C.A. No. 02818

NOVA SCOTIA COURT OF APPEAL

Hallett, Matthews and Freeman, JJ.A.

Cite as: Young v. Sobeys Inc., 1993 NSCA 165

B E T W E E N:

VIOLET YOUNG	**Duncan H. MacEachern for appellant**
appellant	
- and -	
SOBEYS INC.	**David A. Miller, Q.C. for respondent**
respondent	
	Appeal Heard: September 23, l993
	Judgment Delivered: September 23, l993

THE COURT: Appeal dismissed from dismissal of claim for damages for personal injuries resulting from fall to supermarket floor per oral reasons for judgment of Freeman, J.A.; concurred in by Hallett and Matthews, JJ.A.

The reasons for judgment of the court were delivered orally by:

FREEMAN, J.A.:

The appellant slipped on a small pool of liquid detergent a short distance inside a Lofood store owned by the respondent at Glace Bay, N.S., and suffered injuries in a fall to the painted concrete floor; this appeal is from the dismissal of her claim for damages, which the trial judge assessed at $18,000.

She fell in an area the cashiers were responsible for keeping clean. The trial judge, the Honourable Murray J. Ryan of the County Court, accepted the evidence of three of the cashiers, supported by a maintenance log kept by them, that the liquid detergent had not been on the floor when it had been swept less than ten minutes before the appellant's fall.

Ryan C.C.J. cited **Indermaur v. Dames**, (1986) L.R. 1 C.R. 274 for the standard to be applied:

> "(An invitee) using reasonable care on his own part for his own safety, is entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual danger, of which he knows or ought to know . . . ."

He considered the questions posed by Ilsley, C.J.N.S. in **Smith v. Provincial Motors Ltd.** (1962), 32 D.C.R. (24) 405:

> "(1) was there an unusual danger? (2) If so, was it one which the defendant knew or ought to know? (3) If so, did the defendant use reasonable care to prevent damage to the plaintiff from the unusual danger? (4) Did the plaintiff use reasonable care on his own part for his own safety?

With respect to the third question, he cited **Armsworthy-Wilson v. Sears Canada Ltd.** (1991) 100 N.S.R. (2d) 17 in which Nathanson J. stated at p. 22:

> "An occupier of premises owes a legal duty to take reasonable care for the safety of an invitee by putting in place an adequate system for the prompt discovery and removal of objects and materials which might be present on the floor of the premises."

He found that while the unexplained presence of the substance on the floor was an unusual danger, it had not been there when the floor had been swept and "the defendant did have a system in place sufficient to discharge its duty to take reasonable care to protect the plaintiff against unusual dangers."

The appellant argued that the system was inadequate and the maintenance log unreliable.

These are matters of fact and the appellant's burden is a heavy one. See, e.g., **MacLellan v. MacKay** (1976), 18 N.S.R. (2d) 639 at pp. 646-7; **Jeans v. Carl B. Potter Limited** (1977), 24 N.S.R. (2d) 106; **Hoyt v. Grand Lake Development Corporation** (1977), 79 D.L.R. (3d) 241 (S.C.C.) In our opinion the burden on the appellant to show reversible error on the part of the trial judge has not been discharged.

We have reviewed the evidence and it supports the clear findings of fact made by the trial judge. He made no error in the law he applied to the facts as he found them. The appeal is dismissed with costs which are fixed at $1000.

Freeman, J.A.

Concurred in: Hallett, J.A.

Matthews, J.A.

C.A. No. 02818

NOVA SCOTIA COURT OF APPEAL

B E T W E E N:

VIOLET YOUNG) REASONS FOR

	)	
appellant	)	**JUDGMENT BY:**
	)	
	)	**FREEMAN, J.A.**
- and -	)	**(Orally)**
	)	
SOBEYS INC.	)	
	)	
respondent	)	