#### DCPI1563/2008

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 1563 OF 2008

BETWEEN

ALI SHAFKAT Plaintiff

and

PIZZA HUT HONG KONG MANAGEMENT Defendant

LIMITED

##### Before: H H Judge Lok in Chambers (Open to the public)

Date of Hearing: 30 July 2009

Date of Decision: 30 July 2009

## D E C I S I O N

1. In this case, the Plaintiff ordered a seafood pizza from the Defendant. He alleges that when he placed the order, he made it an express term that the seafood pizza would not contain any pork, ham or products derived from pork meat or blood. Being a devout Muslim, the Plaintiff is forbidden to consume any dead meat, blood and flesh of swine as it is a mortal sin and will violate the Holy Qur’an. The Plaintiff alleges that despite his specific request, the seafood pizza he ordered contained ham. After eating the pizza, the Plaintiff vomited and became ill and has been suffering from psychiatric condition. He alleges that the incident was caused by the Defendant’s negligence or breach of contract.

1. The Defendant’s defence is that the seafood pizza the Plaintiff ordered did not contain any ham. Besides, when the Plaintiff placed the order, he did not make any specific request or enquiry as to the ingredients of the pizza.
2. This appeal arises out of the order made by Master Simon Lo at the checklist review hearing on 8 June 2009, refusing leave to the Plaintiff to adduce 2 Muslim reports prepared by Mr Uthman Yang Xing Ben (“Mr Yang”) of the Islamic Union of Hong Kong dated 24 July 2007 and 8 May 2008 on the issues of quantum and causation, as set out in the Notice of Appeal to the judge in chambers.
3. In the first report by Mr Yang, he stated that he was asked to write a report on the implication of a devout Muslim inadvertently eating pork, the reasoning behind the prohibition and the effect of breaching the prohibition. In gist, the first report set out the Holy Qur’an rules that a Muslim is forbidden to eat pork and he commits a big sin if he does so and will be punished in due course.
4. In the second report by Mr Yang, he repeated the Holy Qur’an rule that a Muslim is not allowed to eat pork. Mr Yang further purportedly set out the psychiatric harm that a “reasonable robust devout Muslim” would likely to suffer in the circumstances alleged by the Plaintiff.
5. In the hearing, I understand from Mr Clough, counsel for the Plaintiff, that the Plaintiff is not seeking to rely on the expert evidence to establish that a “reasonable robust devout Muslim” would likely to suffer psychiatric harm in the circumstances alleged by the Plaintiff. The Plaintiff only wants to establish at the trial that it is a rule set out in the Holy Qur’an that a believer eating pork has committed a mortal sin condemning that believer to damnation throughout eternity.

1. In the checklist review hearing before Master Lo, the Defendant has already informed the learned Master that the Defendant would not dispute that it is against the Holy Qur’an rule for a Muslim to eat pork and he commits a sin if he does so. The Plaintiff accepts that such concession was made before the learned Master. With such concession, it seems that the Plaintiff only now wants to establish that the effect of eating pork, according to the Muslim teaching, would be condemning that believer to damnation throughout eternity. If that is the case, the Plaintiff can simply establish such fact at the trial without any expert evidence from Mr Yang. In fact, I understand that the Defendant will not seriously contest such teaching. In such circumstances, I see no point, and Mr Clough accepts, for the Plaintiff to adduce further expert evidence in this regard.
2. In my judgment, the Plaintiff should pay for the costs of the appeal. The concession about the Holy Qur’an teaching has already been made by the Defendant in the checklist review hearing. Unfortunately, the expert reports go to bit further and try to establish the psychiatric harm that a “reasonable robust
3. devout Muslim” would likely to suffer in the circumstances as alleged by the Plaintiff. This certainly raises the concern of the Defendant. As the Plaintiff agrees today that he is not relying on expert evidence to establish such proposition, I am of the view that the Plaintiff should bear the full responsibility for lodging this quite unnecessary appeal. I therefore order the Plaintiff to pay for the costs of the appeal.

# (David Lok)

# District Judge

Mr Neal Clough, instructed by Messrs Massie & Clement, for the Plaintiff

Miss V Cheung, of Messrs Kennedys, for the Defendant