

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Winkelman v. The Owners, Strata Plan
LMS3096,*
2025 BCSC 98

Date: 20250122
Docket: S205541
Registry: Vancouver

Between:

Juliet Helen Winkelman

Plaintiff

And

The Owners, Strata Plan LMS3096 and ABC Company

Defendant

Before: The Honourable Justice Laurie

Reasons for Judgment

Counsel for the Plaintiff:

M.T.K. Berry

Counsel for the Defendants:

J. Abrioux

Place and Date of Trial:

Vancouver, B.C.
July 22-25, 2024

Place and Date of Judgment:

Vancouver, B.C.
January 22, 2025

Table of Contents

INTRODUCTION 3
THE EVIDENCE 3
ISSUES..... 7
POSITION OF THE PARTIES 7
LEGAL FRAMEWORK..... 8
DISCUSSION..... 9
CONCLUSION..... 10
“APPENDIX A” 11

INTRODUCTION

[1] The plaintiff, Juliet Helen Winkelman, sustained injuries after she accidentally tripped and fell on the premises of the townhouse strata complex where she lived. She alleges that the defendant, The Owners, Strata Plan LMS3096 (the “Strata”), breached its statutory and common law duty to keep its premises reasonably safe for use.

[2] The Strata disputes the plaintiff’s account of where and how she tripped. In any event, it argues that the plaintiff failed to exercise a “modicum of awareness” and was the author of her own misfortune.

[3] Liability is the sole issue in this case. The parties have agreed on the quantum of damages in the event of a finding of liability.

[4] I have considered the totality of the evidence, the helpful submissions of counsel, and the applicable law. For the reasons that follow, I find that the plaintiff has not met her burden of proving that the defendant’s negligence caused her injuries. The defendant is not liable for the plaintiff’s injuries.

THE EVIDENCE

[5] The plaintiff was 81 years old at trial and 75 years old at the time of the accident.

[6] The accident happened on the grounds of the Munday Creek townhouse complex located at 20770 97B Avenue in Langley (“Munday Creek”). At the time of the accident, the plaintiff had resided there for 20 years.

[7] On May 30, 2018, the plaintiff went to see her husband at his care home. The plaintiff’s neighbour, Barry McNie, drove her. When they returned to Munday Creek, the plaintiff asked Mr. McNie to stop at the mailbox building of the complex. This was a structure with a roof supported by pillars near the entrance of Munday Creek that housed the mailboxes for the residents.

[8] For ease of description, I have appended two photographs that depict the area of the mailbox building (“Photo 1” and “Photo 2” in Appendix A). These photographs were taken two years after the accident, however, they generally depict the area. The various markings on Photo 2 indicate specific areas referred to in the evidence.

[9] Mr. McNie pulled up in front of the mailbox building with the passenger side of the vehicle closest to the building. The plaintiff testified that the nose of the vehicle was roughly where the white line is shown on the far left side of Photo 2. The plaintiff could not give an estimate as to the distance between the vehicle and the curb.

[10] The plaintiff stepped out of the front passenger seat. She stated that she left the car door open. She walked to her mailbox which was on the right-hand side of the wall of mailboxes. She collected her mail and walked back to the front passenger side of the car in a straight diagonal line. She then placed the mail on the dashboard.

[11] The plaintiff then decided to obtain a copy of the Langley Advance newspaper (the “Advance”). She testified that there was a box for this newspaper on the ground immediately to the left of the wall of mailboxes. This area is depicted by the green outline of a box in Photo 2.

[12] The plaintiff testified that she turned from the car to go “straight across” towards the box for the Advance. Her left foot caught on the lip on the ground which caused her to trip. The lip is located in the area of the base of the front pillar as shown in the photographs. The plaintiff testified that she tripped at “A” in Photo 2 (the “Lip”).

[13] The plaintiff lost her balance. She described doing a “two-step dance” before falling. She tried to break her fall with her left arm as her right arm was in a sling, but she failed to do so. She fell on her left side. The position of her body was such that her head was at “2” in Photo 2 and her feet were at “3”. As a result of the fall, the plaintiff sustained a broken left femur and a fractured wrist.

[14] The plaintiff's right arm was in a sling due to an injury sustained three days prior when she tripped and fell in her home. On that day, the plaintiff said that she was hurrying to the garage while carrying newspapers and glass jars to recycle when she lost her balance. She broke her right collarbone as a result.

[15] The plaintiff testified that in her years of residing at Munday Creek, the Advance newspaper box was to the left of the mailboxes. The white box in Photo 2 between the pillars and next to the green box was for recycling. The plaintiff stated that there was another box to the right of the mailboxes for a different newspaper (not shown in Photo 2).

[16] The plaintiff testified that before the accident, she was aware of the existence of the Lip. It was there when she moved in to Munday Creek. In addition, she observed it on her regular trips to the mailbox building to collect her mail.

