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## 1. *McLeod v. Wu et al, 2025 ONSC 6944 (CanLII)*

On October 22, 2019, the plaintiff, 67 year old Carol McLeod (the "Plaintiff"), attended at her daughter's rented home to visit with her grandchildren. The property was owned by the defendant Yuping Wu ("Wu"). The Plaintiff departed the residence at approximately 9:20 pm via the back door, which lead to an exterior wooden staircase that consisted of an upper landing and five stairs. There was no lighting in the area.

As the Plaintiff descended the staircase, holding onto a handrail on the right hand side, her left foot to become caught in a crack in the second last step. Her body pitched forward, causing her to first strike a brick wall on the left hand side of the staircase, and then fall onto a concrete walkway. The Plaintiff landed on her left side causing her to break her left elbow.

While there was no dispute that Wu owed a duty of care to the Plaintiff, the defendants argued that they did not breach their standard of care, and that the Plaintiff did not suffer any damages because of the fall. They also mounted a third party claim against the Plaintiff's daughter, their tenant, arguing that she had exclusive possession of the property and therefore owed the Plaintiff a duty of care. Lastly, of note, the Court considered whether Wu's conveyance of her family home to her children - after being served the Statement of Claim - constituted a fraudulent conveyance.

### **The Issues Considered By The Court**

The issues before the Court were:

1. Did the defendants breach their standard of care that led to the Plaintiff suffering harm and damages?
2. Did the Plaintiff's daughter have a duty of care in respect to the maintenance and upkeep of the property?
3. Did the Plaintiff sustain damages?
4. Was the conveyance of the family home, from Wu to her children, fraudulent?

### **Did The Defendants Breach Their Standard Of Care?**

The Court found that Wu owed the Plaintiff a duty of care pursuant to sections 3 and 8 of the *Occupiers' Liability Act*, R.S.O. 1990, c. O.2. The duty included a requirement "to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises".

Ultimately, Wu was found to have not met the standard of care with respect to the upkeep of the staircase on the basis that there was no system of inspection, monitoring, or maintenance in place.

At trial, Wu acknowledged that, as the landlord, she was responsible for the maintenance and repair of the property. However, she was clear in her evidence that her husband took care of all repairs and maintenance. She advised that, after the property had been purchased in 2014, her husband had performed several touch-ups and improvements to the property, including replacing the old materials on the back staircase with new wood. Mr. Wu was not adduced as a witness at trial, and Wu had no knowledge of any of the details of what steps her husband took, if any, with respect to the back staircase. No other evidence in support of the repairs was adduced at trial. Notably, no inspections were undertaken by Wu either prior to or after 2014.

The Court found that lack of any evidence of regular inspection, maintenance, or monitoring of the back staircase was insufficient and wholly unreasonable by Wu as the landlord.

The staircase was examined by an expert retained by the Plaintiff. The expert rendered an opinion that the staircase was unstable and had structurally inadequate stair treads due to lack of fasteners, which was the result of both improper construction and maintenance. The staircase presented as a safety hazard. Moreover, the presence of the deficiencies rendered the staircase non-compliant with the applicable by-law requirements.

It was the position of the Court that Wu failed to take such reasonable care to ensure that the property, including the back staircase, was reasonably safe. It found that the deficient construction of the staircase, and the lack of lighting, constituted a safety hazard. Wu was in breach of the standard of care owed to the Plaintiff.

### **Did The Tenant Owe The Plaintiff A Duty Of Care?**

The Court found that the Plaintiff's daughter did not owe the Plaintiff a duty of care, in spite of Wu arguing that she had exclusive control over the property.

It was noted by the Court that the Plaintiff's daughter and her children moved into the property on April 1, 2017, and that they almost always used the front entrance to the home for personal safety reasons and due to lack of lighting. The Plaintiff's daughter had complained to Wu about the lack of lighting prior to the fall. At no time prior to the fall did the Plaintiff's daughter, or her grandchildren, observe that the stair was either displaced or broken.

In the factual circumstances of the case, and considering the expert evidence of the Plaintiff's expert on the construction of the staircase, the Court found that the Plaintiff's daughter had no duty to maintain the staircase, to ensure that it was structurally stable and had the proper fasteners, or that it complied with the applicable Property Standards By-Law requirements.

## **Did The Plaintiff Sustain Damages?**

Prior to the fall, the Plaintiff was generally in good health and was completely mobile, independent, and pain free. As a result of the fall, the Plaintiff, who is left-handed, sustained (a) a left elbow radial head fracture; (b) a left elbow contusion and ulnar nerve subluxation; (c) secondary post traumatic ulnar neuropathy left upper extremity (cubital tunnel syndrome); and (d) mild elbow contracture. The elbow fracture was treated non-operatively. According to an orthopedic expert retained by the Plaintiff, she was at risk for developing post-traumatic arthritis and worsening of her ulnar neuropathy. Ulnar nerve transposition surgery was recommended by the expert.

Despite physiotherapy, the Plaintiff reported that she had continued soreness and weakness in the left arm, along with difficulty lifting heavier items, gripping items, and handling items with her left arm extended. There was numbness and pain in the left elbow and hand with repetitive movements or hyperflexion. While the Plaintiff was able to complete all prior tasks, she did so with pacing.

The Court ultimately awarded the Plaintiff \$85,000 in general damages, \$7,300 for housekeeping and home maintenance, \$1,689.93 for past physiotherapy care, \$4,050 for future care, and \$1,524.64 for OHIP's subrogated claim. The Plaintiff was also entitled to pre and post judgment interest, and costs for fees in the amount of \$50,000, exclusive of H.S.T., and to disbursements in the amount of \$22,210.78.

## **Was The Conveyance Of Wu's Family Home To Her Children Fraudulent?**

Finally, the Court found that the conveyance of the family home to Wu's children was fraudulent, as it had been transferred with the intent to "defeat, hinder, or defraud" the Plaintiff from satisfying any judgment she might obtain against the defendants. The Court ordered a declaration that the registration of the conveyance be voided.

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