

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Ricketts v. Best Buy Canada Ltd.*, 2023 NSSC 209

**Date:** 20230628

**Docket:** *Kentville*, No. 499129

**Registry:** Kentville

**Between:**

Maryann Ricketts

*Plaintiff*

v.

Best Buy Canada Ltd./Magasins Best Buy Ltee, an Extra-Provincial Body  
Corporate

*Defendant*

**Judge:** The Honourable Justice Gail L. Gatchalian

**Heard:** June 26 and 27, 2023, in Kentville, Nova Scotia

**Counsel:** Tom F.G. Champion, for the Plaintiff  
John T. Boyle and Sarah Dobson, for the Defendant

**By the Court:**

**Introduction**

[1] On May 14, 2019, at approximately 3:00 p.m., Maryann Ricketts slipped and fell on the tile floor as she was entering the Best Buy Canada Ltd. store in Bayer's Lake in Halifax. She brought an action against Best Buy under s.4(1) of the *Occupiers' Liability Act*, S.N.S. 1996, c.27, claiming damages for her injuries. Ms. Ricketts says that: (a) it was raining that day, (b) she had never experienced a fall like this before, (c) she was wearing the shoes she normally wore when shopping, (d) her shoes were in good condition, (e) she was walking as an average person would walk, (f) she had no problem walking through the exterior automatic doors of the store, through the vestibule, through the interior automatic doors, and across a mat that employees had placed on the floor at the front of the store, and (g) as soon as she stepped on to the tile, she slipped and fell quickly and hard. Although she cannot remember seeing any water on the floor, and there is no direct evidence that there was water on the floor, she asks the Court to infer that there was water on the tile, and that the water caused her to slip and fall. She says that Best Buy failed to take reasonable care in the circumstances to make its premises safe,

contrary to s.4(1) of the *Act*, because it should have placed additional mats on the tile where she fell and a “wet floor” sign in the area.

[2] Best Buy says that there was no water on the tile floor when Ms. Ricketts stepped on it, that at best she tracked a small amount of water on to the tile when she stepped on it, and that Best Buy took reasonable care in the circumstances to make its premises safe because: (a) the type of flooring in the vestibule of the store is designed to reduce slip and falls, (b) there was a bright yellow “wet floor” sign on the floor of the vestibule warning people of the possible risk of slipping and falling on wet floors, (c) there was nothing obstructing Ms. Ricketts’ view of the sign, (d) employees had placed two mats side by side immediately after the interior automatic doors at the front of the store that were each 9 ½ feet long and that are designed to capture water and dry quickly, (d) the mats were cleaned every day and changed every week, and (e) hundreds of visitors enter the store every day and there is no evidence of any other slip and fall accidents in the area where Ms. Ricketts fell in at least eleven years.

[3] The parties reached an agreement on damages. The trial was therefore focussed on liability only.

[4] It is undisputed that Best Buy is an occupier as defined in s.2(a) of the *Act*. Best Buy therefore owed Ms. Ricketts a duty of care when she entered the store on May 14, 2019.

[5] Under s.4(1) of the *Act*, an occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that each person entering on the premises is reasonably safe while on the premises.

[6] Best Buy has a positive obligation, as an occupier, to ensure that those who enter its store are reasonably safe. The onus is on Ms. Ricketts to prove on a balance of probabilities that Best Buy failed to meet the standard of reasonable care: see *Theriault v. Avery's Farm Markets Limited*, (2022) NSCA 36 at para.63, citing *Miller v. Royal Bank of Canada*, 2008 NSCA 118, and *Gallant v. Roman Catholic Episcopal Corporation*, (2001) NFCA 22.

[7] The fact that Ms. Ricketts suffered an injury when she fell does not, in and of itself, create a presumption of negligence on the part of Best Buy. Ms. Ricketts must point to some act or failure to act on the part of Best Buy that resulted in her injury: see *Theriault* at para.63, citing *Miller* and *Gallant*.

