

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tu v. 12300118 Holdings Ltd.*,
2026 BCSC 1387

Date: 20260724
Docket: S223208
Registry: Vancouver

Between:

Christine Tu

Plaintiff

And

**12300118 Holdings Ltd., Owners of Strata Plan LMS 1590,
1099091 BC Ltd. doing business as Orchards Farm Market,
ABC Property Management Company and
XYZ Property Maintenance Company**

Defendants

Before: The Honourable Justice Klein

Reasons for Judgment

Counsel for the Plaintiff:

A. Moniuszko

Counsel for the Defendants:

D. Tochor

Place and Dates of Hearing:

Vancouver, B.C.
May 25, 2026, and June 24, 2026

Place and Date of Judgment:

Vancouver, B.C.
July 24, 2026

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I. INTRODUCTION

[1] The defendants, 1099091 BC Ltd. doing business as Orchards Farm Market (“Orchards”) and 12300118 Holdings Ltd., apply to have the plaintiff’s claim for injuries suffered as a result of a slip and fall dismissed pursuant to Rule 9-7(2) of the *Supreme Court Civil Rules* [Rules]. The plaintiff opposes the relief sought and asks that the application be dismissed and that the matter proceed to trial in the ordinary course.

II. FACTUAL BACKGROUND

[2] On November 30, 2021, at around 5:30 p.m., the plaintiff slipped and fell at Orchards, a business that operates a store (the “Premises”) that sells produce. The plaintiff alleges that she slipped and fell on a piece of lettuce that was left on the floor. She alleges that she did not notice the piece of lettuce prior to her slipping and falling but noticed it after her fall. As a result, the plaintiff says that she suffered injuries including a significant injury to her ankle.

[3] The evidence that was placed before the court was in the form of affidavits from the plaintiff and from Regina Shui Hing Wong, the owner and manager of Orchards. Ms. Wong is also a director of 12300118 Holdings Ltd. As well, the plaintiff relied upon excerpts of the examination for discovery of Ms. Wong.

[4] In her affidavit, Ms. Wong averred to personally training her employees on a system of maintenance to keep the Premises clean and safe. Appended to her affidavit was a “sweep log” for the month of November 2021. The sweep log is a table with columns that show times appearing to start at 8 a.m. and end at 7 p.m. The table has thirty rows that show the days of the month of November 2021, one to 30. The top of the table has a heading “ORCHARDS FARM #1300 DAILY CHECK LIST” and adjacent to that heading, is “FOR NOV 2021”.

[5] Each of the boxes in the table appear to have initials. Important to this matter is that all of the boxes between 4 p.m. and 7 p.m. on November 30, 2021, are marked with initials.

[6] Ms. Wong was examined for discovery on May 21, 2024. During that examination, Ms. Wong was questioned about employee training and sweep logs but at that time, the sweep log for November 2021, was not included with documents that had been disclosed. The summary trial application was filed on July 18, 2025, and Ms. Wong's affidavit with the November 2021 sweep log was included with the application. The plaintiff made a request for the November 2021 sweep log but upon receipt, did not seek to further examine Ms. Wong about that document. As well, the plaintiff did not follow up with other prospective witnesses that may have had something to say about employee training.

A. Position of the Defendants

[7] The defendants admit that all material times, the Premises at which the plaintiff allegedly fell, was owned by the defendant 12300118 Holdings Ltd. and that 12300118 Holdings Ltd. leased the Premises to the defendant, 1099091 BC Ltd. doing business as Orchards.

[8] The defendants say that Orchards was the occupier of the Premises. The defendants say that 12300118 Holdings Ltd. as lessor, was not an occupier of the Premises.

[9] The defendants agree that Orchards had a duty of care to all persons attending the Premises and while they do not necessarily concede that the plaintiff slipped on a piece of lettuce, they do not really contest that issue. In defence of the claim, the defendants say that at all material times, there was a system of maintenance and inspection that was in place and operational. They further submit that this system was reasonable in all the circumstances and therefore, there was no breach by the defendants of the applicable standard of care.

[10] In coming to this conclusion, the defendants say that there is concrete evidence that employees of Orchards were trained in inspection and maintenance including the cleanup of the Premises. The defendants further submit that there is unchallenged evidence of a "sweep log" that shows that, on an hourly basis, staff at Orchards were required to inspect and, as necessary, clean up the Premises to

ensure there were no hazards, and that the sweep log demonstrates that at the relevant time, the system of inspection and maintenance was operational.

