while walking around the vehicle, she observed water and a greasy or oily substance on the ground near the vehicle.

[43] Following their discussion, which ended near the driver's side of the Range Rover, Mr. Lai started to walk back towards the door which led into the reception area.

[44] Ms. Chin followed him. As she started walking back towards the door, she did not observe any wetness on the ground in the walkway area.

[45] Ms. Chin suddenly fell forward onto the ground. She said that she felt some kind of danger, and recalled hoping that she would not fall. Immediately she went forward, and had her hands in fists. She fell onto her fists, and hit her arms and elbows. Her knees crashed down onto the concrete flooring. She ended up face down on the ground.

[46] Although there are differing accounts about exactly where Ms. Chin fell, it appears that she landed somewhere around the middle of the walkway, past the line separating the driveline from the walkway.

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[47] She testified that after she was helped up, someone moved her into MCL's lunch room using an office chair with wheels. MCL's first aid attendant, Mr. Duchnych, met her in the lunch room. Ms. Chin told Mr. Duchnych that she had slipped. At the time, he recorded her version of the event in a document entitled "First Aid Record" as follows:

> Walking in shop and slipped, falling forward on concrete. Landed on hands and knees.

[48] Aside from Ms. Chin, there was only one witness who was able to give direct evidence regarding Ms. Chin's fall. Ron Laing, who was working as a valet for MCL on the day of incident, testified that he saw Ms. Chin trip over a piece of machinery.

[49] Mr. Laing testified that at the time of the accident he was standing at a place known as "the tower" adjacent to the door leading from the reception area into the shop, and that Mr. Lai came around the corner towards him. He testified that "a lady was coming behind him. She stubbed her right toe on the DEF machine. She tripped and fell on her left knee."

[50] DEF stands for diesel exhaust fluids. The DEF machine is comprised of a blue barrel sitting on a four-wheeled cart. It has hoses running from it.

[51] Mr. Laing's evidence and Ms. Chin's evidence cannot both be correct. On a balance of probabilities, it is my view that it is more likely that Ms. Chin slipped than tripped. I have reached this conclusion for the following reasons:

a) Ms. Chin's evidence that she and Mr. Lai circled the Range Rover in a clockwise direction was not seriously contested by MCL. Ms. Chin's evidence that she saw the Range Rover as soon as she entered the shop suggests that her vehicle must have been protruding around the corner at the intersection of the walkway and the driveline. I conclude from these two pieces of evidence that after she came around the front of the vehicle on the driver's side, she was able to walk straight towards the doorway, avoiding the DEF machine. She testified she was walking in the middle of

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the passageway in a more or less straight line from the front of her vehicle to the doorway. It is not likely that this path would have taken her towards the DEF machine which was sitting at the side of the walkway.

b) Numerous witnesses testified that the walkway was not cluttered. Mr. Laing was the only witness who testified that the DEF machine was protruding far enough into the walkway to cause Ms. Chin to trip.

c) Mr. Laing testified that he did not know where Ms. Chin was coming from before she fell but he was adamant that there was no car in the driveline adjacent to the walkway. His firm recollection in this regard is contrary to the clear evidence of other witnesses that Ms. Chin's Range Rover was parked there. Mr. Laing's insistence regarding this issue casts doubt on his memory of the incident more generally.

d) Mr. Laing's evidence was not recorded contemporaneously with the event. He was not asked for his recollection until a year later. On the other hand, Ms. Chin's version of events was recorded on the day of the incident by means of a statement made to Mr. Duchnych in a First Aid Record, as described above.

[52] Both Dr. Toor and Mr. Chimich gave evidence concerning the biomechanics of falling, and in particular on whether it was more likely that a person would fall forwards when tripping, as opposed to when slipping. Although their opinions differed as to the degree and extent of this likelihood, they both ultimately opined that it is possible for someone to slip and to fall forward.

[53] Dr. Toor testified that for someone to slip on a level floor and to fall forward is not atypical. Mr. Chimich opined that if a person falls forward it is more likely that he or she had tripped rather than slipped. Although he opined that it was less likely as a person becomes older to fall forward following a slip, he conceded that one could not say with certainty that the fact that Ms. Chin fell forward meant that she had tripped.

