

CANADA / JUDGMENT

## Petrunia v. Pensionfund Realty Limited

2025 BCSC 2345

COURT

Supreme Court of British Columbia

DECIDED

27 November 2025

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2025 BCSC 2345 Petrunia v. Pensionfund Realty Limited

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Petrunia v. Pensionfund Realty Limited,

2025 BCSC 2345

Date: 20251127

Docket: S235701

Registry: Vancouver

Between:

Jordan Lee Petrunia

Plaintiff

And

Pensionfund Realty Limited

Paladin Security Group Ltd.

Defendants

And

Pensionfund Realty Limited and

Ledcor Construction Limited

Third Party Defendants

Before: The Honourable Madam Justice Sukstorf

## Reasons for Judgment

The Plaintiff, appearing in person:

J.L. Petrunia

Counsel for the Defendant, Paladin Security Group Ltd.:

I.U. Azhar

Counsel for the Third Parties:

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Place and Date of Hearing:

Port Coquitlam, B.C.

September 23, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 27, 2025

Table of Contents

Overview.. 4

ISSUES. 5

FACTS. 6

The Renovations and Safety System.. 6

The Fall 7

Condition of the Area Post-Incident 11

Construction Fencing and Alleged "Next-Day" Measures. 13

CCTV Infrastructure and Footage Preservation. 13

Contested and Uncontested Facts. 14

POSITIONS OF THE PARTIES. 15

ANALYSIS. 16

A. Is liability suitable for summary determination under Rule 9-7?. 16

i) Legal Framework. 16

ii) Application of Law to the Facts. 17

B. Did the temporary flooring installed in the Food Court constitute an objectively unreasonable risk of harm to its users, causing the fall?. 18

i) Legal Framework. 18

ii) Application of Law to the Facts. 19

C. Did the defendants breach the duty and standard of care under s. 3 of the OLA? 21

i) Positions of the Parties. 21

ii) Legal Framework. 22

iii) Application of Law to the Facts. 24

D. Is spoliation made out to justify an adverse inference?. 25

i) Positions of the Parties. 25

ii) Legal Framework. 26

iii) Application of Law to the Facts. 27

DISPOSITION AND ORDERS. 27

## Overview

- [1] This is an application for summary trial pursuant to Rule 9-7(2) of the Supreme Court Civil Rules, B.C. Reg. 168/2009. The defendant, Paladin Security Group Ltd. ("Paladin"), seeks an order severing the issues of liability and damages and submits that, after severing liability, the plaintiff's claim should be dismissed summarily. Paladin is supported in its application for summary trial by Pensionfund Realty Limited, a defendant and third party in this action, and by Ledcor Construction Limited ("Ledcor"), another third party in this action.
- [2] The action before me arises from a trip and fall incident that occurred at the food court of the Coquitlam Centre shopping mall, located at 2929 Barnet Highway, Coquitlam, British Columbia ("Food Court"), on November 17, 2022. The plaintiff, Jordan Lee Petrunia, sustained a serious knee injury when he fell in the Food Court.
- [3] The fall occurred while the Food Court was undergoing renovations that included replacing the existing flooring. The Food Court remained open to the public during the staged renovation, with temporary flooring and warning signage in place.
- [4] Mr. Petrunia alleges that his fall was caused by unsafe or uneven floor conditions that were either created or left unaddressed during the renovation work. He further contends that the defendants failed to preserve additional video surveillance footage of the incident, which constitutes spoliation and warrants the court's imposition of an adverse inference against the defendants.

- [5] The defendants, Pensionfund Realty Limited (as owner and occupier through its agent, Morguard Investments Limited ("Morguard")) and Paladin, deny liability. They maintain that the Food Court was reasonably safe, that Mr. Petrunia's own conduct caused the fall, and that there was no spoliation or destruction of relevant evidence.
- [6] For the reasons that follow, I find this matter suitable for severance and summary determination. The key facts are uncomplicated, credibility is not in issue, and the central legal questions are straightforward. Determining the discrete issue of liability apart from the quantum of damages will achieve a fair, efficient, and proportionate resolution while avoiding unnecessary cost and delay.
- [7] I am satisfied that the evidentiary record permits me to make the necessary findings of fact to resolve the disputed issues and that it would not be unjust to do so summarily under Rule 9-7.
- [8] I accept that Mr. Petrunia sustained a serious injury in the fall. The existence of an injury, however, does not in itself establish negligence or liability; the plaintiff must still prove that the defendants breached a duty of care and that such breach caused the injury. Having considered all of the evidence, I have concluded that the defendants are not liable. What follows are the reasons for that conclusion, organized around the issues I was required to examine. I begin by setting out the general facts underlying this action. I will make additional factual findings as I address each issue in turn.

## Issues

- [9] In coming to my conclusion, I examined the following issues:
- Is liability suitable for summary determination under Rule 9-7?
  - Has Mr. Petrunia established that the temporary flooring installed in the Food Court constituted an objectively unreasonable risk of harm to its users?
  - If so, has Mr. Petrunia established that the defendants breached their duty of care under s. 3 of the Occupiers' Liability Act, R.S.B.C. 1996, c. 337 [OLA]?
  - Is spoliation made out to justify an adverse inference?