[11] Therefore, the defendants say they are not liable for the injuries suffered by the plaintiff and the claim ought to be dismissed.

B. Position of the Plaintiff

[12] The plaintiff submits that there are three issues before the court that require determination:

1. Have the defendants established extraordinary, exceptional or compelling reasons to justify the severance of liability from damages?
2. Is the matter suitable for disposition by way of summary trial application?
3. Have the defendants proven on a balance of probabilities that they had a reasonable system of inspection and maintenance in place at the Premises and that it was being followed at the time of the incident?

[13] Additionally, the plaintiff asserts that 12300118 Holdings Ltd, is also an occupier of the Premises.

III. ANALYSIS

A. Severance of Liability from Damages

[14] The plaintiff submits that severance of liability from damages is not appropriate. The plaintiff says that the following are reasons to arrive at that conclusion:

1. The defendants have not tendered any evidence regarding savings in time and expense that may be realized by severing liability from damages in the action;
2. Severing liability from damages will not contribute to the just, speedy, and inexpensive determination of this action on its merits;

3. Liability and damages are interconnected issues. In this action, there is a substantial risk of producing unnecessary complexity by severing liability from damages;
4. The question of damages in this action turns, in part, on the plaintiff's credibility which can only be tested adequately at a conventional trial;
5. The question of liability in this action turns heavily on the credibility of Ms. Wong which can only be tested adequately in a conventional trial; and
6. Severing liability from damages is unlikely to encourage settlement on damages.

[15] With respect to the applicable principles on the question of severance, the decision of *Zary v. Canada Mortgage and Housing Corporation*, 2015 BCSC 1145, is helpful and instructive. In *Zary*, the court stated:

[26] As noted, CMHC seeks to have the liability issue determined on this summary trial. No formal severance application has been brought.

[27] Rule 9-7 does contemplate in subsection (2) that a party may apply for judgment on an issue or generally. However, the authorities make it clear that where a party seeks judgment on liability only, even in the absence of a severance application, the court must consider the principles governing severance.

[28] In *Burg Properties Ltd. v. Economical Mutual Insurance Company*, 2013 BCSC 209, Madam Justice Gerow described the proper approach as follows at para. 27:

There is authority for the proposition that in a summary trial application where a party seeks to proceed only on liability, a two step approach should be followed: the first step is to determine whether there should be severance, and the second step is to determine if a summary trial on the issue of liability is appropriate: *Chun v. Smit*, 2011 BCSC 412 at paras. 8-9. In *Chun*, the court stated that the test for severance is whether there are extraordinary, exceptional or compelling reasons for the severance. A compelling reason to order severance is a likelihood of a significant savings in time and expense realized by a summary trial: *Bramwell v. Greater Vancouver Transportation Authority*, 2008 BCSC 1180 at para. 12.

[29] I am satisfied that the test for severance is met in this case. In particular, I am satisfied that by deciding the liability issue in advance, there will be a considerable saving in time and expense. If the liability issue is decided in favour of CMHC, then the case will be at an end, subject to any

appeal. If, however, liability is found in favour of Ms. Zary, the resulting trial on damages will be considerably shorter, if indeed it goes at all.

[16] Relying upon the *Zary* decision, I am satisfied that by dealing with liability in advance, there will be considerable savings in time and expense. If no liability is found, the case will be at an end. If liability is found, the resulting trial on damages will be shortened considerably. It is also not unrealistic to conclude that if liability is found on the part of the defendants, that the prospect of settlement is enhanced. Therefore, I find that there are compelling reasons to sever the issue of liability from damages.

B. Suitability

1. Introduction

[17] Having found that the test for severance has been met, I now address whether this matter is suitable for summary trial and judgment.

[18] The plaintiff says that the matter is not suitable for disposition by way of summary trial application and ought to be dismissed pursuant to Rule 9-7 (11)(b) of the *Rules*. The plaintiff submits that the lack of suitability arises because of the issues to be determined are not suitable for disposition in a summary trial proceeding and that the summary trial proceeding will not assist in the efficient resolution of the proceeding.

[19] Although not specifically articulated by the plaintiff, I also assume that the plaintiff relies upon Rule 9-7(15)(a)(i) and (ii) of the *Rules*, taking the position that, the evidence placed before the court is insufficient for the court to find the facts necessary to decide the issue of liability and that it would be unjust to decide the issue on this application.