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[54] In my view, the evidence of these engineers accords with common sense: that is possible to slip and to fall forward as a result.

[55] On this issue, I prefer Ms. Chin's evidence to Mr. Liang's. On a balance of probabilities, it is my view that Ms. Chin slipped on the ground and did not trip over the DEF machine.

Why Did Ms. Chin slip?

The Relevant Evidence

[56] As described above, Ms. Chin testified that as she was walking around her Range Rover, she saw water and an oily substance on the ground. No one from MCL contradicted this evidence, except to assert in general terms that spills on driveline are always immediately cleaned up. For example, Mr. Laing testified that fluids seen on the driveline would not be "unattended", meaning that if they were seen, they would be dealt with.

[57] The matter of fluids on the driveline was the subject of cross-examination of all of the MCL witnesses. At least two of MCL's witnesses denied that they ever saw vehicle fluids on the driveline. MCL's witnesses provided many reasons why the leakage of fluids from vehicles on the driveline is minimized. For example, they testified that modern vehicles do not use power steering fluid. Any leaks are usually caught by pans which are attached to the bottom of the vehicles. It is possible that if a vehicle was in an accident, there could be a major leak but in those circumstances the vehicle is usually empty of fluids before it is towed into the shop.

[58] However, MCL's witnesses understandably could not say that it was impossible for slippery fluids to leak from vehicles being brought into the shop along the driveline.

[59] Further, as stated above, it was raining on the day of the incident. There were seventeen service bays in the shop and vehicles were being moved in and out of the shop along the driveline all day. It is self evident that rainwater would drip from the vehicles on the driveline and would be brought into the shop by the vehicles' tires.

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[60] Further, it is likely that when vehicles were being driven in from the outside along the driveline, they would shed road grime as well as water. Mr. Campbell conceded that this was a possibility.

[61] During the trial, the parties referred to photos of the driveline which were taken approximately one year after Ms. Chin's fall. It is apparent from the photos that it was raining shortly before, but not during the time, the photos were taken. Some of the photos show the driveline being wet.

[62] There was also a photo showing a dirty carpet on the reception side of the door between the shop and the reception area. The reasonable inference to be drawn from this photo is that dirt and grime are tracked from the driveline through the walkway and into the reception area.

[63] Ms. Chin testified that when she arrived home after discharge from hospital, she observed that there was dirt or grease on her shoes at the corner of her shoe and "my sole and my heel". She could feel it being greasy. She also noted that there was dirt or something similar on her pants and coat. In cross-examination she described her clothes as having "scuff marks".

[64] Although expert evidence is not necessary to reach this conclusion, Mr. Brown conceded that oil or grease when mixed with water can create a very slippery surface.

[65] A number of MCL employees testified that the walkway was not wet or dirty when Ms. Chin fell. Ms. Chin conceded that she did not see any wetness or greasiness in the walkway or in the area where she fell.

[66] In cross-examination, Ms. Chin admitted that she did not know why she slipped and she did not know what she slipped on. She admitted that she did not know whether she stepped in any contaminants while at her vehicle, and that even if she did, she did not know whether or not she tracked the contaminants into the walkway where she fell.

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[67] Nonetheless, in my view, it is open to this Court to draw an inference as to why she fell, based on Ms. Chin's evidence that she saw oil and water on the ground before she fell, and a greasy substance on her shoe afterwards, and on the evidence described above which supports the proposition that there was water, road grime and vehicle fluids on the driveline.

Authorities Cited by the Defendant

[68] As stated above, this Court ought to be wary about speculating about the causes of accidents. On the other hand, it is entitled to draw inferences from the evidence.

[69] The defendant has cited a number of cases in which this Court has found that the cause of a fall was speculative, but in my view, they can all be distinguished from this case.

[70] In *Barr*, the plaintiff fell while traversing stairs which were part of a walkway between the municipal sidewalk and the plaintiff's condominium building. Justice Horsman found that the evidence did not logically support an inference of causation; therefore, the defendant strata was not liable for the plaintiff's injuries resulting from the fall. The plaintiff's case rested primarily on photographs that the Court described as showing "… a slight unevenness in the surface of the 260 Walkway that could hardly be described as a recognizable risk …": para. 38. By contrast, in this case, oil and water on a concrete floor is a recognizable risk.