## FACTS

### The Renovations and Safety System

- [10] At the time of the incident, the Food Court was undergoing a staged renovation that commenced in or about April 2022 and continued until June 2023. The Food Court remained open to the public during regular business hours, with the renovation work being performed primarily after hours, allowing tenants to continue operating as usual.

- [11] As part of the flooring replacement in the Food Court, temporary flooring transitions were installed to maintain a level walking surface. These transitions consisted of custom plywood panels covered with sectioned carpet and secured with heavy-duty construction tape to keep the surfaces even and minimize tripping hazards.
- [12] During regular business hours, Ledcor implemented a project-specific safety program. Warning measures included large yellow "uneven surface" signs and yellow "wet floor" cones placed throughout the area to alert visitors to the uneven flooring and ongoing construction. Photographs entered into evidence show that the affected areas of the Food Court were clearly and visibly marked.
- [13] Ledcor conducted end-of-shift safety inspections to confirm that signage was in place and to ensure that the temporary transitions remained intact. Morguard also conducted regular inspections throughout the project, and Paladin performed routine security patrols of the area.
- [14] On the evening of November 17, 2022, Mr. Petrunia attended the Food Court with several companions. Based on my review of the CCTV footage, he can be seen walking toward the Dairy Queen counter while making circular or "twirling" movements. At one point, he appears to stumble slightly and nearly make contact with one of the yellow caution signs positioned in the area. In his examination for discovery, he acknowledged that he had been "shuffling" and "twirling" because he "might have been happy" on the way to Dairy Queen. When asked about that sequence in court, he gave the same explanation. The CCTV footage shows that, given his proximity to the caution signs, he would have been aware of their presence as he walked through the area.
- [15] On the evening of the incident, Mr. Petrunia attended the Food Court with his partner, Tania Michaud, and two friends, Ashley and Zach Bindley, all of whom can be seen in the footage walking near him. The footage also shows his companions walking beside him in a normal manner without tripping or reacting to any irregularities on the floor.

## The Fall

- [16] Less than two minutes after his initial "twirling" movements, Mr. Petrunia is seen in front of the Dairy Queen counter making a series of forward and backward movements.
- [17] In his discovery evidence, Mr. Petrunia explained that he performed two lunges in succession, stating that his foot became caught during the second lunge, causing him to fall backward.
- [18] Based on my review of the CCTV footage, Mr. Petrunia first faces away from the Dairy Queen counter, extending his right leg forward as his torso inclines slightly in that direction. He then returns to an upright position, turns toward the counter, and makes another step or lunge-like movement, transferring his weight primarily onto his left leg. At the same time, his right foot is extended behind him for balance.

- [19] As Mr. Petrunia moves into that left-sided lunge, his centre of gravity is visibly over the left leg while the right leg bears little weight. The left knee is slightly flexed and bearing most of the load, and his upper body simultaneously rotates to the left and forward. The combination of these movements--forward weight transfer, torso rotation, and reduced support from the trailing leg--appears to result in a sudden loss of balance.
- [20] At the instant Mr. Petrunia disappears behind the pillar in the video, his weight appears to be concentrated through his left foot, and I find that the moment of instability originates from that leg. The fall then proceeds backward and to the left, consistent with a pivot or limited release at the left foot as his mass continues to shift backward.
- [21] Mr. Petrunia testified in the discovery that, as seen on the video, he "popped backwards" and landed on his buttocks, consistent with the position shown in the photographs taken moments later.
- [22] The CCTV footage shows that bystanders and security personnel responded within moments of the fall and that Mr. Petrunia remained seated or reclined on the floor until attended to by Paladin staff.
- [23] In her affidavit, sworn on September 12, 2025, Ms. Bindley, who was with Mr. Petrunia at the time, stated that:
2. I observed Jordan Petrunia fall while doing a lunging motion out front of the Dairy Queen in the food court. This occurred while Jordan and I were talking and waiting to order.
  3. The fall appeared to be caused by Jordan's heel getting stuck on the construction tape while he was coming back up into normal positioning from the motion. He proceeded to fall backwards into one of the food court tables.

[My Emphasis added.]

- [24] At his examination for discovery, Mr. Petrunia candidly explained that at the time of the fall, he was performing what he described as a "lunge," stating that his "testicles were stuck to [his] leg" and that he chose to lunge rather than adjust himself in public.
- [25] He further testified that while making that movement, his foot became caught on construction tape, which caused him to trip and fall backward, dislocating his knee:

Q: Now, describe the incident for me. What happened?

A: I got my foot caught on tape and tripped. Fell backwards on the trip and my knee dislocated.

Q: What were you doing at the time of the incident?

A: A lunge.

Q: Why were you doing a lunge?

A: My testicles were stuck to my leg. So instead of grabbing my crotch to unstick them in public, I did a lunge.

[26] He confirmed that he believed this ordinary movement would "unstick [his] testicles" but also admitted that he did not recall ever having had to do this before in public.

[27] In his discovery evidence, Mr. Petrunia also acknowledged that he was aware the Food Court was under construction and that he saw tape on the floor but stated that he did not know that he had to look around before lunging. He further agreed that the tape seen in those photographs was in the same condition at the time of the accident.

