#### DCPI 1305/2005

IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1305 OF 2005

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| BETWEEN | CHENG SHUI CHU | Plaintiff |
|  | and |  |
|  | SOUTH HORIZONS MANAGEMENT LIMITED | Defendant |

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##### Coram: Deputy District Judge E. Yip in Chambers

Date of Hearing: 5th July 2007

Date of Handing Down Decision:  13th July 2007

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D E C I S I O N

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*Introduction*

1. The plaintiff was a member of the South Horizons Resident Club managed by the defendant. The plaintiff was injured whilst using its tennis court.
2. The plaintiff applies for leave to adduce 2 reports written by Dr. Courtney to prove that the injury was caused by an uneven and over-abundant build-up of sand in the tennis court. The defendant resists the application on the ground that the reports are not relevant to the fact in issue.

###### Plaintiff’s pleaded case

1. At about 8:10 a.m. on 5 October 2003, the plaintiff started to play tennis with her friends at the tennis court, No. 4 Court. When she tried to hit the ball, she suddenly stepped onto a slippery sand patch and/or slippery substance on the ground. She slipped and fell onto the ground. She suffered injuries to the left side of her face and body.
2. She filed a Statement of Claim on 23 September 2005. The plaintiff sued the defendant on the basis of breach of contract, negligence, and *res ipsa loquitur* for allowing an uneven and over-abundant build-up of sand in No. 4 Court.

###### Defendant’s pleaded case

1. The defendant filed a Defence on 19 October 2005. It pleaded to the fact, among others, that the turf of No. 4 Court made up of a very high quality artificial turf filled with silicon sand (“Sand”). There was proper and regular maintenance to keep it safe and serviceable. It denied any uneven or over-abundant build-up of Sand in No. 4 Court [vide para. 4(d), (e), para. 5(f)].

###### Objectives of the 2 expert reports

1. Dr. Courtney was teaching in the Department of Industrial and Manufacturing Systems Engineering of the University of Hong Kong. He claimed to be an expert in the scientific analysis of how slippery a tennis court would become if there was an uneven and over-abundant build-up. He set out his analysis in 2 reports dated 17 March 2006 and 24 January 2007 respectively. As I see it, they purported to prove that:
   1. An uneven and over-abundant build-up of Sand in No. 4 Court would make it slippery;
   2. That was probably the case on 5 October 2003.

I shall refer to this as “My View of the Reports”.

1. Mr. Lai for the plaintiff, however, states in his Supplemental Submissions [para. 9] that the 2 reports mainly focus on 2 aspects:
   1. Why the surface with Sand build-up was slippery;
   2. Why No. 4 Court with such a slippery surface with Sand build-up should be considered as unsafe.

I shall refer to this as “Mr. Lai’s View of the Reports”.

###### Criteria for leave to adduce expert evidence

1. The Court has to be satisfied that the evidence can be admissible as expert evidence for the purposes of section 58 of the Evidence Ordinance as well as relevant to the issues to be resolved [*Wong Hoi Fung v American International Assurance Co. (Bermuda) Ltd.* [2002] 4 HKC 225].

This Court’s findings on “My View of the Reports”

1. Assuming that Dr. Courtney can be regarded as an expert for the plaintiff’s purpose, the defendant has never sought to argue that an uneven and over-abundant build-up of Sand at the tennis court would not make it slippery. This is not an issue to be resolved. Any evidence, be it expert or not, on this issue will not be relevant.
2. By dint of Dr. Courtney’s reports, the plaintiff has sought to prove that there was an uneven and over-abundant build-up of Sand in No. 4 Court on 5 October 2003. Dr. Courtney prayed in aid:
   1. A security videotape taken at the time of the accident;

* 1. Photos taken by the plaintiff between 8 May 2004 and 12 September 2004 of No. 4 Court;
  2. His site visit on 11 March 2006.

1. Dr. Courtney conceded that the security videotape was not of a very high quality. Despite that, he still embarked on a comparison between images scanned from such a videotape with photos taken by the plaintiff. He concluded that the Sand in No. 4 Court looked more patchy in the scanned images, hence indicating poor maintenance at the time of the plaintiff’s injury (para. 3.6 – 3.10 of his second report). I see no value in reconstructing the condition of No. 4 Court with such patently poor tools whilst the plaintiff can give evidence on the same fact.

*This Court’s findings on “Mr. Lai’s View of the Reports”*

1. I have orally clarified with Mr. Lai that Sand was an essential part of the game on the turf in No. 4 Court. He wants an expert to say that a surface with Sand build-up was slippery. I think common sense itself will suffice. As it does likewise for Mr. Lai’s proposition that if No. 4 Court had a slippery surface with Sand build-up it should be considered as unsafe.

###### My Decision

1. Expert evidence on non-contested or common sense matters simply adds to costs and time. I refuse leave to admit into evidence Dr. Courtney’s 2 reports. Costs usually follow the event. I make an order *nisi* for the defendant to have costs in the present application. This costs order shall become absolute after 14 days from today.

# ( E. Yip )

Deputy District Judge

Representation:

Mr Alex Lai, instructed by Messrs Christine F L Ip & Young, for the Plaintiff

Ms Yip Mei Ling, of Messrs Simmons & Simmons, for the Defendant