###### DCPI 66/2004

### IN THE DISTRICT COURT OF THE

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**PERSONAL INJURIES ACTION NO. 66 OF 2004**

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##### BETWEEN

## HO BING CHEUNG Plaintiff

### and

#### LAM YIN TUK trading as OCEAN FAST FOOD 1st Defendant

（海洋快餐美食）

BROADWAY-NASSAU INVESTMENTS

LIMITED 2nd Defendant

THE INCORPORATED OWNERS OF MEI

FOO SUN CHUEN – STAGE V 3rd Defendant

THE INCORPORATED OWNERS OF MEI

FOO SUN CHUEN – STAGE VI 4th Defendant

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Coram: Her Honour Judge C.B. Chan in Court

Dates of Trial: 16th 17th and 20th September 2004

Date of Handing down of Judgment: 3rd December 2004

J U D G M E N T

1. In this action, the Plaintiff claims damages for personal injuries suffered by him when he slipped and fell upon stepping on an oily or slippery substance underfoot at the back of Ocean Fast Food Shop at 20A, Ground Floor, Nassau Street, Phase 5 Mei Foo Sun Chuen, Kowloon. The 1st Defendant was operating a fast food shop known as Ocean Fast Food at 20A, Ground Floor, Nassau Street, Phase 5, Mei Foo Sun Chuen, Kowloon. The 2nd Defendant was a limited company carrying on the business of property and facility management of Mei Foo Sun Chuen – Stage V and/or Stage VI and was the occupier of Mei Foo Sun Chuen – Stage V and/or Stage VI within the meaning of the Occupiers’ Liability Ordinance Cap. 314 (“the OLO”). The 3rd Defendant was the Incorporated Owners of Mei Foo Sun Chuen - Stage V incorporated under the Building Management Ordinance Cap. 344 (“the BMO”). The 4th Defendant was the Incorporated Owners of Mei Foo Sun Chuen – Stage VI incorporated under the BMO, Cap. 344.

2. It is not disputed that the accident occurred in a common part of Mei Foo Sun Chuen as defined in the BMO and the 2nd and 3rd Defendants owed to the Plaintiff the common duty of care pursuant to section 3 of the OLO.

The 1st Defendant ‘s Case

3. The 1st Defendant by his Counsel states that he does not deny that there was an oil patch in the area at the back of Ocean Fast Food Shop at 20A, Ground Floor, Nassau Street, Phase 5 Mei Foo Sun Chuen, Kowloon. He however disputes that the oil came from the exhaust vent of his Fast Food Shop. The 1st Defendant also alleges that the 2nd to 4th Defendants have failed to discharge their respective duties as the management company and the Incorporated owners. However this is not pleaded. They also allege that the Plaintiff contributed to the cause of the accident through his negligence. Particulars of the Plaintiff’s negligence pleaded in para 4 of the 1st Defendant’s Defence are:-

Particulars of Negligence

1. Walking too fast
2. Failing to make a proper look-out
3. Failing to make a proper assessment of the condition of the surface of the place the Plaintiff was approaching so as to prevent himself from slipping
4. Failing to stop while approaching the scene knowing that there was the risk of injury or damage to himself
5. Failing to take an alterative route so as to prevent himself from slipping
6. Failing to slow down while walking at the scene

The 2nd to 4th Defendants Case

4. Regarding the accident itself, it is not disputed by the 2nd to 4th Defendants that the Plaintiff had slipped and fell at a spot underneath an exhaust fan vent opening of the fast food shop operated by the 1st Defendant on the day of the accident.

5. For the purposes of this trial, they accept that the 3rd and 4th Defendants’ position is the same as the 2nd Defendant’s position.

6. Their case is that even were the oil stain found to have come from the exhaust vent of the 1st Defendant’s Fast Food Shop, the 2nd – 4th Defendants should not be held liable as they have discharged their duty of care. Their stance is that the Plaintiff should not be liable in contributory negligence.

The Evidence of the Plaintiff

*How the Accident Occurred*

7. The evidence of the Plaintiff in relation to the accident is not challenged. On 23 August 1999 at about 6:30 p.m. the Plaintiff was walking through the open space on his way to his home at Block 18 in Mei Foo Sun Chuen. There was drizzling rain and the Plaintiff walked close to the rear wall of Ocean Fast Food. When he reached the accident location, he stepped on a patch of oil on the ground. As a result, he lost balance and slipped and fell on the ground. He pressed his right hand against the ground and sustained injuries. At Exhibit P2, the Plaintiff marked the accident location with a red cross.

8. After he fell the Plaintiff realized that there was a patch of oil right underneath the exhaust fan opening. Police and ambulance were called. The Plaintiff took the opportunity of putting his bag and daily purchase back to his own flat before coming down and going away to hospital by ambulance. The clothing worn by the Plaintiff have been produced as Exhibit P1 and the oil patches or stains on the shirt and trousers could be easily seen on them.