[28] However, in his first affidavit, sworn September 10, 2025, Mr. Petrunia re-characterizes the movement as a stretch rather than a lunge, stating, "I was not doing lunges; I was performing a brief stretch to adjust my privates from my leg" in a "normal and controlled" manner. He maintains that this movement was mischaracterized as lunging in the affidavit of a Paladin supervisor who viewed the CCTV footage, and that his fall occurred because his back foot became caught on the taped-down carpet covering an uneven section of flooring.

[29] In his first affidavit, dated September 10, 2025, Mr. Petrunia stated:

During this stretch, my left back foot got caught on construction flooring holding down a carpet covering a level change in the floor, causing me to be propelled backwards and dislocate my patella.

[30] He further stated that:

At the time of the incident, I initially believed my foot had become stuck on the white tape that was holding down the carpet. However, after receiving a sworn affidavit from Azael Flores, construction superintendent for Ledcor Construction Limited, I now understand that beneath the carpet was a gap in the floor, which had been filled with a piece of plywood with the carpet taped over it. These photos show that the plywood caused an imperfection in the carpet, creating a level change that caused my foot to depress into the carpet, leading to my fall.

[31] These evolving explanations--from getting stuck or tripping on tape, to a foot catching on an alleged level change, to a depression in the carpet--form the basis of Mr. Petrunia's current theory of liability.

[32] In his first affidavit, Mr. Petrunia relies on photographs taken by Ms. Bindley at the time of the incident. He attests that these photographs show visible ripples or unevenness in the carpet caused by the manner in which it was secured with white construction tape.

[33] Mr. Petrunia states that there were no warning signs in the area surrounding the carpeted section to alert him to any hidden hazard or change in level beneath it. Although he acknowledges that signage may have been present elsewhere in the Food Court, he maintains that nothing in the vicinity of the carpeted area indicated a potential hazard or change in level. I accept that there were no warning signs posted at the exact location where he fell. However, the CCTV footage shows that several caution signs were positioned in close

proximity to the area of the fall and that, as Mr. Petrunia made his way toward the Dairy Queen counter, he nearly walked into one of them.

- [34] The photographs depicting Mr. Petrunia after the fall show him lying on the floor with his feet positioned close to the taped-down carpet panels.
- [35] During his examination for discovery, Mr. Petrunia confirmed that the condition of the tape and flooring depicted in these photographs accurately represented the state of the area at the time of the incident.
- [36] In his first affidavit, Mr. Petrunia deposes that the construction tape appears marked with shoe prints, which he says indicate wear and support his allegation that the taped carpet created a hazardous condition that caused his fall.
- [37] Based on my review of the photographic evidence taken on the evening of the incident, I observe that, although a few minor marks are visible on the construction tape, there is no indication of any displacement or disruption of the carpet panels that were taped down. I also note in photographs taken after Mr. Petrunia had been transported to the hospital, what appears to be a torn or opened paper package nearby. Its significance, if any, is unclear.
- [38] The photographs of the shoes Mr. Petrunia wore at the time--black Nike Air sneakers--show they were in good condition, with intact soles of high quality, and appropriate for the circumstances.

### Condition of the Area Post-Incident

- [39] In his first affidavit, Azael Flores, the construction superintendent for Ledcor, deposes that during the renovation, temporary flooring transitions were installed to eliminate tripping hazards and fill any gaps in the flooring. These transitions consisted of sheets of plywood covered with sectioned carpeting and secured with heavy-duty construction tape.
- [40] At approximately 11:20 p.m. on November 17, 2022, Mr. Flores was notified of Mr. Petrunia's fall. He and Ledcor's project safety coordinator, Jorge Ruiz, attended the security office to review the surveillance footage and then inspected the scene of the fall.
- [41] Mr. Flores deposes that no flooring work had been performed in that section of the Food Court on the evening in question. He observed that the temporary flooring transitions remained in place and intact, that the construction tape securing the carpet was undamaged and affixed with the adhesive side facing downward, and that several yellow caution signs bearing the warnings "uneven surface" and "wet floor" were present nearby.
- [42] Mr. Flores further explains that Ledcor conducted daily safety inspections at the end of each shift to ensure that the temporary flooring, transitions, and warning signage were secure and in good condition.

