# DCPI 48/2000

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO.48 OF 2000

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### BETWEEN

WONG SHEK HUNG Plaintiff

and

PENTECOSTAL LAM HON KWONG SCHOOL Defendant

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Coram: Deputy District Judge Anthony Chow

Dates of Hearing: 4th, 5th and 7th July 2001

Date of Handing Down Judgment: 23rd July 2001

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JUDGMENT

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### BACKGROUND

1. This is a personal injuries action in which the Plaintiff, a former student of the Defendant’s school, is seeking damages, under the Occupiers’ Liability Ordinance (Cap.314), against the Defendant for injuries suffered as a result of an incident in 1997.

2. At the relevant time, the Plaintiff was a form 6 student at the Defendant’s school. The Plaintiff’s class was using room 209, the Home Economics Room, as their form room (the “Classroom”).

3. The entrance from the corridor leading to the Classroom consisted of an enclave with a set of double doors. The left door was usually bolted shut, leaving the right door for general use. There were handles on the corridor side of the doors, but none on the classroom side. The doors were controlled by a spring hinge system concealed in the floor. The hinge system allowed the door to be opened and locked at a 90-degree angle. To release the door from the 90-degree position, it was necessary to pull the door away slightly and the spring hinge system would pull the door shut. The hinge system was also designed to slow the door down as it got near to the closed position.

4. On 9th January 1997, after recess, the Plaintiff was the last of a group of students returning to the Classroom. The right door was stuck at the 90-degree position and as the Plaintiff entered the Classroom, she pulled the right door shut. While the Plaintiff was still touching the door it closed, trapping the Plaintiff’s right middle finger tip between the two doors. As a result of the incident, the right middle finger tip of the Plaintiff, including the fingernail, was severed.

5. After the incident, the Plaintiff was attended by a teacher Ms. Chiu Fung Ying (“Ms. Chiu”), at the school infirmary. The Plaintiff was sent to the hospital with the fingertip that was recovered by Ms. Chiu. The Plaintiff was hospitalized for 3 days, during which time an operation was carried out to reattach the fingertip. Unfortunately the reattachment was not successful.

6. The Plaintiff is now a university student studying marketing.

THE PLAINTIFF’S CASE

7. At the time of the incident, because there was no internal door handle, the Plaintiff had to pull the door shut by its edge. The door closed at a great speed. Before she could withdraw her hand from the edge, the door had closed trapping her fingertip between the doors.

8. When the Plaintiff was still recuperating at home, her mother and sister, Ms. Wong Chor Wai (the “Sister”) attended a meeting with the school principal, Mr. Ho Kuen Fai (the “Mr. Ho”) and the deputy principal Mr. Wan Pui To (“Mr. Wan”).

9. During this meeting Mr. Ho made certain admissions to the Sister, including: (i) he was aware of the defective door in the Classroom; (ii) a similar accident had happened involving a school worker; and (iii) that the school was waiting for funding approval for the required repairs.

10. Mr. Ho also took the Sister up to the Classroom and pointed out and explained the defective hinge system and how it made the door shut so quickly. It was stated that the door hinge was concealed in the floor under a metal plate, making the required repair difficult.

11. Soon after the incident, a pair of door handle was installed on the inside of the Classroom door. External door dampers were also installed on the top of the Classroom doors.

THE DEFENDANT’S CASE

12. The Defendant alleged that the Classroom door was operating properly at the time of the incident. Alternatively, the incident was caused by the Plaintiff’s own negligence, including putting her hand in the wrong place when it was closing and putting her hand on the door with a view of pushing it open when she knew that the door would close automatically.

13. After the accident, to alleviate other student’s concern and for no other reasons, the Defendant installed door handles on the inside so that one can now hold onto the door without grabbing its edge. In addition, they also installed door dampers at the top of the doors. These installations were inexpensive and were easily installed by the Defendant’s worker.

14. About a year after the accident, during the school’s major renovation, the Defendant went through the trouble of removing the original concealed door hinges that were set on the ground. The original door hinges were discarded without replacement. The Defendant’s action supported that they took necessary precaution and measurements to avoid any future accident like the one suffered by the Plaintiff.

ISSUES

15. Counsels for both parties had agreed on a number of issues, including:

1. The Defendant was the occupier of the premises within the meaning of the Occupiers’ Liability Ordinance, Cap.314 (“the Ordinance”);
2. The Plaintiff was a lawful visitor at the premises within the meaning of the Ordinance to whom the Defendant owed a common duty of care; and
3. The damages for the Plaintiff’s pain, suffering and loss of amenities were HK$120,000.

16. On these facts a number of issues arose:

1. What was the nature and degree of duty of care which the Defendant/school owed to the Plaintiff/student?
2. Had the Defendant breached that duty?
3. If not, was the Plaintiff’s injury caused by the Defendant’s failure to discharge that duty of care?
4. Was the Plaintiff guilty of any negligent conduct and to what degree did this conduct contributed to her own injury?