[8] Demonstrating the existence of an act or omission by Best Buy does not give rise to an automatic finding of negligence. Whether an act or omission

constitutes negligence giving rise to a statutory breach will depend on all the circumstances. An occupier is not a guarantor or insurer of the safety of the persons coming on its premises. In assessing whether an occupier has taken reasonable care in the circumstances to make the premises safe, the factors to be considered by the trial judge will be specific to the particular fact situation: see *Theriault* at paras.63-64, citing *Miller, Gallant and Waldick v. Malcolm*, [1991] 2 S.C.R. 456 at para.33.

[9] The standard of care that Best Buy is required to meet is reasonableness, not perfection: see the decision of the Honourable Justice Jeffrey R. Hunt in *MacPherson v. Strait Regional Center for Education*, 2023 NSSC 167 at paras65-66 and 82.

[10] The two critical issues for me to determine in this case are:

1. whether there was water on the floor when Ms. Ricketts fell; and
2. whether Best Buy failed to take reasonable care by failing to place additional mats and an additional wet floor sign in the area of Ms. Ricketts' fall before her accident.

[11] If the answers to each of the questions above is “yes,” I will also determine:

1. whether Best Buy demonstrated that it had a reasonable regime of inspection and maintenance sufficient to discharge its duty; and

2. in the event there is any finding of liability against Best Buy, was Ms. Ricketts contributorily negligent to any degree?

**Water on the Tile Floor?**

[12] The parties agreed on a Joint Exhibit Book, that it was not necessary to further authenticate the documents in the Joint Exhibit Book, and that the documents were being entered into evidence for proof of the truth of their contents. The Joint Exhibit Book included surveillance video of the vestibule, which shows Ms. Ricketts' daughter, Danielle, entering the vestibule, and then Ms. Ricketts entering the vestibule seconds later. The Joint Exhibit Book included surveillance video of the front of store, which shows Danielle enter the store, Ms. Ricketts enter the store, Ms. Ricketts' fall, and Best Buy employees placing additional mats and an additional "wet floor" sign on the floor after the fall.

[13] Ms. Ricketts testified, as did her daughter. Best Buy called three witnesses: (1) Luke Gallant, the current General Manager or Store Leader at the Best Buy store and who has been working at Best Buy since 2011; (2) Dequan Lepage, who was the Product Process Team Lead at the Best Buy store at the time and was working on the day of the accident; and (3) Sarah Cann, who was working as a Customer Service Representative on the day of the accident. For the most part, the parties agreed on the applicable law and on the facts.

[14] The following facts are not in dispute:

- It was raining when Ms. Ricketts and her daughter entered the store.
- Danielle entered the store first, walked through the vestibule, on to the tile, and went to the back of the store. She did not slip or fall.
- The vestibule between the first set of automatic doors of the store and the interior set of automatic doors is approximately 10 feet in length.
- On the day of the accident, there was a bright yellow “wet floor” sign on the floor of the vestibule just before the interior automatic doors, approximately one foot to the left of the those doors. The sign also has a large drawing of a stick person slipping and in the process of falling.
- At the end of the vestibule, the interior set of automatic doors lead into the main store.
- Immediately on the other side of the interior automatic doors, in the main part of the store, there is section of flooring that is rubberized, and then a section of flooring made of tile.

- On the day of the accident, Best Buy employees had placed two mats side-by-side on the store floor, each running approximately 9 ½ feet in length from the interior automatic doors into the main store.
- Each mat extended over most of the rubberized flooring, leaving a small amount of the rubberized flooring exposed at the end of the mats, after which the tile floor began.
- On the surveillance video, there is no water or debris visible on the tile floor before Ms. Ricketts entered the store.
- Best Buy Customer Service Representative Sarah Cann was working at the front of the store at the time that Ms. Ricketts entered the store, and saw Ms. Ricketts enter the store.
- Ms. Ricketts walked through the first set of automatic entry doors, walked through the vestibule, through the interior automatic doors, and across the length of one of the mats.
- Ms. Ricketts stepped off the mat on to the tile floor. Her left foot stepped on the tile. When her left foot landed on the tile floor, she slipped and fell, quickly and hard.



