

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No.: 1309/2003

In the matter between:

S.J. BADENHORST

Plaintiff

and

LIBERTY GROUP PROPERTIES
(PTY) LTD

Defendant

CORAM: **EBRAHIM, J**

HEARD ON: **27, 28 & 30 JULY 2004**

DELIVERED ON: **12 AUGUST 2004**

[1] The plaintiff claims damages in the amount of R369 617,06 in respect of injuries she sustained during a fall which occurred on 29 May 2000 in the Liberty Centre in Welkom, which is owned by the defendant. It was agreed at the outset of the trial that there should be a separation of the merits and *quantum*, and accordingly the trial proceeded on the merits only.

[2] The plaintiff's case is that on the said date she was in the centre when she slipped and fell on the black tiles in the centre, thereby injuring her back. She described these tiles as smooth and slippery. She said that

on that day she had been wearing Green Cross rubber- soled shoes which gave very firm support and she testified that she had worn those shoes before on other tile surfaces and other floor surfaces, and she had never slipped wearing them.

[3] The plaintiff called an expert Andre Wessels, an architect, to testify on its behalf. He testified that he had examined the premises in question with reference specifically to the surface area on which the fall had occurred. He testified that the entire public thoroughfare area of the centre had been tiled using two types of tiles. One was an ochre coloured rough surface tile, whilst the other was a black highly glazed smooth tile which he said was highly slippery and highly dangerous. He said for those reasons this sort of black tile was not being used commercially anymore since it had caused many persons walking on them to slip and fall and injure themselves. He also testified that if one were wearing very good rubber-soled shoes, the chances of slipping on such tile would be minimized. He conceded that thousands of people used the particular Liberty Centre in Welkom and that he had not heard of any accidents having happened in that Centre as a result of a person slipping on the tiled floor.

[4] The defendant's case on the other hand was that the black tiles which had been laid in the Centre were not so smooth and slippery that it would ordinarily cause a person to slip and fall. The defendant's allege that thousands of persons use the Liberty Centre on a daily basis and that they had not once received a complaint of this nature, namely that someone had slipped on the tile and fallen. The defendant further alleges that it depended entirely on the kind of shoes, more specifically the type of rubber-soled shoes which plaintiff had been wearing at the relevant time, when she fell. The defendant's case is that it could well have been the type of shoes which the plaintiff had been wearing which had caused her to slip and fall, rather than the black tile in the Centre.

[5] The issue that I am called upon to decide in this case is accordingly one of causation, that is what exactly was it which caused the plaintiff to fall? That being the case and there being no evidence whatsoever placed before me of the kind of rubber-soled shoes which the plaintiff alleges she had been wearing at the time, I find that the probabilities in this matter are evenly balanced. Since there is no evidence upon which I might find for the plaintiff, the

defendant is absolved from the instance and the plaintiff is ordered to pay the defendant's costs of suit.

S. EBRAHIM, J

On behalf of Plaintiff:

Adv. M.J. Möller
Instructed by
Honey & Partners Inc.

On behalf of Defendant:

Adv. P.C.F. van Rooyen
Instructed by
Naudes

/scd