- [43] Mr. Flores' evidence is corroborated by Leah Flather, a development coordinator with Morguard who regularly inspected the Food Court during the renovation. Ms. Flather attests that on November 14, 2022, three days before Mr. Petrunia's fall, she observed multiple warning signs in the area and did not see any damaged construction tape or misplaced flooring transitions.
- [44] Mr. Flores' evidence is further supported by George Brunelle, Ledcor's project manager, who attests that Ledcor's project-specific safety program required personnel to independently monitor the Food Court nightly to ensure that no gaps or tripping hazards were left unaddressed.
- [45] At his examination for discovery, Mr. Petrunia acknowledged that he was aware the Food Court was "under construction" and that tape was visible on the floor. However, he denied paying attention to his surroundings and said he did not notice the multiple yellow caution cones warning of the construction area. When asked about this, he remarked that he did not know he had to look at his surroundings before performing the movement that led to his fall.
- [46] According to Kiranpreet Sidhu, assistant supervisor with Paladin, staff attended within minutes of the incident and observed Mr. Petrunia lying on his left side near the Dairy Queen counter. Ms. Sidhu deposes that she immediately contacted 911. She further deposes that she and the responding security guard inspected the surrounding area and saw no visible hazards, obstructions, or damage to the taped flooring that could have contributed to the fall.
- [47] Ms. Sidhu's affidavit attaches and adopts Paladin security guard Bruce Hamilton's contemporaneous logbook, in which Mr. Hamilton recorded that Mr. Petrunia reported tripping on the carpet but that no hazards were observed in the area at that time.
- [48] Ms. Sidhu further deposes that exercising or lunging in the Food Court contravenes the Coquitlam Centre Code of Conduct, which prohibits activities that may endanger or disturb other patrons.

### Construction Fencing and Alleged "Next-Day" Measures

- [49] Mr. Petrunia also relies on the presence of "more fencing and more signs the next day" as evidence that the defendants recognized a hazard. The defence says the additional fencing was not reactive but reflected the pre-determined construction schedule. According to that schedule, the installation of two wash stations required the cabinetry to be pre-positioned within a cordoned-off area and enclosed by construction fencing. Fencing had already been installed near the KFC on November 15, 2022, and further fencing was scheduled for installation near the Dairy Queen on November 18, 2022. The defendants submit that the Dairy Queen fencing was installed as planned and not in response to the incident.

- [50] In a subsequent affidavit, Mr. Flores addresses the suggestion that additional fencing was erected immediately after the fall. He explains that the November 18, 2022, fencing was installed in the ordinary course of the renovation to cordon off cabinetry for the wash station being constructed in front of the KFC and Dairy Queen counters, and that it was unrelated to Mr. Petrunia's incident.
- [1] Mr. Flores' evidence aligns with Ledcor's project-specific safety program and construction schedule, which identified the installation of wash-station fencing at the Dairy Queen counter as the next phase of work beginning November 18, 2022.
- [51] I have reviewed the photographs included in the evidentiary record. They clearly show that the fencing was installed adjacent to new cabinetry ready to be installed within the Food Court, consistent with the planned wash station installations described in the construction schedule. The placement and configuration of the fencing align with Mr. Flores' explanation that it was part of the next phase of the renovation work and not a reactive measure taken in response to Mr. Petrunia's fall.

#### CCTV Infrastructure and Footage Preservation

- [52] Mr. Petrunia also alleges that the defendants failed to preserve or produce additional surveillance footage of the incident.
- [53] On December 2, 2022, Mr. Petrunia's former counsel, Mr. Paul Warnett of Warnett Hallen LLP, wrote to the Coquitlam Center's general manager requesting that all video surveillance from the Food Court on the date of the incident be preserved. The defendants, through their counsel at Guild Yule LLP, subsequently acknowledged receipt of that request.
- [54] The evidence suggests that before the renovation project, two security cameras were located in or near the Food Court. As part of the renovation, two additional cameras were installed in October 2022. However, according to Robert Wong's affidavit, the operations manager for Morguard, the new cameras were not connected to the mall's integrated monitoring system and did not begin recording until February 2023. As a result, no footage from those devices existed at the time of the incident.
- [55] Ms. Sidhu deposes that she reviewed the available footage on November 18, 2022, the day after the fall. She explains that several camera angles were examined, but most were either blurry or did not clearly capture the incident. Only one camera in the Food Court hallway provided a complete view, and that clip was saved and preserved.
- [56] Ms. Sidhu further explains that non-incident footage was automatically deleted from the system after three months. The only preserved recording was the camera angle showing the fall in full, which was retained and provided to the defendants for litigation purposes.

- [57] When Mr. Petrunia inquired again in August 2025 about footage from other cameras in the Food Court, Morguard's counsel confirmed by letter dated September 3, 2025, that those cameras were not operational at the time and that no other recordings of the incident existed or could be retrieved.

### Contested and Uncontested Facts

- [58] The parties agree that the fall occurred at the Food Court during a renovation with temporary flooring transitions. They also agree that CCTV captured Mr. Petrunia walking near Dairy Queen and subsequently falling. However, a pillar somewhat obstructed the footage.
- [59] The principal factual disputes concern how the fall occurred, whether a defect existed at the site, the purpose for erecting the fencing, and whether additional CCTV should have been available.

### Positions of the Parties

- [60] The defendants submit that this case is suitable for determination by summary trial and that doing so will promote efficiency and proportionality.
- [61] On the merits, they advance three main points:
- i) they met their duty of care under the OLA by implementing and inspecting a reasonable temporary flooring and signage system;
  - j) the CCTV footage shows that the fall occurred during Mr. Petrunia's own deliberate action of performing lunges, rather than from tripping on a defect; and
  - k) the requirements for a finding of spoliation are not met, as the additional cameras were not operational, and the only usable video was preserved and produced.
- [62] The defendants dispute Mr. Petrunia's version of events. They say the video footage clearly depicts Mr. Petrunia engaging in a series of deliberate, exaggerated lunges rather than a discrete stretch. According to the defendants, these movements were self-initiated, unnecessary, and unrelated to any floor condition. They emphasize that Mr. Petrunia's evolving explanations--first that he tripped on a strip of tape, later that his foot stuck to the tape, and finally that the carpet concealed an uneven floor--underscore that the cause of his fall lies in his own conduct. The defendants maintain that the flooring and construction materials were secure, that warning signage was visible, and that there is no evidence of any hazard capable of causing the fall. In their submission, Mr. Petrunia lost his balance because he shifted his weight awkwardly during the second of two lunges, causing him to twist and fall.