17. The evidence relating to these issues overlap each other, but each issue must be considered separately.

DUTY OF CARE

18. It was necessary to review the background of the school building before we can define the nature of the duties required and the actions or lack thereof taken by the Defendant.

19. The school building was completed by government contractors and turned over to the Defendant in 1983. At the beginning, the school and all of its facilities, including its mechanical system, were new and not much repair and maintenance were expected or required.

20. One of the duties required by an occupier under the Ordinance was the duty to maintain the property to a reasonably safe level. Section 3(2) of the Ordinance provided:

“The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there for.”

21. The extend of this duty includes a duty to repair and maintain the building, to provide the staffs and students a reasonably safe environment to teach and learn.

BREACH OF DUTY

22. Mr. Ho, the Principal and Mr. Wan, the Deputy Principal both admitted, with the sole exception of the air-conditioning system, the school’s system of maintenance and repair consisted of an *ad hoc* arrangement, which they described as “*we would fix it whenever there was a problem*”.

23. That may have been sufficient in 1983, when the school building was new, but as the school building aged its mechanical systems aged too. Something more was required. One must remember that all mechanical systems will eventually fail; it is only a matter of time.

* + 1. Mechanical failures generally take two forms: catastrophic failure and gradual decreasing function failures. Catastrophic failures are easy to spot. For example, when a light bulb fails, it gives out no light and one knows it is time to replace it. Gradual decreasing function failures, however, are much more difficult to discover or detect. Unlike catastrophic failures there are no telltale events to alert the user. The system will continue to function but with decreasing ability.

25. To a daily user of a gradually failing mechanical system, all may appear to be normal; but over time, its function would have decreased by a greatly when compared to its optimal operating level. The only way to spot this type of decreasing function failures is a systematic repair and maintenance program, including keeping of detailed records.

26. It was easy for Mr. Ho and Mr. Wan to fall into the trap of continuing their *ad hoc* maintenance program they started in 1983. This type of maintenance and repair, however, will only cover catastrophic failures and was useless against the type of failure that the door hinge may have suffered. The *ad hoc* maintenance program was clearly insufficient at the time of the incident, when the school has been used for 14 years by groups of sometimes-rambunctious young students.

27. It was common ground that the concealed hinge system in the Classroom door served several functions. First, to allow the door to be locked at a 90 degree position; second, to function as a spring so that the door will close by itself if opened; and third, to slow the door down before it reached the close position.

28. It was unfortunate that no test was ever performed on the hinge system after the incident. One year after the incident, the hinge was removed so that no test can now be performed. The Plaintiff and her former classmates’ testimonies and the degree of injury suffered by the Plaintiff, however, clearly pointed to the fact that the door did not slow down before reaching the closed position.

29. Mr. Gidwani, in his final submission, argued that there was not evidence proving that the door hinge was defective at the time of the incident. After reviewing the evidence, I found I could not agree with his submission.

30. The injury suffered by the Plaintiff was severe. The evidence was that the fingertip of the Plaintiff, including the fingernail was completely severed. Ms. Chiu gave evidence that she saw bone from the Plaintiff’s wound. In the submitted photographs and video, it was clearly shown that the edge of the Classroom door was blunt. It was slightly rounded from daily wear.

1. Given the fact that the fingertip of the Plaintiff was ripped off from the rest of her finger, the force required to do such damage must have been enormous. The Classroom door must have been closing at tremendous speed at the time of the impact. The Plaintiff and both of her former classmates all clearly described the door as closing at great speed.

32. After careful consideration of the evidence, the natural conclusion was that at the time of the incident, the hinge was not functioning properly. It failed to slow down the door and to prevent the kind of severe injury suffered by the Plaintiff.

33. My finding did not mean that Mr. Ho, Mr. Wan and Ms. Chiu were not telling the truth, when they testified that the door was functioning “normally”. For the door may have appeared to be functioning “normally” to them, when in fact its function had deteriorated over a period of time and had completely failed in one of its three functions. Without a systematic repair and maintenance program and keeping of detailed records of the same, there was simply no way Mr. Ho, Mr. Wan and Ms. Chiu could tell if the door was functioning “normally” or not.

34. The facts as I have found can be distinguished from *Meehan v. Lancashire County Council*, an unreported case of the English Court of Appeal submitted by Mr. Gidwani. In *Meehan*, a student injured her lower right forearm when it was trapped by a set of closing swing doors. After concluding that the doors were functioning properly, the trial judge dismissed the Plaintiff’s claim. The evidence of this case led me to conclude that the door hinge was not functioning properly. Furthermore, in *Meehan*, the Plaintiff gave conflicting evidence on how she suffered her injuries, but in this case there was no dispute on how the Plaintiff’s injury had occurred.

