#### DCPI2450/2007

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 2450 OF 2007

BETWEEN

CHAN MAN WUN Plaintiff

and

SHING CHEONG HONG Defendant

SERVICES LIMITED

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

Date of Hearing: 7 July 2008

Date of Decision: 7 July 2008

## D E C I S I O N

1. This is an application to amend the Statement of Claim. This case had been set down for trial in the running list not to be warned before 10 June 2008. On 5 June 2008, the parties filed a consent summons applying for court’s leave to allow them to file further witness statements and to postpone the earliest warning date of this action from 10 June 2008 to 26 August 2008. Shortly before that, on 3 June 2008, the Plaintiff took out the present application to amend the Statement of Claim.
2. This action arises out of an industrial accident. It is the Plaintiff’s pleaded case that during his course of employment with the Defendant, he injured his right ankle while he stepped on some oily or wet substance on the floor, causing him to slip and to lose his balance. At the material time, the Plaintiff was working as a warehouse assistant for the Defendant and he was carrying 2 bags of rice from the warehouse when he slipped and fell on the floor.
3. In the original Statement of Claim, general particulars of negligence, breach of occupier’s liability and breach of statutory duty under section 6 of the Occupational Safety and Health Ordinance, Cap.508, were pleaded, including, *inter alia,* failing on the part of the Defendant to provide a safe system of work and a safe place of work for the Plaintiff.
4. In the proposed amendments, the Plaintiff seeks to rely on the specific regulations in the Occupational Safety and Health Regulation, Cap.509A, to substantiate the claim for breach of statutory duty. The new allegations include, *inter alia*, failing on the part of the Defendant to conduct a risk assessment in respect of the work undertaken by the Plaintiff at the material time, failing to avoid the need for the Plaintiff to carry out the manual handling operation, failing to provide the Plaintiff with information about the weight and the other details of each load, failing to provide appropriate mechanical and protective equipment for the Plaintiff to carry out his work and failing to appoint a competent person to supervise or ensure that the Plaintiff’s work was carried out in a safely manner.
5. I agree with Miss Leung, solicitor for the Defendant, that the Plaintiff is now relying on more specific allegations to substantiate his claim. However, I am of the view that such kind of amendments would not cause the Defendant prejudice which cannot be compensated by an appropriate order of costs. As I see, the Plaintiff is basically relying on the same facts in support of his claim, and he is now seeking to reply on more specific allegations to substantiate the more general allegations included in the original Statement of Claim.

1. Obviously, the Defendant should be given sufficient time and opportunity to deal with the more specific allegations. Giving additional time of 1 or 2 months for the preparation work, the Defendant should be able to deal with the new allegations without much difficulty. Although the application was taken out at such a late stage, the Defendant would not suffer any prejudice which cannot be compensated by an appropriate order of costs. Further, the court should decide the case based on the merits and a further delay of 1 or 2 months for the trial date is acceptable in the present case. I therefore allow the Plaintiff’s application for amendments.

# (David Lok)

# District Judge

Miss W Cheung, of Messrs Au Yeung, Cheng, Ho & Tin, for the Plaintiff

Miss Angela Leung, of Messrs Deacons, for the Defendant