- Ms. Ricketts does not know what caused her to fall. She does not remember seeing any water or liquid or debris on the tile floor when she fell.
- Ms. Ricketts cannot remember whether the mats were wet when she walked over them.
- Ms. Ricketts had never experienced a fall like this before.
- On the day of the fall, Ms. Ricketts was wearing the shoes she normally wore shopping, which were flat slip-on shoes. She had never had trouble with those shoes before.
- Ms. Cann approached Ms. Ricketts immediately when she fell. Ms. Cann said that there was no water or liquid on the tile floor where Ms. Ricketts fell, and the mats appeared to be dry.
- On the surveillance video, a spot appears on the area of rubberized floor at the end of the mat that Ms. Ricketts walked over, as or after Ms. Ricketts steps on the tile floor and slips.

[15] Best Buy says that the small dark spot on the rubberized floor that appears after Ms. Ricketts' fall is a wet footprint. I am not satisfied, from my review of the video, that it is a footprint, as Ms. Ricketts, in my view, did not step on the

rubberized floor but stepped from the mat on to the tile floor, over a small portion of the rubberized floor. I find, from my review of the video, that when Ms. Ricketts stepped with her left foot on to the tile floor, her right foot touched or dragged on the rubberized floor, leaving a small amount of water, which is what is visible on the video.

[16] Ms. Ricketts asks me to infer that there was water on the tile floor before she stepped on it based on the following circumstantial evidence: (a) she had not experienced a fall like this before, (b) she had not previously had any issues with the shoes she was wearing, (c) there was a “wet floor” sign in the vestibule of the store, (d) employees place “wet floor” signs on the floor to warn people that the floor is wet, (e) she had no trouble walking in to the store through the vestibule and over the mat, and (f) when she stepped off the mat and on to the tile, she fell quickly and hard. In my view, the factual jump on the reasoning path urged upon me by Ms. Ricketts is too broad: see *Johansson v. General Motors of Canada Ltd.*, 2012 NSCA 120 at para.81. It is simply too speculative for me to say that, based on the proven facts, there was water on the tile floor before Ms. Ricketts stepped on it.

[17] Rather, I find, on a balance of probabilities, that the tile floor was dry before Ms. Ricketts stepped on it, based on the following: Ms. Cann’s evidence that there was no water or liquid on the tile floor after Ms. Ricketts’ fall, Ms. Cann’s

evidence that the mats appeared to be dry, and the fact that, on the surveillance video, there is no water or liquid or other debris visible in the relevant area of the floor before or after Ms. Ricketts' fall.

[18] Best Buy allows for the possibility that Ms. Ricketts may have tracked a small amount of water on to the tile floor, and that this may have caused Ms. Ricketts' fall. It was raining, and her right foot did deposit a small amount of water on the rubberized flooring, between the mat and the tile floor, as or after she stepped on the tile floor and slipped. However, having carefully considered all of the evidence, I am unable to conclude, on a balance of probabilities, that a small amount of water on the bottom of Ms. Ricketts' left shoe caused her to slip, for the following reasons. First, I have found that there was no water on the tile floor after Ms. Ricketts' fall. Second, pictures of the shoes that Ms. Ricketts was wearing on the day of the accident were entered into evidence. The soles of the shoes were quite worn, and had very little tread. I find that it is just as likely that Ms. Ricketts slipped due to the worn tread on her shoes as it is that she slipped due to water on the bottom of her shoes.

[19] It would, in my view, be too speculative conclude that Ms. Ricketts transferred a small amount of water from the bottom of her shoe to the tile floor.

Nonetheless, I will go on to consider whether Best Buy took reasonable care in the circumstances to make the premises safe.