[63] Mr. Petrunia argues that a summary trial under Rule 9-7 is not suitable because there are disputed facts, namely the condition of the surface, the chronology of events, the extent of signage and fencing, and the cause of the fall. He says the surface was rippled or uneven, the tape created a tripping hazard, and that adding fencing after the fact demonstrates a lack of awareness of the risk. He seeks an adverse inference based on missing CCTV.

## Analysis

### A. Is liability suitable for summary determination under Rule 9-7?

#### i) Legal Framework

[64] Rule 9-7 permits summary judgment when the court can find the necessary facts to decide the issues of fact or law, and it is not unjust to do so. The principles of proportionality and access to justice favour the use of this rule where appropriate.

[65] The defendants specifically invoke Rule 9-7(2), which permits the determination of a discrete issue by summary trial. They argue that the question of liability can be resolved summarily and that the action should be dismissed as the evidence does not establish any negligence on their part.

[66] Whether a case is suitable for summary trial depends on its facts and legal issues. In *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.*, 36 B.C.L.R. (2d) 202 at 214, 1989 CanLII 229 (B.C.C.A.), the Court of Appeal identified factors relevant to that assessment, including: the amount at stake, the complexity of the matter, the urgency of the case, potential prejudice from delay, the cost of proceeding to a conventional trial, and the course of the proceedings.

[67] The critical question is whether the court can make the findings of fact necessary to resolve the dispute. Even where that is possible, the court must still consider whether it would be unjust to do so summarily, having regard to the *Inspiration Management* factors: see also *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30-31.

[68] The summary trial rule is intended to promote proportionality, access to justice, and the timely and affordable resolution of claims: *Hryniak v. Mauldin*, 2014 SCC 7.

#### ii) Application of Law to the Facts

[69] First, I need to consider whether liability is appropriately severed from damages. Second, I must consider whether it is appropriate to deal with liability on a summary basis. In following the practical application of how to approach this type of decision, I found Justice Underhill's two-stage approach in *Stoeff v. Stephenson*, 2025 BCSC 737, to be instructive.

[70] I will now briefly consider the relevant factors in assessing whether there is a good reason and whether it is fair to determine liability in this summary trial application.

- [71] I find liability can be determined on a summary basis. The record--which consists of CCTV footage, photographs, contemporaneous inspection evidence, and affidavits--is document-heavy and largely objective. Further, the key disputes--unreasonable risk and causation--turn on that record rather than on credibility findings that require viva voce evidence.
- [72] After hearing Mr. Petrunia's submissions (which initially opposed proceeding summarily) and reviewing the materials, I am satisfied that there are no direct, irreconcilable conflicts of material facts. The facts are straightforward: while performing lunges in the mall's Food Court, Mr. Petrunia fell and injured his knee. The fall and the seriousness of his injuries are undisputed. The remaining question is a legal one: whether, based on the facts before me, the defendants are liable for the fall. In a case such as this, proceeding summarily is proportionate.
- [73] Next, I do not see any reason why it would be unjust to determine liability summarily.
- [74] The issues of liability and damages are not intertwined. Determining liability alone will not create duplication or risk of inconsistent findings in any subsequent quantum hearing. The amount at stake does not justify a conventional trial given the nature of the record. The issues in this case are neither novel nor complex; there is no identified prejudice from proceeding summarily, and a summary determination advances proportionality and the timely, affordable resolution of the claim. On that basis, I find it fair and just to determine liability summarily on this application.

B. Did the temporary flooring installed in the Food Court constitute an objectively unreasonable risk of harm to its users, causing the fall?

i) Legal Framework

- [75] A plaintiff bears the burden of adducing positive evidence of an unsafe condition or an objectively unreasonable risk of harm, together with a causal nexus between that condition and the resulting injury. Mere speculation is insufficient. Claims fail where there is no proof that the surface was unsafe or where objective evidence--such as video footage--demonstrates a different mechanism of injury, such as a misstep or a toe catching on a mat.
- [76] Further, causation requires proof on a balance of probabilities. The court will not infer causation where a non-hazard explanation is at least equally consistent with the evidence.
- [77] On causation, the defendants rely on *Kerr v. Global Investments House Inc.*, 2014 BCSC 1544, asserting the general principle that a plaintiff must demonstrate a causal link between a proven hazard and the fall, as the court cannot speculate: *Kerr* at para. 30. The defendants also rely on *Gujral v. Meat and Bread Sandwich Company Ltd.*, 2022 BCSC 917, a case where a plaintiff failed to establish that a risk or hazard caused their fall. They argue that, as in *Gujral*, the record in this case supports an alternative, non-hazardous explanation (loss of balance during lunges) that is at least equally consistent with the evidence, precluding a finding in favour of Mr. Petrunia.