2. The Plaintiff's Objections to a Summary Trial

[20] I find that several of the points raised by the plaintiff on the issue of severance are really points of consideration for determining the suitability of the summary trial proceeding.

[21] On the point concerning the interconnection between liability and damages, the plaintiff failed to articulate why liability and damages are intertwined. I do not see how they are. Again, if no liability is found, there are no damages. If liability is found, damages will encompass an assessment of the plaintiff's injuries and the impact those injuries have upon the plaintiff. In this matter, liability has nothing to do with damages and exists in a silo separate from damages.

[22] The plaintiff's credibility is not an issue in this matter. The defendants concede that the plaintiff slipped and fell and was injured. The defendants seek to dismiss the claim because of the existence of a system of inspection and maintenance that was reasonable in the circumstances. At no point in this proceeding have the defendants sought to challenge the credibility of the plaintiff. These factors do not, in any way, militate against a finding that a summary trial is suitable.

3. The Evidence of Ms. Wong

[23] What appears to be the main thrust of the plaintiff's submission is that Ms. Wong is not credible, and her evidence needs to be challenged in a trial. On this application, to challenge the credibility of Ms. Wong's evidence in her affidavit, the plaintiff relies upon her examination for discovery taking the position that Ms. Wong's affidavit evidence is at odds with and contradicted by her discovery evidence. Therefore, the plaintiff says the summary trial proceeding is not suitable because the issue of credibility cannot be determined except by way of cross examination in a conventional trial.

a) Evidence of Employee Training

[24] The first point upon which the plaintiff takes issue with Ms. Wong's credibility concerns her evidence about employee training.

[25] In her affidavit, Ms. Wong says that she "personally" trains her employees in a system of maintenance.

[26] In her examination for discovery, Ms. Wong stated:

“I provide trainings to my employees about the slip and fall prevention. I have more than 40 years working experience in a fish factory. I got some training from [Canadian Food Inspection Agency]. I passed this knowledge to my employees. Why there are some trash cans, brooms, dustpans and “wet Floor” signs in place in the store, because I work in the fish factory for more than 40 years. I know some safety knowledge”

[27] With regard to the timing of the inspection Ms. Wong stated:

A “they—they only do once every hour. For example—well, they —they do have their own duties to do, not just to do the inspections.

For example, if they have to do something around the orange table, then they look at the orange table and walk around the surroundings of the orange tables. If they see something that needs to be cleaned up, then they will do it. Or if they see something—if they have to work on the vegetable tables and - - and then they will walk around the vegetable tables to —look for the garbage et cetera.

Q. Okay. But once an hour is there an employee walking around the entire store?

I request them to do the inspection once every hour, but this is dynamic. It doesn't have to be exact once every hour. When they are busy, they cannot and they won't do the inspection once every hour. I just tell them roughly. Roughly they do once every hour.”

[28] In her discovery, Ms. Wong goes on to say that no employee is specifically tasked with doing inspections, but every employee conducts inspections when they have time to do so and they also inspect the store while they are working. If an employee sees something that could be a “slipping hazard”, they are to clean it up immediately.

[29] Ms. Wong also stated that there were written materials concerning cleaning and maintenance that were placed upon the walls for people to refer to. At the examination for discovery, there was a request for a photo of the materials posted on the wall at Orchards, but as far as I am aware, there was no follow-up to that request. Despite outstanding requests, the examinations of Ms. Wong were not continued.

b) Evidence Concerning the Sweep Logs

[30] Ms. Wong was asked about documentation (presumably the sweep logs) related to cleaning. Ms. Wong stated:

They will just sign the table when they did it but they wouldn't document exactly what they have done for that thing. For example, they wouldn't document the floor has been swept, mopped, or that a sign had been put up. Nobody has time to document all those things.

[31] Ms. Wong in her examination for discovery was shown the daily sweep logs dated from January 2022 to May 2022. Based on the description of what was put to Ms. Wong, it is apparent that those logs are in the same form as the sweep log for November 2021. Again, there appears to be no follow-up with regard to the request for the November 2021 sweep log and there was no further examination of Ms. Wong, despite the passage of time between the filing of this application and the hearing of this application.