9. The Plaintiff stated that it was as he stepped down from the steps that he slipped and fell. He did not run but he walked. He walked close to the wall because it was drizzling and he had some cover from the wall when he walked close to it.

10. Before the accident, the Plaintiff had never received any warning notice asking him to be careful when walking in the site of the accident because of grease on the ground.

*The Exhaust Vents*

11. The Plaintiff gave evidence that about two to three months after the accident, he took the photographs of the exhaust vents at the back of the 1st Defendant’s Fast Food Shop as shown in page 209 of the Bundle of Documents. He stated that the left vent at the middle photo, that is the same as the vent in the top photo, had been changed since the date of the accident. On the date of the accident, the left vent had only one segment and the opening faced downwards to the ground in the same way as the vent on the right in the middle photo.

Evidence of the 1st Defendant

12. The 1st Defendant stated that he is the sole proprietor of Ocean Fast Food. He commenced his business in April 1998. He stated that there is a ventilation system installed in the kitchen of his restaurant. It takes out grease. It would allow no oily or slippery substance to escape from it as it was installed in compliance with the requirements and standard approved by the Fire Services Department and the Licencing Section of the Urban Services Department. In his witness statement which he adduced into evidence he stated that he from time to time cleaned the system and found that no oily and/or slippery substance had escaped from it. He stated that he cleaned it every 3 days and changed the filter. The ventilation system has to be constantly cleaned.

13. He admitted that after the accident policemen and staff of the Management Office came and talked to him. They took him outside to ask him if the vent outside the Fast Food Shop belonged to him. He replied “yes”. The Police then informed him that an elderly man slipped and asked him to go to clean the area. He stated that he went out to clean the area because the Police asked him. He did not agree that oil came from the exhaust vent of his shop.

14. Under cross-examination by Mr. Li, Counsel for the 2nd to 4th Defendants, he was referred to the letter from Cheung Sha Wan Police Station enclosing its report on the accident at pages 161 162 of the BD. The letter stated “Enquiries revealed that the oil came from the exhaust fan of the “Ocean Fast Food” and a verbal warning was given to the person-in-charge of the fastfood shop but no summons action was taken”. In response to this the 1st Defendant denied that the oil came from the vent. He stated that he did not see grease on the ground. When asked, if he did not see grease on the ground, why he co-operated with the Police to wash the ground, he answered that at the time, there were a lot of leaves on the ground. He did not see any grease. He stated that he put his hand down and did not feel or see grease. So he did not use detergent to clean the ground.

15. He was questioned on his statement that he had always cleaned the vent well. When asked he admitted that in November 2002 there was a fire in his shop. He disagreed that it had to do with failure to clean the grease from the ventilation system. He was then cross-examined by Mr. Li on the letter from the 2nd Defendant to him dated 4th January 2003 which stated,

“最近本邨某食店因廚房排氣槽積滿油漬，沒有定時清理，不慎引起火警，經消防員到場灌救後，幸未造成嚴重損失。

為着店內員工及公眾安全起見，我們謹請各食店及酒樓經營者必須定時清理所有廚房之排氣槽及抽氣扇，以免油漬積聚在槽內或流出公眾地方，而引致他人財物損失及人身傷害，閣下需負上賠償及法律責任。”

He admitted that the letter was sent to him after the fire. However he stated that it was just a usual letter to the restaurants and was not specifically directed to him as the culprit. He further stated that the fire had nothing to do with oil in the exhaust vent. It was caused by hot oil in the wok which was too hot. He later stated that the letter was written to his shop but he did not notice the contents of the letter. When it was pointed out to him that para 1 of the letter stated that the exhaust vent was filled with grease and there was no regular cleaning and that this caused a fire, the 1st Defendant merely stated that when other shops had a fire, he also received such a letter.

16． He was then referred to a letter at page 154 from the 2nd Defendant addressed to all food shops and restaurants in Mei Foo Sun Chuen Commercial Premises. That notice was issued generally without specific note of the address to the recipient. This was shown to the 1st Defendant to show that in the earlier letter there was specific reference to his shop as the addressee. He stated that he did not look at that letter. He threw it away. He denied that he had grease coming out of the vent. He stated that every three days he cleaned part of the exhaust vent and every seven days he cleaned other parts of the exhaust system.

17． He was referred to the Incident Report prepared by the 2nd Defendant at page 165 of the BD related to the accident. In the Report on line 5 and 6 thereof, Mr. Lee Pak Tong, the maker of the Report stated that he “saw there was yellow colour oil stain like substance with an area of approximately 2 square feet in size on the floor.” Subsequently in evidence Mr. Lee Pak Tong stated the area of the oil patch should have been 1 square foot. The Report referred to three policemen arriving at the scene. It stated that “the policemen asked the restaurant owner of Ocean Fast Food to clean up the oil stain with water. The restaurant owner immediately conducted the cleaning.” The 1st Defendant stated that the policemen did not say it like that. He said there was oil stain, but the 1st Defendant stated “no”. The policemen asked him to clean the area. He stated that he did not see any oil stain. He stated that he cleaned the steps area.

