Blaney McMurtry LLP

NEWS

Kyle Duncan Successful on Summary Judgement Motion in the Ontario Superior Court of Justice

Date: April 09, 2026

Our Senior Associate, Kyle Duncan successfully obtained summary judgment for Wal-Mart Canada Corp., securing a complete dismissal of a trip-and-fall action claiming over $1,000,000 in damages.

On October 31, 2022, a patron tripped and fell in a Wal-Mart store in Scarborough, fracturing her hip. The plaintiffs alleged that Wal-Mart breached its duty of care under Ontario's *Occupiers' Liability Act* by creating a hazardous condition in a store aisle.

1. A decision released March 4, 2026, Justice Carissima Mathen of the Ontario Superior Court of Justice found no genuine issue requiring a trial. The Court held that CCTV footage and the evidentiary record demonstrated, on a balance of probabilities, that the plaintiff's fall was caused by contact with another patron's wheeled basket — not by anything Wal-Mart or its employees did or failed to do. Justice Mathen concluded that the incident was "an awful but unforeseeable accident that did not involve Wal-Mart at all and against which Wal-Mart could not have taken reasonable precautions."

The decision reinforces well-established law that occupiers are not under a duty to remove every possible danger or "sanitize their environment to…negate all risk." A plaintiff must pinpoint some act or failure on the part of the occupier that caused the injury — the *Occupiers' Liability Act* does not impose strict liability, and the duty of care must not be confused with a presumption of negligence. Here, the Court found that the plaintiffs demanded a standard of perfection rather than reasonable risk mitigation, and expectation that could not survive summary judgment.

This result also underscores the importance of a strong evidentiary record — including video evidence and expert analysis — in defeating occupiers' liability claims at the earliest opportunity, avoiding the time and expense of a full trial.

View the decision here.

PEOPLE

- Kyle Duncan