## ii) Application of Law to the Facts

- [78] The evidence establishes that, at the time of the incident, the Food Court was undergoing renovations that included the replacement of flooring. To maintain public access during daytime hours, Ledcor installed temporary flooring transitions consisting of sheets of plywood fitted into gaps, covered with sectioned carpeting, and secured with heavy-duty construction tape. The purpose of these transitions was to level the walking surface and eliminate tripping hazards. Warning signage reading "uneven surface" and "wet floor" was placed at visible locations throughout the area. Ledcor conducted daily safety inspections at the end of each shift to ensure that the transitions and signage were secure and intact. Additionally, Morguard's development coordinator and Paladin staff performed regular daytime inspections.
- [79] Immediately following the incident, Ledcor's superintendent, Mr. Flores, inspected the area. He observed that the flooring transitions were intact, the construction tape was undamaged and affixed sticky-side down, and that several yellow caution signs were present nearby. There is no evidence of damage, loosened materials, or any deviation from the established safety system. Mr. Petrunia himself admitted that he was aware the Food Court was under construction and that tape was visible on the floor, although he denied noticing the warning cones.
- [80] I have reviewed the video footage, which clearly depicts the Food Court layout before the fall. The warning cones are plainly visible in the camera's field of view. Indeed, the footage shows Mr. Petrunia walking and twirling as he made his way toward the Dairy Queen counter and, at one point, almost colliding with one of the yellow caution signs. Immediately before the fall, his weight is visibly centred and then transferred forward over his left leg as he engages in what appears to be a stretching or lunging motion. His upper body rotates left and backward while his centre of gravity remains over the planted leg. The combination of that forward weight shift and rotation produces an immediate loss of balance. After reviewing the video, I find that the sequence is consistent with a self-initiated movement.
- [81] Mr. Petrunia asserts that his fall resulted from "rippled" or uneven carpet covering a hidden level change. The defendants point out that his own accounts of the mechanism of injury have varied from tripping on a strip of tape, to having his shoe caught on the tape while lunging, and to slipping on uneven flooring. The CCTV footage depicts him performing what the evidence confirms are two deliberate lunges in an open area of the Food Court rather than tripping or stumbling while walking.

- [82] The evidence as a whole demonstrates that the renovation conditions were readily apparent to users of the Food Court. The taped carpet, plywood transitions, and warning signage were typical features of a public area undergoing staged construction. Nothing in the record suggests that the temporary flooring created a trap or hidden danger. Mr. Petrunia's awareness of the construction environment and his decision to perform lunging movements in that space further diminish the foreseeability of harm arising from the flooring itself.
- [83] As outlined above, Mr. Petrunia bears the burden of proving, on a balance of probabilities, that the temporary flooring installed in the Food Court presented an objectively unreasonable risk of harm to users of the premises and the existence of a causal connection between that unsafe condition and his fall.
- [84] I am not persuaded that the temporary flooring, its transitions, or the taped carpet constituted an objectively unreasonable risk of harm. Based on the evidence, the flooring system was installed and maintained in accordance with a reasonable and industry-standard safety protocol. The conditions were visible and adequately marked and Mr. Petrunia's fall was not caused by a latent defect or unsafe surface but rather by his own unexpected movement. At most, any minor irregularities or exposed transition areas were the open and commonplace conditions that inevitably arise in public spaces during renovation. Those conditions do not exceed the ordinary risks of daily life that occupiers are not required to eliminate.
- [85] Accordingly, I find that Mr. Petrunia has not established that the temporary flooring presented an objectively unreasonable risk of harm, nor that it caused his fall.
- [86] In my view, this case is decided on the first question. However, I have also examined the next question.

C. Did the defendants breach the duty and standard of care under s. 3 of the OLA?

i) Positions of the Parties

- [87] The defendants submit that the onus remains on Mr. Petrunia to prove breach under s. 3 of the OLA: *Nungwana v. Canada (Attorney General)*, 2020 BCSC 1634 at para. 57. They rely on *Hickey v. Roman Catholic Archdiocese of Vancouver*, 2017 BCSC 1176 at para. 27, for the proposition that the standard of care established by s. 3 of the OLA is one of reasonableness, not perfection. The defendants further submit that there is no presumption of negligence against an occupier wherever a person is injured on the premises: *Fulber v. Browns Social House Ltd.*, 2013 BCSC 1760 at para. 29, citing *Bauman v. Stein*, 78 D.L.R. (4th) 118 at 127, 1991 CanLII 1140 (B.C.C.A.).
- [88] In response to Mr. Petrunia's allegations of negligence, the defendants argue that a defendant does not breach its duty where an accident could have been avoided with a modicum of awareness by the plaintiff, relying on *Voje v. Teck Developments Ltd.*, 2022 BCSC 503 at para. 102, as authority. They note *MacKandy-Gray v. London Drugs Limited*, 2013 BCSC 2069, and *Kerr* as examples where claims failed in the absence of proof that the

surface was actually unsafe. They further submit that even if a prima facie hazard were shown, an occupier can rebut the breach of the duty of care by proving that a reasonable inspection or maintenance system was in place: *Gujral* at para. 27, citing *Druet v. Sandman Hotels, Inns & Suites Limited*, 2011 BCSC 232 at para. 40.