[71] Four of the authorities relied on by MCL are distinguishable from this case on the basis that Ms. Chin saw oil and water on the ground before she fell and a greasy substance on her shoe afterwards, whereas in the following cases, there was no direct evidence of the alleged hazard:

a) In *Biegel v. Trotter and Mortan Ltd.*, 2022 ABKB 808, the plaintiff testified that the front part of her bicycle hit a divot or gravel, sending her over the handlebars, but "Ms. Biegel testified she did not see divots or gravel before the accident, nor did she remember seeing divots or gravel while

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lying on the ground after the accident": para. 21. The Court was unable to determine the cause of the accident because there was no evidence of the hazard encountered by the plaintiff, only her speculation: paras. 22, 26–27

b) In *Gujral v. Meat and Bread Sandwich Company Ltd*., 2022 BCSC 917 at para. 39, the Court "… found it significant that at no time did [the plaintiff] testify that he was aware of, or witnessed in that moment, that he was slipping on water, nor did he testify that he had visually identified water under or near his feet prior to, or immediately after, that moment."

c) In *Nandlal v. Toronto Transit Commission*, 2014 ONSC 4760, aff'd 2015 ONCA 166, the plaintiff deposed that she believed she slipped on debris at the top of the staircase. However, while the plaintiff had seen debris at the station that morning, she did not see the debris she believed she fell on. The claim was dismissed as the plaintiff did not provide direct evidence that there was debris on the stairs at the time of the fall. Instead she testified that she believed that there was debris which caused her fall: para. 26.

d) In *Charlie v. Canada Safeway Limited*, 2011 BCCA 202, the plaintiff claimed she slipped on water that escaped from a flower display. However, although the plaintiff argued that the flower display represented a possible source of water, there was no direct evidence that there was water on the floor prior to her fall. In the result, the Court of Appeal upheld the chambers judge's decision to dismiss the plaintiff's claim.

[72] In *Hanes v. Loblaws Inc.,* 2017 BCSC 102, in the face of no direct evidence that the floor was wet when the plaintiff fell, the Court concluded that the plaintiff tracked in water from outside:

> [143] It is my view that Ms. Hanes' shoes were already wet when she entered the store due both to her crossing the snowy church parking lot, and residual moisture on the concrete outside the store.

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[73] In *Lansdowne v. United Church of Canada et al.*, 2000 BCSC 1604, Justice Scarth found insufficient evidence as to the cause of the accident. In that case, the plaintiff attributed her fall down a flight of stairs at the defendant church to "three carpet threads" coming out over the bottom step.

[74] In my view, *Lansdowne* is distinguishable on the basis that the Court in that case was unable to find on a balance of probabilities that the loose threads, discovered a week after the accident, caused the fall. Every case may turn on its own facts and there is no principled reason arising from *Lansdowne* which precludes me from drawing the inference in this case that Ms. Chin fell as a result of an oily substance which had attached to her shoe as she rounded her car.

[75] I note that in *Barr* at para. 36, Justice Horsman referred to the decision in *Burnett v. Canada Safeway Ltd.*, [1983] B.C.J. No. 1073 (S.C.), aff'd [1984] B.C.J. No. 1848 (C.A.), as follows:

> [36] … The plaintiff in *Burnett* slipped and fell on a waxed linoleum floor in a Safeway store. There was no direct evidence that water was on the floor where the plaintiff fell. However, the trial judge drew an inference of causation from evidence that a Safeway employee was spraying water on vegetables in the vicinity that the plaintiff fell, and evidence that the device used to mist vegetables often left water on the floor. In upholding the trial judgment, the Court of Appeal held that the evidence, while "sparse", permitted the inference drawn by the trial judge that water on the floor had caused the fall.

[76] Read together, *Burnett, Lansdowne,* and *Barr* stand for the proposition that this Court is entitled to infer causation from the evidence in appropriate circumstances.

[77] The defendant argued that "countless" people have taken the same route as Ms. Chin without incident. Mr. Campbell testified that he was not aware of any injuries involving customers, in the shop or otherwise, in the 34 years he has worked for MCL.