4. Analysis Regarding Suitability

a) Legal Principles on Suitability

[32] Rule 9–7(11) of the *Rules* provides:

- (11) On an application heard before or at the same time as the hearing of a summary trial application, the court may
 - (a) adjourn the summary trial application, or
 - (b) dismiss the summary trial application on the ground that
 - (i) the issues raised by the summary trial application are not suitable for disposition under this rule, or
 - (ii) the summary trial application will not assist the efficient resolution of the proceeding.

[33] Rule 9-7(15) of the *Rules* provides:

- (15) On the hearing of a summary trial application, the court may
 - (a) grant judgment in favour of any party, either on an issue or generally, unless
 - (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or

- (ii) the court is of the opinion that it would be unjust to decide the issues on the application,
- (b) impose terms respecting enforcement of the judgment, including a stay of execution, and
- (c) award costs.

[34] To determine the legal principles applicable to the suitability of a summary proceeding, I am again guided by the court in *Zary* which states:

[31] The critical question facing the court when hearing a summary trial application is whether the court can find the facts necessary to decide the disputed issues. Even where the court can find the necessary facts, it must still consider whether it would be just to decide the matter summarily, by reference to factors such as the amount involved, the complexity of the matter, its urgency, any prejudice that might arise by reason of delay, and the cost of taking the matter forward to a conventional trial: see *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.) and *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30-31.

b) Legal Principles and Analysis on Failing to Make Use of Pretrial Procedures

[35] The plaintiff submits that Ms. Wong is not credible. The plaintiff asserts that there are conflicts in Ms. Wong's evidence and that those conflicts cannot be resolved without cross examination. However, as stated above, the plaintiff has not put forward any evidence to contradict Ms. Wong and apparently has not taken any steps to obtain any evidence to contradict Ms. Wong.

[36] Germane to this issue is the decision of *Canstar Restorations Limited Partnership v. MBW Canada Holding Inc.*, 2026 BCSC 472. In that judgment, the court relies upon *Arbutus Investment Management Ltd. v. Russell*, 2022 BCSC 72 and states:

[61] A summary trial is a trial and must be treated as one, as explained in *Arbutus Investment Management Ltd. v. Russell*, 2022 BCSC 72, aff'd 2023 BCCA 9.

[48] This is a trial. The parties need to treat it as a trial: *Bayview Construction Ltd. v. Warner*, 2018 BCSC 2576 at paras. 19 and 27. There is no tomorrow. Each party must put their best foot forward: *Council of Canadians with Disabilities v. British Columbia (Attorney General)*, 2020 BCCA 241 at para. 64; *Gichuru v. Pallai*, 2013 BCCA 60 at para. 32; *Everest Canadian Properties Ltd. v.*

Mallmann, 2008 BCCA 275 [Everest Canadian Properties] at para. 34; *1050017 B.C. Ltd. v. Lee*, 2019 BCSC 1512 at para. 8; *Player v. Janssen-Ortho Inc.*, 2014 BCSC 1122 at para. 165.

[49] Its adjournment application having failed, AIM was required to put all its cards on the table. At a summary trial, evidence can be weighed: *The Bank of Nova Scotia v. Robertson*, 2001 BCCA 580 at para. 11. Conflicts in the evidence can be resolved: *Zhao* at para. 6. At that point, there was no time left for AIM to collect further evidence or further documents. As the court stated in *Canadian Western Bank Leasing Inc. v. SSC Ventures (No. 98) Ltd.*, 2016 BCSC 223, “where a respondent fails to make use of pre-trial procedures and frustrates the proper functioning of the summary trial, they take a serious risk that the court will grant judgment relying upon the evidence it does have”: para. 36. Where an application is brought by one party, the other may not simply insist on a full trial in the hopes that, with the benefit of *viva voce* evidence, “something might turn up”: *Everest Canadian Properties* at para. 34.

[37] I also rely upon *Rahnama v. Loblaw's City Market*, 2024 BCSC 2120, *aff'd* 2025 BCCA 176 which states:

[61] The plaintiff challenged the reliability of the evidence as to implementation of the system. The Loblaw's action has been outstanding since January 2020, over four-and-a-half years. Both parties have complied with their document discovery obligations, and each party has conducted an examination for discovery of the other. Each party has had the opportunity to track down any other persons who might be useful witnesses as to what occurred on that day, and I was given no information with respect to any witness whose evidence is not available on this summary trial.

[62] In my view, the sweep logs that have been produced are credible and believable. The plaintiff has had ample opportunity to locate and develop any evidence that might exist that would permit her to actually undercut what is reflected in those logs. Her submissions to me ultimately amount to little more than concerns about the failure to retain the video evidence and aspirations that something might come up.