## ii) Legal Framework

[89] Section 3 of the OLA sets out the duty of care owed by occupiers to users of their premises:

### 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.

[90] "Premises" is broadly defined in s. 1 of the OLA as including land and structures, as well as ships, vessels, specific portable structures, and various vehicles, so long as they are not in operation. It is clear that the Food Court at Coquitlam Centre meets this definition.

[91] Under s. 1, the OLA defines an "occupier" as a person who is in physical possession of premises or "has responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter those premises". There may be more than one occupier under the OLA. None of the defendants deny they were occupiers of the premises at the time of the incident. Thus, they owe users of the premises a duty of care to ensure they are safe from an unreasonable risk of harm.

[92] The OLA, however, does not create a presumption of negligence whenever an injury occurs, and occupiers are not required to eliminate the ordinary risks of everyday life: *Fulber* at para. 29, citing *Bauman* 127. The OLA does not require an occupier to "warn or protect against 'the ordinary risks arising out of the exigencies of everyday life'": *Choromanski v. Malaspina University College*, 2002 BCSC 771 at para. 42, citing *Malcolm v. British Columbia Transit*, 32 B.C.L.R. (2d) 317 at 318-319, 1988 CanLII 3213 (B.C.C.A.).

[93] While I accept that a fall occurred and that Mr. Petrunia sustained injuries as a result, these facts alone do not give rise to any presumption of negligence on the part of the defendants. The OLA imposes a duty of reasonable care, not a guarantee of safety. Occupiers are required to act reasonably in all of the circumstances and entrants must exercise a corresponding "modicum of awareness" for their own safety. Where an accident could have

been avoided through such ordinary care, the occupier will not be found to have breached the duty of reasonable care.

- [94] It is Mr. Petrunia's burden to prove, on a balance of probabilities, that the defendants breached their duty and that this breach resulted in the injury or loss at issue: *Foley v. Imperial Oil Limited*, 2011 BCCA 262 at para. 30, citing *Kayser v. Park Royal Shopping Centre Limited*, 16 B.C.L.R. (3d) 220 at para. 13, 1995 CanLII 655 (B.C.C.A.). The onus on the plaintiff does not shift in a summary trial under Rule 9-7.
- [95] The standard of care under the OLA is one of reasonableness, not perfection. In *Agar v. Weber*, 2014 BCCA 297 at para. 30, leave to appeal to SCC ref'd, 36090 (26 November 2015), the Court of Appeal held that the standard of care under the OLA is the same as at common law for negligence: "to protect others from an objectively unreasonable risk of harm." The Supreme Court of Canada similarly described the statutory test for the standard of care for occupier's liability as a "duty to take reasonable care in the circumstances to make the premises safe": *Waldick v. Malcolm*, [1991] 2 S.C.R. 456 at p. 472, 1991 CanLII 71.
- [96] On the facts before me, it was the duty of those responsible for managing and operating the Food Court to take reasonable care to ensure that the premises were safe. What constitutes reasonable care varies depending on the specific facts of each case. As set out in *Wilson v. Canadian Motor Inn Ltd.*, 2010 BCPC 46 at para. 22, the duty is premised on three elements:
- a) actual or constructive knowledge of the hazard;
  - b) foreseeability of the consequences of failing to abate the hazard; and
  - c) the ability to abate the hazard.
- [97] Where there is evidence of a *prima facie* breach of the OLA, an occupier may refute the violation by leading evidence that it had put into place a reasonable system of inspection and maintenance that was being followed at the time of the accident: *Druet* at para. 40; *Anderson v. Hicks Enterprises Ltd.*, [1991] B.C.J. No. 3059, 1991 CanLII 1847 (B.C.S.C.).
- [98] Mr. Petrunia did not plead or argue a distinct common law claim.

### iii) Application of Law to the Facts

- [99] The temporary flooring regime--comprising plywood transitions, carpeted runners secured with tape, posted signage, and ongoing inspections--was a recognized means of construction-phase control, and, on this record, a reasonable one. The objective materials show that the tape edges were adhered, signs were in place, and inspections were being conducted regularly. Although photographs taken immediately after the incident do not depict pylons or barriers at the precise spot where Mr. Petrunia fell, pylons and barriers were deployed across the Food Court with conspicuous warning messages.

[100] The duty of care does not extend to guaranteeing safety against open and observable transitional surfaces that a patron exercising a modest degree of attention would notice. The evidence suggests that transitional surfaces and taped coverings are commonplace during staged renovations. Absent evidence of displacement, damage, or concealment, the transitional surfaces do not, without more, amount to an unreasonable risk. I find no breach of duty on this record.

[101] The CCTV footage shows Mr. Petrunia engaging in what I describe as deep, deliberate lunges immediately before the fall. As there is no persuasive evidence of a defect or loss of integrity in the temporary flooring transitions, I find that Mr. Pertunia's fall is the unfortunate result of his failure to exercise a "modicum of awareness" for his own safety rather than negligence on the part of the defendants.