### **Failure to Take Reasonable Care?**

[20] In determining whether the duty of care created by s.4(1) has been discharged, I must consider the six non-exhaustive list of factors listed in s.4(3) of the *Act*.

1. the knowledge that the occupier has or ought to have of the likelihood of persons or property being on the premises

[21] Best Buy clearly knew that customers would be entering in its store, walking on its floors, at the time Ms. Ricketts entered the store.

2. the circumstances of the entry into the premises

[22] Ms. Ricketts was a customer. She was clearly a person authorized to be on the site.

3. the age of the person entering the premises

[23] Ms. Ricketts was an adult.

4. the ability of the person entering the premises to appreciate the danger

[24] Ms. Ricketts had no identified issues with perception or observation. She knew it was raining. The bright yellow wet floor sign would have been visible to her when she walked in and through the vestibule, even though she does not remember seeing it.

4. the effort made by the occupier to give warning of the danger concerned or to discourage persons from incurring the risk

[25] Best Buy employees had placed a bright yellow wet floor sign in the vestibule before the internal automatic doors, warning customers entering the store that the floors could be wet.

5. whether the risk is one against which, in all the circumstances of the case, the occupier may reasonably be expected to offer some protection.

[26] By its own actions in placing the wet floor sign in the lobby and placing the mats on the ceramic tile just inside the internal doors, Best Buy impliedly admits that the risk of slipping on the tile floor, in all the circumstances of this case, is one against which it may reasonably be expected to offer *some* protection, and it did.

The question is whether Best Buy took *reasonable* care in the circumstance to make the premises *reasonably* safe.

[27] Having considered all of the evidence, I find that, in the circumstances of this case, Ms. Ricketts has *not* established that Best Buy failed to take such care as in all the circumstances of the case was reasonable to see that each person entering on the premises were reasonably safe. The following uncontradicted evidence demonstrates, in my view, that Best Buy met the standard of reasonableness:

- The flooring in the vestibule, which runs 10 feet in length, is a “Smart Scraper” system made of an alternating pattern of gridded PVC matting and aluminum alloy, which is designed to reduce slips and falls by removing, containing and concealing moisture and debris: description of the “Smart Scraper Entrance System,” Joint Exhibit Book, Tab 1.
- On each side of the “Smart Scraper” flooring in the vestibule is “Channel Tile,” which is made of PVC and is designed to reduce slips and falls, and which has an open grid configuration that allows for draining and aeration: description of “Channel Tile”, Joint Exhibit Book, Tab 3.

- On the day of the accident, there was a bright yellow “wet floor” sign on the floor of the vestibule just before the interior automatic doors, approximately one foot to the left of the those doors.
- Although neither Ms. Ricketts nor her daughter remember seeing the “wet floor” sign, it is clearly visible in the surveillance video at the time that they walk through the vestibule, and they acknowledged that there was nothing obstructing their view of the sign.
- On the other side of the interior automatic doors, in the main part of the store, Best Buy employees had placed two “Cintas Xtraction” mats side-by-side on the store floor, each running approximately 9 ½ feet in length out from the doors into the main store, over the rubberized flooring almost to but not quite to the tile flooring.
- “Cintas Xtraction” mats have ten times more fibres than a standard Cintas mat to help capture more dirt and water, have “advanced” fibres to create greater surface area to capture and hold more water, and are fast-drying to provide quicker evaporation of moisture: description of Cintas XTraction mats, Joint Exhibit Book, Tab 4.
- The mat that Ms. Ricketts walked on before she slipped was not wet.

- In total, Ms. Ricketts walked over 19 ½ feet of flooring designed to reduce slip and fall accidents, before she stepped on to the tile.
- At the relevant time, the “Cintas XTraction” mats were cleaned daily by janitorial staff and replaced on a weekly basis.