[63] The sweep log is a business record that has been verified by the then store manager. It is consistent with the policy he described. It is completed in different types of handwriting, which is consistent with it having been completed by different employees. There is nothing in the evidence before me on which to conclude that the sweep log is not reliable, or that something might realistically come up at trial to cause a trial judge to disregard it.

[64] As I understand the evidence, any video surveillance that might have existed was not preserved and was written over 30 days after the incident. That might well be relevant to a judge attempting to resolve credibility issues over the means by which the plaintiff fell. I do not see it as a reasonable basis to question the reliability of the evidence as to implementation of the maintenance system generally. One would not normally expect a store to

present evidence cross-referencing the accuracy of the sweep logs maintained by its employees.

[65] In my view, Loblaws has established that it had a reasonable system of maintenance, and that system was being implemented on the day of the plaintiff's fall. In light of that conclusion, the plaintiff's action against Loblaws cannot succeed and must be dismissed.

[38] In the present case, the plaintiff has known about Ms. Wong's statements about employee training, and the existence of the sweep log, since her discovery and has been in possession of the November 2021 sweep log for almost a year. The plaintiff could have applied to continue the examination for discovery in relation to the November 2021 sweep log, but for reasons not known to the court, chose not to do so.

[39] Moreover, the plaintiff has not provided any evidence to undermine what Ms. Wong has said about Orchards' employee training and its system of inspection and maintenance. If such evidence does exist, it has not been produced, despite the plaintiff having ample time to do so.

[40] I find that, as was the case in *Canstar*, the plaintiff has failed to make use of pretrial procedures to advance the plaintiff's position.

[41] Relying upon *Rahnama*, I also find that the record relied upon by the defendants is, on its face, reliable. As occurred in *Rahnama*, and again, as far as I am aware, the plaintiffs have not taken any steps to undermine those documents.

[42] I see no reasonable basis to question the veracity of the evidence of the sweep logs nor any basis to question the existence and implementation of employee training. The plaintiff's complaint is without foundation and like *Arbutus*, amounts to the plaintiff hoping that in a full trial, "something might turn up".

[43] I disagree with the plaintiff's position that without cross-examination, I cannot resolve conflicts in the evidence of Ms. Wong such that I cannot assess her credibility. I find that the evidence placed before me is sufficient to resolve any credibility issues suggested by the plaintiff and therefore, in this proceeding, I am

able to address the plaintiff's main complaint that Ms. Wong is not credible and therefore, cannot support the ultimate position of the defendants that they are not liable for the slip and fall.

c) Analysis of the Credibility of Ms. Wong

[44] The plaintiff argues that there are inconsistencies in Ms. Wong's evidence that undermine the position of the defendants. The plaintiff therefore submits that because Ms. Wong is not credible, I cannot, on the evidence placed before me, find that Orchards' employees were trained, and that Orchards had a reasonable system of inspection and maintenance in place on the day of the incident. The plaintiff submits that Ms. Wong's affidavit evidence is contradicted by her discovery evidence.

[45] With respect to employee training, I cannot find any contradiction between Ms. Wong's evidence in her affidavit and her examination for discovery. In both her affidavit and her examination, Ms. Wong indicates that she trains her employees in inspection and maintenance and in slip and fall prevention.

[46] I also find significant that what is being asked of the employees is not technical nor complex. Employees need only be told to conduct inspections every hour and to be vigilant for spills or hazards in the store and if they see something, they are to clean it up so that someone does not slip on whatever has been spilled. Ms. Wong, in both her affidavit and in her discovery evidence, says she trains her employees to inspect for and clean up any spills or mess and that the inspection is to be conducted on an hourly basis.

[47] From this evidence, I conclude that the Orchards staff have been trained and are made aware that any spill or hazard on the floor of the Premises is to be cleaned up when it is observed and that they are required to inspect and clean as necessary at hourly intervals.

[48] With respect, to the system of inspection and maintenance, I again disagree with the plaintiff's assertion that Ms. Wong is not credible. In her affidavit, Ms. Wong

avers to a system of inspection and maintenance. Attached to her affidavit is the sweep log for November 2021 that shows that on November 30, 2021, at the relevant time, employees took the time to initial the boxes indicating that sweeps had been performed. In my view, this is sufficient to demonstrate that there was a system in place, and it was operational when the plaintiff is said to have slipped and sustained injuries.