D. Is spoliation made out to justify an adverse inference?

i) Positions of the Parties

[102] Mr. Petrunia submits that the defendants failed to preserve additional surveillance footage from other camera angles despite a preservation demand from his former counsel. He asks the Court to find spoliation and draw an adverse inference that any missing footage would have supported his account and undermined the defence. He relies on *Dawes v. Jajcaj*, 15 B.C.L.R. (3d) 240, 1995 CanLII 137 (B.C.S.C.), and *SS&C Technologies Canada Corp. v. Bank of New York Mellon Corporation*, 2024 ONCA 675, as well as on a statutory or contractual retention obligation. As a remedy, he requests that uncertainties regarding his tripping mechanism and the hazard that caused it to be resolved against the defendants, thereby defeating summary dismissal or aiding in establishing liability. Mr. Petrunia also seeks consequences for "selective disclosure," including adverse inferences and costs.

[103] On spoliation, the defendants rely on *Dyk v. Protec Automotive Repairs*, 41 B.C.L.R. (3d) 197, 1997 CanLII 2114 (B.C.S.C.), and *Axion Ventures Inc. v. Bonner*, 2025 BCSC 167, as well as the appellate authorities cited therein, for the test for spoliation. They submit that the test requires the intentional destruction of relevant evidence when litigation is pending or reasonably foreseeable. They further submit that the test for spoliation is not met in this case because no other footage ever existed.

[104] The defendants also rely on Mr. Wong's affidavit. They state that the additional cameras referenced by Mr. Petrunia were newly installed but not connected to the system until February 2023 and therefore did not record anything at the time of the incident in November 2022. Accordingly, there was no footage from those devices to preserve or produce. They further state that Paladin reviewed multiple operational angles covering the Food Court area on the date in question and preserved the only clear clip depicting Mr. Petrunia's presence and movement. They deny any destruction or selective disclosure, point out that Mr. Petrunia's demand was met by the production of the available clip, and submit that there is no evidence of bad faith or of any breach of a preservation duty. They add that the record already includes objective materials--including CCTV footage,

photographs, contemporaneous inspection logs, and sworn affidavits--and submit that, as a result of the objective nature of the record, Mr. Petrunia cannot show prejudice from any supposed "missing" view. On this footing, they submit that spoliation is not established and that no adverse inference should be drawn against them.

## ii) Legal Framework

[105] Spoliation is a doctrine engaged only where relevant evidence has been intentionally destroyed in bad faith, in circumstances indicative of fraud, or with an intention to suppress the truth. Spoliation requires intentional destruction of pertinent evidence when litigation is pending or reasonably foreseeable; absent intention, no adverse inference arises. It does not occur merely because evidence is destroyed. Justice Walker recently summarized the law on spoliation in *Axion Ventures Inc* at paras. 5-12.

[106] To find spoliation, four elements must be established. These elements are outlined in *2025925 Ontario Inc. v. Maramusche Holdings Inc.*, 2023 ONSC 3041 at para. 250:

[250] A finding of spoliation requires that the following four elements be established on a balance of probability (see *Nova Growth Corp. v. Kepinski*, 2014 ONSC 2763 ("*Nova Growth*") at para. 296):

- a. the missing evidence must be relevant;
- b. the missing evidence must have been destroyed intentionally;
- c. at the time of destruction, litigation must have been ongoing or contemplated; and
- d. it must be reasonable to infer that the evidence was destroyed in order to affect the outcome of the litigation.

## iii) Application of Law to the Facts

[107] On this record, I decline to find spoliation and, consequently, I draw no adverse inference against the defendants.

[108] Mr. Petrunia alleges that there is a "missing video," a concern he raised by letter on August 22, 2025 (well after the pleadings and lists of documents were filed).

[109] Mr. Petrunia has not established that relevant footage ever existed, nor that it was destroyed or withheld. The Wong affidavit, which I accept on this point, explains that the additional cameras were not recording in November 2022 and therefore captured no footage on the day in question. Further, I accept that Paladin preserved the only operational angle depicting the area of the fall. There is no evidentiary basis to infer intentional destruction of relevant footage, improper curation, or bad faith. Additionally, Mr. Petrunia identifies no specific prejudice arising from the absence of other footage. The objective materials preserved (i.e., the recorded CCTV footage, still photographs, and contemporaneous inspection evidence) are sufficient to permit a fair adjudication of the issues. Any remaining uncertainty about the mechanism will be resolved on the whole of the

admissible record, not by way of an adverse inference shortcut.

[110] The test for spoliation is not met, and no adverse inference arises.

### Disposition and Orders

[111] I find that the Food Court was reasonably safe for users and that the defendants and third parties did not breach their statutory duty under the OLA. In light of that finding, I do not need to address causation.

[112] Mr. Petrunia's accident and injury were regrettable. However, for the reasons set out above, his action is dismissed.

[113] In the absence of facts that might affect costs, the defendants are entitled to their costs of this action on Scale B.

"Sukstorf J."

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