35. I had carefully considered the costs of instituting a proper program of maintenance and repairs and the impact it may have on the Defendant and other occupiers of aging schools and institutions. The potential cost to society in injuries, sufferings and deaths as a result of poorly maintained and failing mechanical systems far out weights the minimal costs of instituting suitable program of repair and maintenance. Accordingly, my conclusion was that the Plaintiff had breached its duty to the Plaintiff.

CAUSATION

36. Neither Ms. Cruden nor Mr. Gidwani addressed me on the issue of causation, it must then be assumed that the parties agreed if I found the Defendant was in breach its duty, the Plaintiff’s injury was within the type of injuries foreseeable by the Defendant. In this circumstance, I agree with them that there was little doubt the failure of the Defendant to have a proper system of repair and maintenance was one of the causes of the Plaintiff’s injury.

CONTRIBUTORY NEGLIGENCE

37. Mr. Gidwani however, argued that the Plaintiff’s failure to keep her finger away from the closing door was also a cause of her injury.

38. In *Stapley v. Gypsum Mines Ltd*. [1953] AC 663. Lord Reid stated:

“To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical scientific theory of causation, it is quite irrelevant in this connection… The question must be determined by applying common sense to the facts of each case. One may find that as a matter of history several people have been at fault and that if any one of them had acted properly the accident would not have happened, but that does not mean the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being remote and those which must not. Sometimes it is proper to discard all but one and to regard that one as the sole cause, but in other cases it is proper to regard two or more as having jointly caused the accident.”

1. It was clear that the Plaintiff’s own action was a cause of her injury, my task is to determine if this “cause” should be discarded or not. Keeping in mind that, at the time of the incident, the Plaintiff was a 17-year-old student at the Defendant’s school. All parties agreed that she was diligent and obedience.

40. According to the evidences of the Plaintiff and her former classmates, the door was heavy and would slam shut with a loud “bang”, if allowed to close on its own. As an obedient student, it would have been natural for her to avoid making any loud noises when she entered her classroom. It was unavoidable for the Plaintiff to place her hand on the door, in an attempt to slow it down before it closed.

41. From the nature of her injury and the way the door was positioned at the relevant time, I found the most natural and probable sequence of events leading to the injury was as follows: the Plaintiff first walked into the enclave outside the Classroom, she then grabbed the edge of the door as she walked part way through the enclave, pulling it away from its locked position as she walked pass. The Plaintiff was at the same time, trying to slow the speed of the closing door by slipping her hand from the edge of the door and placing it on the inside surface of the door. In the transition from the edge to the surface of the door, her fingertip remained extended beyond the edge and was trapped when the door closed unexpectedly fast.

42. Mr. Gidwani suggested that the Plaintiff was negligent by not carefully placing her hand and ensuring her fingers were not extended outside the surface of the door.

43. Given the fact that there was no inside door handle, the only place the Plaintiff could place her hand to slow it down was on the door surface. To make sure her fingers were not extended beyond the door surface, the Plaintiff would have had to stop after pulling the door from its stuck position, turn around to face the door, put her hand against the door surface, look to ensure the position of her hand and backed into the Classroom, while carefully looking at the position of her hand.

44. I found this contrary to the natural range of motion a reasonable person would have taken, given the same circumstance of the Plaintiff. The actions Plaintiff took were the most natural movements a reasonable person would have taken. This is specially so, when one took into consideration the age of the Plaintiff at the time of the incident. Section 3(3) of the Ordinance provided:

“The circumstances relevant for the present purposes include the degree of care, and of want of care, which would ordinarily be looked for in such a visitor, so that (for example) in proper cases-

1. an occupier must be prepared for children to be less careful than adults; and
2. …”

45. Finally, the Plaintiff’s injury could have easily been avoided by the Defendant, fitting a pair of inexpensive handles on the inside door surface.

46. Given the Plaintiff’s young age, the defective condition of the hinge, the range of motions natural to a reasonable person given the same task to perform and that the injury could easily and inexpensively been avoided by the Defendant, I could not find any blameworthiness on the part of the Plaintiff. Accordingly, I found there was no contributory negligence.

JUDGMENT

(1) Judgment is for the Plaintiff at the agreed sum of HK$120,000.

(2) Costs to the Plaintiff, with certificate for counsel, to be taxed on a Party/Party basis if not agreed.

(3) Plaintiff’s own costs be assessed in accordance with the Legal Aid Regulations.

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Anthony Chow

Deputy District Court Judge

Ms. Liza Jane Cruden Instructed by Messrs. Hobson & Ma for the Plaintiff assigned by D.L.A.

Mr. Victor Gidwani Instructed by Messrs. Ip Kwan & Co. for the Defendant.