## DCPI 1394/2006

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSON INJURIES ACTION NO. 1394 OF 2006

--------------------

##### BETWEEN

YEUNG LIN FONG Plaintiff

### and

A.S. WATSON GROUP (HK) LTD Defendant

Trading as PARK’N SHOP

--------------------

Coram : Deputy District Judge A. Yuen in Chambers

Date of Hearing : 3rd August 2007

Date of handing down Decision : 14th August 2007

DECISION

1. Plaintiff (P) seeks an order for specific discovery of the following documents and for the production of such documents for inspection pursuant to Order 24 R.7 and R.11 of RDC:

(1) Documents pertaining to the date the modifications were made and installed to the steps of the Park’N Shop supermarket at the G/F of 124C-D Argyle street, Kowloon, HK (the “Shop”) about a month after the accident on 20th August 2003 (the “Accident”) and the nature as well as full particulars of the modifications;

1. Documents pertaining to any investigations of the Accident conducted, including any report(s) of such investigations; and
2. Any investigations of other accident prior to the Accident including any report(s) of such investigations.
3. Before the commencement of the hearing of this application, Defendant (D) produced to P an accident report dated 20.August 03, which is related to this Accident. As a result, P’s application is now confined to item (1) and (3) of the abovementioned paragraph.

Background

1. P, a 62 years old housewife, visited the Shop on 20.Aug.03. There was a flight of staircase of 3 steps leading from the pavement to the main entrance of the Shop. After P finished her shopping and left the Shop, she slipped and fell when she was descending the staircase. As a result, P was injured and admitted into the A & E Department of Kwong Wah Hospital.
2. P was hospitalized for about 3 months during which she underwent operation and received medical treatment.
3. Months after the Accident, P found out that the entrance of the Shop had undergone modifications in that:

(a) the original 3-step staircase had been modified to 4-step;

(b) handrails were installed on either side of the staircase;

(c) the staircase was moved from the outside of the Shop to the inside and some anti-slip improvements were done to the surface of the steps.

1. P also alleged that when she was waiting for the ambulance to come, she overheard the conversation between the staffs of the Shop words to the effect that there was history of accidents at the staircase and that the management had taken no action despite repeated complain from the staffs.

The Law

1. The principle applicable to discovery is neatly summarized in the case of Wu Kwok Hung and Dah Chong Hong (Motor Service Centre) Ltd and another. HCPI 768/06, where Master B. Kwan said:

*“ 1. Discovery must ‘relate to matters in question in the action’;*

*2. Even if a document might be said to fall within that description, discovery should not be ordered if it is not necessary for disposing fairly to the cause or matter, or for the saving of costs;*

*3. Discovery should not be allowed if it is fishing or unduly oppressive;*

*4. An application for discovery under O.24 r.7 must be supported by an affidavit deposing to the belief of the deponent that the other side has the relevant documents, and must be based on more than speculation as to the existence of documents and their relevance, otherwise it is likely to be oppressive;*

*5. Any Order made must identify with precision the class of documents required.”*

1. In this case, the main complain of P is that D was negligent in failing to ensure a safe access and egress to and from the Shop. The design of the staircase at the time of the Accident could be a matter relevant to the action in question. Therefore, the fact that it had undergone modification after the Accident could also be relevant to “matters in question in the action”.
2. However, P’s case is that she slipped and fell while descending the stairs. As to why she slipped and fell is unclear. P’s allegation is that she put her left foot on the first step of the staircase, and when she lifted her right foot off the ground, her left foot slipped out of the step. There was no handrail to come to her assistant. As a result, P lost her balance and fell. Therefore, the main allegation was the slippery of the first step and the absence of handrail.
3. If this is the P’s case, then the no. of steps is irrelevant. In any event, D’s witness, Ms Ching and Mr. So, didn’t dispute that there were modifications of the staircase, save and except the no. of steps, after the Accident.
4. Assuming it’s indeed the case that handrails were added, the no. of steps increased from 3 to 4, the whole staircase moved into the Shop from the outside and some anti-slip improvement were done to the surface of the steps. It could mean the modified design is better than the old one, but it doesn’t necessarily mean that the old design was unsafe.
5. I found that even if the modification is “related to matters in question in the action”, it is not necessary for the production of those documents, if any.
6. In any event, Mr. So of the D affirmed and denied the existence of such documents. His affirmation is conclusive. Therefore, I’ll not order for the discovery of documents referred to in item (1).
7. As far as item (3) documents is concerned, P’s belief that there were investigations of other accidents prior to the Accident was based on what she overheard the conversation between staffs of D.
8. Ms. Chiu of D affirmed that she was the only staff who attended P after the Accident. All other staffs were occupied by their duties. Ms Chiu denied any such conversation between her and her colleagues. She also affirmed that she was not aware of any similar accident during her past 9 years of working in the Shop.
9. I found that P’s belief that there were similar accidents in the past was based on purely heresay evidence and is denied by the staffs of D. There is no prima facie evidence that there were such accidents, let alone reports of such accidents, if any. P’s belief that these reports do exist is speculative and P’s request is therefore more a fishing exercise.

Conclusion

1. P’s application is therefore dismissed.
2. I’ll make an order nisi that costs of the hearing of this application be to D. To be taxed if not agreed.

(Anthony Yuen)

Deputy District Court Judge

Mr. Stephen S. B. Yeung instructed by M/s Paul W. Tse for Plaintiff.

Mr. Y. W. Leung of M/s Henry H. C. Wong & Co. for Defendant.