[17] The plaintiff stated that when she first moved in to Munday Creek, she had notified a superintendent about the Lip because she thought that it was a tripping hazard. The Strata Council did not exist at the time as the townhouse complex had just been built. Later, after the Strata Council was formed, the plaintiff served as Council member for about six months. However, she did not mention the Lip at any Council meetings nor did she report the Lip to the Strata Council at any time before the accident.

[18] The plaintiff testified that on the day of the accident, she simply forgot about the Lip.

[19] In cross-examination, the plaintiff conceded that her recollection of certain details of the accident had changed since her examination for discovery including which foot she tripped on and the precise area where it happened. She disagreed with the suggestion that she tripped on the rolling curb ("B" in Photo 2). She conceded that she did not see where she tripped but only felt it, and that she assumed that she tripped on the Lip because it made the most sense.

[20] Amrit Toor testified for the plaintiff as an expert in mechanical engineering specializing in forensic engineering and accident reconstruction. Mr. Toor did not attend the site but relied on photographs and Google satellite images. He opined that the Lip was a tripping hazard. In his opinion, it was not a structural component of the mailbox building. He proposed various ways of eliminating the tripping hazard including painting the area, constructing a small fence, and putting up a sign.

[21] The defendant called four witnesses: Barry McNie, James Scott, Steve Kloster, and Gerald Gregoire. All were long time residents of Munday Creek in 2018. With the exception of Mr. McNie, all played a role on the Strata Council at various periods of time.

[22] Mr. McNie confirmed that he drove the plaintiff to see her husband on the day of the accident and that they had stopped at the mailbox building when they returned to Munday Creek. His recollection of where the nose of the vehicle was when he pulled in beside the mailbox building was not as far forward as the plaintiff described. He also testified that the plaintiff closed the front passenger door after she got out to get her mail and that she did not have any mail when she returned. He did not observe the plaintiff falling as he said he was looking straight ahead while he waited and he only observed her after she had fallen. His recollection of the position of the plaintiff's body on the ground after her fall is consistent with the plaintiff's account.

[23] The other three witnesses testified that the Strata Council had received no complaints and was aware of no trips or falls on account of the Lip since the complex was built. They also testified to the system that was in place through which complaints or reports from residents were brought to the Strata's attention and were documented. They testified that there was no record of any reports of a tripping hazard at the mailbox building.

[24] Mr. Scott who was a Strata Council member since 2014 and its president since 2019, testified that he measured the height of the Lip to be 3-1/2 inches. He

stated that Lip had been there since he moved in, in 2013. He also testified that the rolling curb as depicted at “B” in Photo 2 existed throughout the complex.

[25] With respect to the newspaper and recycling boxes at the mailbox building, Mr. Scott’s recollection was that the two newspaper boxes including the Advance were always to the right of the mailboxes and the recycling box was to the left, as depicted in Photo 1. This only changed in 2020 when the two newspapers amalgamated, after which there was only one box for newspapers and it was on the right side of the mailboxes. He did not recall ever seeing a newspaper box on the left side of the mailboxes.

[26] Mr. Scott also testified that he was notified of the accident shortly after it occurred. He observed the plaintiff on the ground from across the street. His observation of the position of the plaintiff’s body is consistent with the plaintiff’s evidence.

[27] Messrs. McNie, Kloster, and Gregoire all testified to the same configuration of two newspaper boxes on the right side of the mailboxes and a recycling box on the left.

ISSUES

[28] The issues before me are:

- a. Was the plaintiff’s fall caused by tripping over Lip?
- b. Did the defendant fail to discharge its duty of care because the Lip posed an objectively unreasonable risk of harm to the plaintiff?
- c. If the defendant is liable, how should liability be apportioned between the parties?

POSITION OF THE PARTIES

[29] The plaintiff submits that she has established on a balance of probabilities that she tripped over the Lip. Since no one observed her fall, the plaintiff submits that she is the only one who could give evidence as to how and where she fell.

Despite being challenged on cross-examination, the plaintiff remained steadfast that she tripped on the Lip. Although she may not be 100% certain, based on the evidence, she submits that it is more likely than not that she tripped on the Lip.

[30] To the extent that the plaintiff's position or orientation on the ground after the fall may not be consistent with tripping over the Lip, the plaintiff submits that the two step dance that she did to try to regain her balance before she fell may have caused a shift in the direction of her body.

[31] The plaintiff argues that the defendant Strata breached the standard of care that it owed the plaintiff because the Lip posed an objectively unreasonable risk of harm. The plaintiff submits that a 3.5-inch lip is a tripping hazard as the expert testified. Further, the Lip was not a structural component of the mailbox building and the risks that it posed could have been eliminated by employing simple measures, which the defendant later did after the plaintiff's fall.

[32] The plaintiff concedes that she was contributorily negligent and submits that liability should be apportioned equally between the parties.

[33] The defendant's primary position is that the plaintiff did not trip over the Lip and that she was mistaken about the cause of her fall.

[34] In addition, the area of the Lip was not unreasonably hazardous and the accident could have been avoided had the plaintiff exhibited a "modicum of awareness" of her surroundings. The defendant emphasized that the plaintiff knew that the Lip was there.