[49] I realize that Ms. Wong, in her affidavit, avers to the fact that sweeps would not be conducted precisely on the hour, but that they would be conducted sometime within the hour. That may mean that sweeps were not conducted at precise times, but they were being conducted within every hour. Importantly, it is clear that there was a system in place and that it was being adhered to. There is no evidence to suggest anything to the contrary.

[50] I see no issue, nor do I have any concern about Ms. Wong's credibility concerning the sweep log and the system of inspection and maintenance that was in operation at the relevant time. Her examination for discovery is not inconsistent with her affidavit evidence. I find I can rely upon this evidence to conclude and do conclude that a system was in place and that it was operational at the time of the slip and fall.

d) Analysis and Conclusion on Suitability

[51] For the reasons outlined above, I disagree with the plaintiff's assertion that there is a credibility issue that only a trial can resolve. I find that, on the evidence before me, no such credibility issue exists. I accept Ms. Wong's evidence about the existence of training and the system of inspection and maintenance and that it was operating at the relevant time. Her evidence is supported by the sweep log of November 2021.

[52] I therefore find that the evidence placed before me is sufficiently reliable and credible for this summary trial application. I am able, on the facts before me, to decide the issues in dispute.

[53] With respect to whether a summary trial would be unjust, I find that many factors weigh in favour of a summary trial. This matter is not complex. The issue of concern is whether there was a reasonable system of inspection and maintenance in place and operational at the relevant time. Such a system can be a complete defence to the claim of injury from a slip and fall. As stated, there will be considerable time and expense saved if this decision is made prior to a trial and again, that is particularly so if I decide that liability on the part of Orchards is not made out.

[54] In sum, I find that issue of liability in this matter can properly and fairly be determined on this summary trial application.

C. Was the System of Maintenance Reasonable?

[55] I have found that Ms. Wong's evidence establishes that Orchards' employees were trained in a system of inspection and maintenance and that system was operational and in place at the time of the slip and fall.

[56] The next step is to determine whether that system was reasonable and ultimately whether that system relieves the defendants from liability for the plaintiff's action for injuries suffered as a result of a slip and fall.

[57] The statutory duty imposed on occupiers is set out in s. 3 of the *Occupiers Liability Act*, RSBC 1996, c. 337 [OLA]:

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.

(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.

[58] The duty of care imposed by the *OLA* is one of reasonableness. The duty does not require the occupiers to ensure that persons using the premises will be absolutely safe: *Fulber v. Browns Social House Ltd.*, 2013 BCSC 1760 at para. 28

[59] The decision of *Rahnama* provides a concise statement of the law with regard to the standard of care and what constitutes a reasonable system of cleaning and inspection:

[42] The standard of care under the *Occupiers Liability Act* and that imposed by the general law of negligence are the same: *Newsham v. Canwest Trade Shows Inc.*, 2012 BCSC 289, at para. 89.

[43] The parties put before me a number of cases considering the question of a "reasonable system of cleaning and inspection", including *Mainardi v. Shannon*, 2005 BCSC 644, at para. 21; *Van Slee v. Canada Safeway Limited*, 2008 BCSC 107; *Charlie v. Canada Safeway Limited*, 2010 BCSC 618; *Zary v. Canada Mortgage and Housing Corporation*, 2015 BCSC 1145, at paras. 38–40. The governing principles were usefully summarized by Justice Bauman, as he then was, in *Sioui v. Canada Safeway Limited*, 2001 BCSC 188, at paras. 15–19:

[15] *Coulson v. Canada Safeway Limited* (1988), 1988 CanLII 3202 (BC CA), 32 B.C.L.R. (2d) 212 (C.A.), [1989] 2 W.W.R. 264, [1988] B.C.J. No. 2067 (Q.L.) (B.C.C.A.) is a leading case dealing with the occupier's duty of care in the context of a large grocery store.

[16] Justice Hutcheon (for the court) cited with approval portions of Justice Trainor's reasons in *Rees v. B.C. Place*, [1987] B.C.W.L.D. 756, [1986] B.C.J. No. 2594 (Q.L.) (B.C.S.C.):

...

"The first requirement to satisfy that obligation is to take the kind of steps that were taken by the defendants here to put into place a system to safeguard against dangerous substances being allowed to remain on the surface of the concourse. And then secondly to be sure that there was compliance by the people who were carrying out that responsibility with the system in place."