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[78] While prior safe use is a relevant factor to be considered in cases such as this, it is not determinative. In *Barr,* at para. 40, Justice Horsman held:

> [40] … I am mindful that such evidence of prior safety and continued safe use, while relevant, is not determinative as to whether the area was reasonably safe at the time of the plaintiff's fall: [citation omitted].

Conclusion on the Reason for Ms. Chin's Fall

[79] I find that there was no wetness or substance in the walkway, but there was water and an oily substance around Ms. Chin's vehicle. Given the evidence described above, Ms. Chin's testimony that she saw a mixture of water and an oily substance as she was walking around her Range Rover is not surprising.

[80] I accept Ms. Chin's evidence that when she arrived home, she found a substance on her shoe which was greasy or oily. I find that this substance got onto Ms. Chin's shoe as a result of her being on MCL's property.

[81] Further, I find that despite the water and oily substance on her shoe, Ms. Chin was able to walk a few steps towards and possibly along the walkway but, ultimately, she slipped because of the substance on her shoe, causing her to fall to the ground.

Did MCL Breach the Duty of Care Owed to Ms. Chin?

[82] Assuming that the cause was something within the control of MCL, what steps or what system did MCL have in place to prevent such a fall from happening, and what steps did MCL take or what system did MCL follow on the day of the incident?

[83] As stated above, the duty of care imposed by the *OLA* does not require the occupier to remove every possibility of danger. The test is one of reasonableness, not perfection. Further, the care that an occupier must take differs according to the nature and use of the premises.

[84] Further, the occupier need not, in all cases, show that it had a specific policy in place to deal with the maintenance of the portion of the premises where the fall

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occurred. The nature of the premises will determine whether a maintenance scheme will be required.

[85] In this section of these reasons, I will address three systems or steps that MCL reasonably could have implemented to potentially avert an accident such as Ms. Chin's fall.

Cleaning

[86] Mr. Lai was asked who was responsible for cleaning the shop floor. His evidence was that there was a janitorial service which attended at the shop in the evenings, that technicians were responsible for their individual service bays, and that there were apprentices whose job duties included cleaning.

[87] He said that mops, brooms and a "Zamboni" were available to the staff. The machine referred to throughout this trial as a "Zamboni" was a floor cleaner which emits cleaning fluids. It has brushes and a vacuum which removes the cleaning fluids and other materials and fluids from the floor.

[88] There was much evidence about the use of the Zamboni, but it was confusing and inconsistent.

[89] Mr. Lai could not explain when it was used except to say it was used for "shop clean up" or "maintenance". He did not know whether there was a record of when it was used.

[90] Mr. Laing testified that the Zamboni was used to clean up excess fluid or moisture but could not say whether it was used on the day of the accident. Similarly, Mr. Barbour could not say whether the Zamboni was used on the driveline on the day in question. Mr. Duchnych testified that the Zamboni was only used "once in a blue moon".

[91] Mr. Campbell testified that it was used as required. Mr. Campbell testified that it was used three to four times or possibly up to ten times per day. Mr. Campbell said that it was "likely" that the Zamboni was used on the day of the incident but he

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confirmed that there was no log of its use and he did not know when on that day it was used.

[92] More than one witness testified that the apprentices had some cleaning responsibilities and may have run the Zamboni, yet no apprentice who was working on the day of the accident was called to give evidence.

[93] Mr. Lai testified that it is the job of everyone to look out for spills and that if they see one it is their responsibility to either deal with it themselves or bring it to someone's attention. Similarly, Mr. Campbell testified that MCL's system is one in which everyone is responsible. If anyone sees a spill, their job is to take care of it.

[94] Although it is commendable that employees are tasked to watch out for spills and to deal with them immediately, a general direction like the one described by Mr. Lai and Mr. Campbell is not the same as having systematic cleaning. In *Harrison v. Loblaws, Inc. (Real Canadian Superstore)*, 2018 BCSC 575, Justice Basran addressed a similar directive issued by the defendant in that case, stating:

> [56] While I applaud the Superstore's motto "Don't pass it up, pick it up", that step alone is insufficient to meet the requirements of the *OLA*. …

[95] In my view, it would have been reasonable for MCL to have a schedule or system of cleaning its shop floor, particularly on rainy days, and particularly if customers were to be allowed into the shop. There is no clear evidence that MCL had a reasonable system of cleaning in place that was implemented on the day of the incident. In this regard, I have reached the same conclusion that this Court did in *Robinson v. 1390709 Alberta Ltd*., 2017 BCCA 175: see paras. 12–13. I also find that MCL's failure to have a reasonable system of cleaning in place that was implemented on the day of the incident materially contributed to Ms. Chin's fall.