[35] If the defendant were to be found liable, it submits that at least 75% of the fault be attributed to the plaintiff.

LEGAL FRAMEWORK

[36] The governing test for occupiers liability is section 3 of the *Occupiers Liability Act*, RSBC 1996, c.337 ("OLA"), which provides:

- (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...on the premises will be reasonably safe in using the premises.
- (2) The duty of care referred to in subsection (1) applies in relation to the
 - (a) condition of the premises,
 - (b) activities on the premises, or
 - (c) conduct of third parties on the premises.

DISCUSSION

[37] After considering all of the evidence, I am not satisfied on a balance of probabilities that the plaintiff's fall was caused by tripping over the Lip. I say this because of two main reasons.

[38] First, I find the plaintiff's evidence about tripping over the Lip irreconcilable with the position of her body after the fall.

[39] Second, the plaintiff's evidence regarding the location of the newspaper box for the Advance is inconsistent with the evidence of the four defence witnesses who all testified that the two newspaper boxes had always been on the right of the mailboxes. Although some of the defence witnesses acknowledged the possibility that the newspaper box was moved, the plaintiff's evidence was not just that the box for the Advance was on the left of the mailboxes on the day of the accident, rather, that it had always been there. This is a significant inconsistency with the evidence of the other long-time residents of Munday Creek.

[40] I accept the evidence of the defence witnesses that the newspaper boxes, including the one for the Advance, were located to the right of the mailboxes including on the day of the accident. I find that the plaintiff was mistaken about the location of the newspaper box.

[41] In all of the circumstances, I find that it is highly unlikely that the plaintiff tripped over the Lip. The way in which her body landed on the ground is irreconcilable with her description of how she tripped. If the plaintiff was approaching the box for the Advance, her path would have been different from what she

described. Further, by her own admission, the plaintiff did not recall tripping over the Lip, rather this is what she assumed. In addition, her recollection of other details regarding the accident had changed over time.

[42] As the defendant’s counsel reasonably submitted, the primary issue here is not the plaintiff’s credibility but the reliability of her evidence. The plaintiff’s fall was an extremely unfortunate accident. However, the evidence is not sufficient to establish on a balance of probabilities that it was caused by the Lip.

[43] Given my findings on causation, it is not necessary to decide the remaining issues. However, I will add that even if the plaintiff’s fall was caused by the Lip, I would not find the defendant liable. In my view, given the evidence, the accident would not have occurred if the plaintiff had exercised a “modicum of awareness”.

CONCLUSION

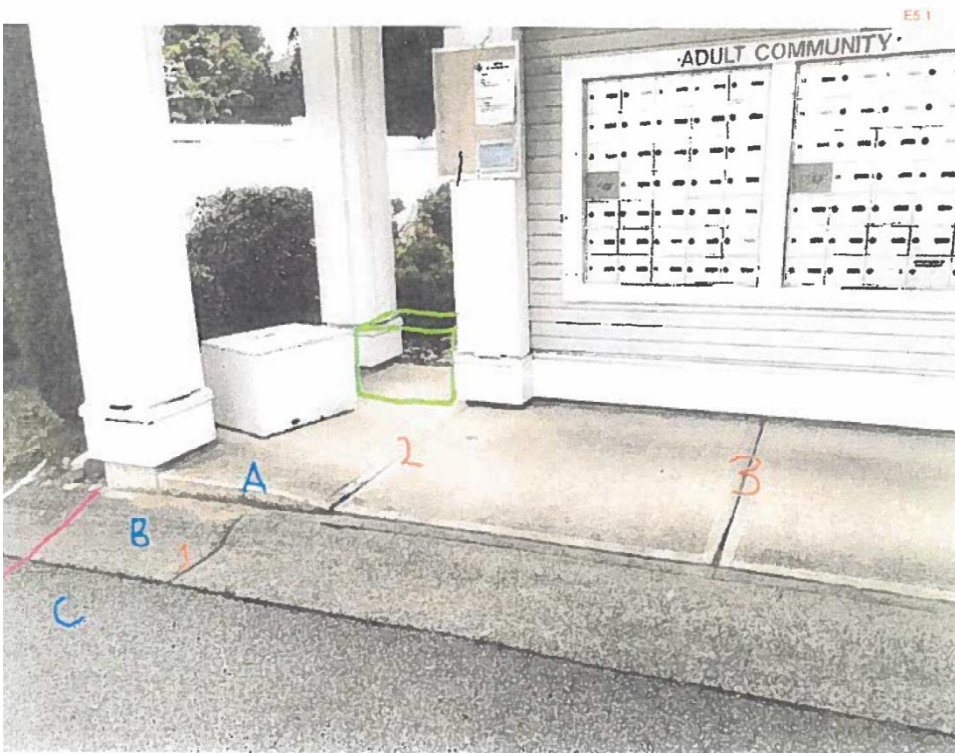
[44] The plaintiff’s claim is dismissed with costs to the defendant on Scale B.

“Laurie J.”

“Appendix A”



“Photo 1”



“Photo 2”