[17] In *Lamont v. Westfair Properties (Pacific) Ltd.* 2000 BCSC 513; [2000] B.C.J. No. 513 (Q.L.) (B.C.S.C.), Justice McEwan repeated the observation that "the duty is not absolute: an occupier is not an insurer." (See *Fry v. Confederation Life Insurance Company et al.* [1989] B.C.J. No. 985 (Q.L.) (B.C.S.C.).

[18] Justice McEwan cited the passage by Justice Lawton in *Beaman v. Canada Safeway* (1993), 1993 CanLII 8928 (SK QB), 115 Sask. R. 100, S.J. No. 617 (Q.L.) (Sask. Q.B.) as expressing the standard:

Constant surveillance and instant response might very well prevent such an accident, but such a high standard is not required. The Defendant is not obliged to have his employees standing around to observe or follow each customer and instantly sweep up after those who spill items on the floor. Unrealistic procedures are not required. Reasonableness is the standard, not perfection.

[19] It is clear that the reasonableness of an inspection and maintenance system will be tested in the light of the risk attaching to the area in question. For example, a busy produce department in a grocery store will require more vigilance than, for example, the common areas of a mall or, I would suggest, the parking lot of the store or mall.

[60] More specifically, with respect to a grocery store, the court in *Charlie v. Canada Safeway Limited*, 2010 BCSC 618, considered the system of inspection and maintenance in place:

[14] The written policy established at the store requires that the grocery area, including the area where this incident occurred, to be inspected and swept “. . . approximately once every two hours” and that the person performing it “promptly and accurately log each and every sweep upon completion”.

[15] The written policy goes on to stipulate that these are the minimum standards and that compliance with the policy is mandatory. It goes on to warn that failure to comply with the policy may result in disciplinary action.

[16] The logs were produced for the day in question and reveal that generally the inspection and sweeps were completed within an hour or slightly more throughout the day with one exception.

[61] The court goes on to find that the evidence established that the store’s system to inspect, clean and identify problem areas or conditions was followed and that it was reasonable (*Charlie* para. 26).

[62] In *Tremblay v. Westfair Foods Ltd.*, 2003 BCSC 1017, the system of inspection and maintenance at a grocery store was described as follows:

[10] Affidavit evidence from employees of the defendant set out the details of the defendant’s scheme to maintain the store reasonably free of hazards. This involved hourly inspections, sweepings, and wet-mopping as determined to be necessary. A log is maintained to record staff attendances to these tasks. The last log entry was approximately one half hour before this incident. The store also has a policy of requiring staff to watch for and clean up any spills.

[63] The system described in *Tremblay* was found to be reasonable and it is remarkably similar to the system implemented by Orchards.

[64] As stated in *Rahnama*, citing *Sioui v. Canada Safeway Limited et al.*, 2001 BCSC 188, "...the reasonableness of an inspection and maintenance system will be tested in the light of the risk attaching to the area in question." (at para. 43). In the present case, the Premises function as a produce store which is similar, if not indistinguishable, from the premises discussed in *Tremblay* and *Charlie*.

[65] Arguably, because inspections occurred every hour, the system in place at Orchards was more thorough than the system in *Charlie*. As I indicated, Orchards' business is very similar to a grocery store. Like a grocery store, it was selling produce and the slip and fall occurred in an area where produce was displayed. If the systems in *Charlie* and *Tremblay* were reasonable, I cannot say that the system at Orchards was not reasonable.

[66] Given that the standard is one of reasonableness rather than perfection, I find that Orchards did have a system in place, the system was being adhered to at the relevant time, and it was reasonable. As was the case in *Zary*, I find that the Orchards system effectively "minimized hazards and fulfilled the defendant's duty to keep the premises safe" (*Zary* at para. 58).

IV. CONCLUSION

[67] Regrettably, the plaintiff was injured in a slip and fall. However, as against the defendants, I can find no liability for that event. The defendants lived up to and met the duty of care imposed upon them.

[68] I also add that the issue raised by the plaintiff about who was occupying the Premises at the relevant time need not be decided given that I have found that the system in place was reasonable. Even if 12300118 Holdings Ltd. was an occupier, it too, can rely upon the system of inspection and maintenance operating at the relevant time.

[69] The defendants' application for summary trial is allowed and the action against the defendants is dismissed. The defendants are entitled to their costs.

"Klein J."