Accompanying Visitors into the Employees Only Area

[96] As stated above, there was a sign at the entrance to the shop which stated "employees only beyond this point". The MCL employees testified that the purpose of the sign was to keep customers from freely wandering into the shop. However,

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they testified, customers were occasionally allowed into the shop so long as they were escorted by a service advisor or another employee.

[97] Mr. Lai testified that the same policy was in place at another shop at which he had previously worked. No customers were allowed to enter the shop without being escorted.

[98] Although Mr. Campbell asserted that the purpose of the policy was to prevent theft, I find that at least one of the primary reasons was for safety. On his examination for discovery, Mr. Lai gave the following evidence:

> 152 Q. Okay. You'll agree with me that when that happens, because it's a work area you know that you're supposed to take care to make sure the person is safe.
>
> A. Correct.
>
> 153 Q. And that's why the customers aren't just allowed to wander in there. They have to be accompanied by somebody in a position of responsibility such as a service advisor like yourself.
>
> A. Yes.
>
> 154 Q. And that's to make sure they stay safe and don't get hurt.
>
> A. Yes.

[99] In this case, the evidence of Ms. Chin is that Mr. Lai invited her into the shop area. That evidence was not seriously contested. Mr. Lai conceded that Ms. Chin could have shown him what was wrong with the Range Rover in the parking lot.

[100] Once Ms. Chin was invited into the shop area, a duty arose requiring the accompanying employee to stay with her and to keep her safe. In this case, I find that Mr. Lai did not fulfill that duty.

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[101] According to his evidence on discovery, Mr. Lai was significantly ahead of Ms. Chin, almost to or at the door to the reception area, when Ms. Chin fell:

> Q. Okay. When did Ms. Chin fall?
>
> A. When I was just arriving at the entrance to the door, and then I turned around and then she was on the ground.

[102] Further, Mr. Laing testified that "Jackie [Lai] was almost at the office door when I first saw Ms. Chin". He testified that Mr. Lai was not close to Mr. Laing. He testified that "because they were so far apart that I didn't realize she was with him".

[103] In my view, Mr. Lai did not reasonably fulfill the duty imposed upon him once he invited Ms. Chin into the shop. I find that his failure to wait for her materially contributed to her fall.

Warning Signs

[104] Mr. Laing testified that he would set up "slippery when wet" signs in the reception area when raining.

[105] However, there is no evidence that there were any warning signs displayed in the shop at the time of the accident, although it was raining.

[106] If there had been warning signs, it is reasonable to conclude that Ms. Chin would have taken even greater care for her own safety than she did. I find that MCL's failure to warn of slick substances on the floor of the shop materially contributed to her fall.

Contributory Negligence

[107] Ms. Chin testified that when she entered the shop, she was very careful because she had never been there before. She was cognizant that it was a working area.

[108] Although it appears that the defendant advanced allegations in the action that Ms. Chin was fumbling with her purse, was otherwise distracted at the time of the

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fall, or was wearing unreasonably high heels, those allegations were not made out on the evidence.

[109] In my view, there is no basis on the evidence to find Ms. Chin contributorily negligent for the damages suffered by her.

Conclusion

[110] On the basis of the foregoing findings, Ms. Chin fell as the result of a hazard in the MCL shop. There is no clear evidence that MCL had a reasonable system of cleaning in place that was implemented on the day of the incident. Further, MCL did not reasonably take other steps that it could have taken, such as closely accompanying Ms. Chin or putting up warning signs, to prevent a fall from happening.

[111] MCL is liable for the damages suffered by Ms. Chin. Those damages will be quantified in a later proceeding, unless the parties can resolve the quantification issues between them.

[112] The issue of costs for this part of the proceeding will be addressed after the quantification of damages.

"Loo J."

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