[28] The safety measures implemented by Best Buy on May 19, 2019 were superior to those taken in other cases where there was in fact moisture or water on the floor, and yet the occupiers were found to have met the reasonableness standard: see, for example, *Nikkel v. Westfair Foods Ltd.*, 2003 MBCA 47, where the plaintiff walked across a six-foot carpet before she walked on to tile flooring and fell, and *Miller v. Royal Bank of Canada*, 2008 NSSC 32, upheld 2008 NSCA 118, where the plaintiff walked over a five-foot mat before slipping on tile flooring.

[29] There was also no evidence of a history of slip and fall accidents in this area of the store, despite the tens of thousands of customers received by the store every year:

- Danielle entered the store seconds before Ms. Ricketts, walked over the mat on to the tile flooring, and did not slip.



- No other customers slipped on the floor that day.
- Hundreds of customers enter the store every day.
- In the year that Mr. LePage worked at the Best Buy store, he was not aware of any other slip and fall accidents in this area of the store.
- Mr. Gallant began working at the Best Buy store in April of 2011. Mr. Gallant is not aware of anyone else slipping and falling on the store floor in the eight years between then and Ms. Ricketts' fall. He conceded that that it is possible that, if a slip and fall happened on his day off, he might not have been informed.

[30] There was therefore no evidence that Best Buy should reasonably have been aware that the measures it had in place on May 14, 2019 were not sufficient to ensure the reasonable safety of its customers: see *Miller*, Court of Appeal decision, para.24.

[31] Ms. Ricketts asserts that the fact that Best Buy employees placed extra mats and an extra sign in the area of her fall after the accident demonstrates that Best Buy failed to act reasonably. I do not agree. I have already determined that the measures taken by Best Buy to make their premises safe were reasonable in all of

the circumstances. Moreover, I accept the evidence of the Best Buy employees that the extra mats and sign were placed in the area of the fall on the date of Ms. Ricketts' fall because other customers witnessed the accident, and the employees wanted to give them some peace of mind. Best Buy employees have continued their practice of only using a second set of mats in the winter, because of the salt and slush tracked in by customers. They do not place a second set of mats on the floor at other times of the year because they feel it is not necessary, and because they are concerned that the mats themselves can be a tripping hazard.

[32] It is regrettable that Ms. Ricketts fell and suffered an injury. However, the fact of the fall and injury does not automatically mean that Best Buy is liable. The standard required to be met by Best Buy is reasonableness, not perfection. I have found that Best Buy met that standard, in the circumstances of this case.

### **Adequate Inspection, Maintenance and Monitoring Regime?**

[33] Having found that Ms. Ricketts has not established a *prima facie* case of negligence, it is not necessary for me to determine whether Best Buy had an adequate regime of inspection, maintenance and monitoring. Had I been required to answer this question, my conclusion would have been that Best Buy has established the existence of an adequate inspection and maintenance regime in this

case. While Best Buy did not have any written policies with respect to water on the floor, all Best Buy employees receive training that impresses upon them that they all have constant responsibility to monitor the store floor for hazards such as liquid or water and to immediately address the hazard, whether by contacting the supervisor by radio or cleaning up the hazard themselves. This expectation is reinforced in annual training, and in daily morning meetings. There are Best Buy employees at the front of the store, in the area where Ms. Ricketts fell, almost constantly. There is always a manager on the floor, who is also trained and expected to constantly monitor for hazards on the floor such as water and to ensure that it is addressed. The employee witnesses conceded in cross-examination that, when they are dealing with a customer, that customer takes priority over other duties, and that the manager may at times be dealing with a customer. This does not change my conclusion. The law does not require perfection. Best Buy, in the circumstances of this case, had an adequate regime of inspection, maintenance and monitoring for water on the floor of the store.

### **Contributory Negligence?**

[34] Given my conclusion that Ms. Ricketts has not established a *prima facie* case of negligence, it is not necessary for me to determine whether Ms. Ricketts was contributorily negligent.

**Conclusion**

[35] Ms. Ricketts' action against Best Buy Canada Ltd. is dismissed.

[36] I encourage the parties to resolve the issue of costs. If they cannot, I will receive written submissions from them within one month of this decision.

Gatchalian, J.