18． Subsequently he stated that the area he cleaned was not the area where the Plaintiff marked with a red “X” on Exh P2 being the area where he fell down. He stated that he cleaned the area of the two steps which he circled on Exh P2 because the policemen asked him to clean the area of the two steps. He did not clean the area where the Plaintiff fell down and where the grease was alleged to be.

19． In relation to the left vent shown on the middle photo at page 209, he stated that the vent had always had three segments from the time he commenced the fast food shop over the shop. He stated that before that he moved into the shop premises the vent had only one segment, the same as the right vent shown in that photograph. He stated that the vents existed before he took over the shop even though the former tenant was an estate agent and not a fast food shop. However in the decoration before commencement of business the left vent was changed to have three segments.

20． He denied the fact that from the time he started his fast food shop there had been the problem of dripping oil from the vent. He stated that he had not had notices to him from the 2nd Defendant requesting him not to allow the oil to drip from the vent. When it was put to him that Ms. Wong Kwan Hing, the Asset Management Officer of the 2nd Defendant had come to his fast food shop to tell him or his brother not to allow oil to drip from the vent, he stated that he did not receive such a visit. He also denied any warning by any other staff of the 2nd Defendant of this.

21． When cross-examined by the Plaintiff’s Counsel, the 1st Defendant stated that the policemen stated that there was oil on the ground. The 1st Defendant stated that he touched the ground and told the policemen that it was not oil. He agreed that the policemen asked him to reach out his hand to touch the ground and the area he touched was the two areas he circled in black on Exh P2.

22． When he was asked whether the reason he added two segments to the left vent shown in the middle photograph at page 209 was to avoid oil dripping on the ground, he said “no”. He stated that it was to avoid air blowing on people’s heads. He stated that the architect who did the decoration said that.

Evidence of Lee Pak Tong

23． He is a security guard employed by the 2nd Defendant. He is deployed as a guard at Blocks 18 and 20 of Mei Foo Sun Chuen. He verified the contents of his witness statement at pages 90 to 92 in the BD and the contents of his Supplementary Witness Statement to be true and correct. He adduced them into his evidence.

24． He stated that on the day of the accident, it was drizzling. He was outside the lobby of Block 18, Nassau Street when he heard a noise. He rushed out and saw the Plaintiff sitting on the floor. He then went to assist him. He called the Police who arrived before the Plaintiff was taken by ambulance to the hospital. He saw that the Plaintiff’s trousers had an oil stain on it and he also saw an oil patch on the area where the Plaintiff fell. The area where the Plaintiff fell is marked with a “X” in the bottom photo at page 218. The oil patch was around one square foot in area. It was just below the left vent outside the Ocean Fast Food.

25． He saw the police come and they and the 1st Defendant went to look at the accident site. Later he saw the 1st Defendant went to clean up the oil stain.

26． Related to the left vent at the back of Ocean Fast Food, it was not as long as that as shown in the top and middle photograph of page 209. At the time of the accident, the left vent was shorter and it faced downwards and not to the side as shown in the photographs at page 209.

27． Before the accident, he had seen oil stain below the left vent at the back of Ocean Fast Food for about 6 to 7 times. On each occasion he would telephone to report of that to the Control of the Security Guards of the Estate. After reporting to them, he would see that the area of the oil stain had been cleaned. He did not see the actual cleaning. On one occasion, after he had reported sight of the oil stain to the Control, the Control requested him to speak to the 1st Defendant to ask him to clean up the oil stain. He did so. The 1st Defendant looked at him without reaction. Eventually he left and later reported back to the Control. He found that each time after reporting the sight of oil stain to Control, the area had been cleaned up within hours.

28． He had the responsibility to look after Blocks 18 and 20 and also the communal area around the two blocks. The area of the accident site is within his patrol. The bottom photograph at page 217 showed the view he had from Block 20 when he stood outside its gate. He would inspect the area with his eyes from that position. However whenever he goes on duty he would go to look all around the communal area including the accident site at the start of his duty. Normally people do not walk close to the wall at the back of Ocean Fast Food. Only when it rained would people seek shelter and walk close to the wall. Usually no one would walk so close to the wall because there are pipes there.

29． On the day of the accident, at 3 p.m. when he went on duty, he walked past the communal area near the accident site and looked at the site. At that time, he did not see any oil stain on the ground. However, whenever he went out from his station in Block 20 to go to Block 18 to sign the book there, he would look to survey the area in the vicinity including the back of Ocean Fast Food. He left Block 20 for Block 18 every 30 minutes.

Evidence of Wong Kwan Hing

30． She has been employed by the 2nd Defendant since 1996 as an Asset Management Officer. Her daily work duties include asset management and patrolling Stage 5 of Mei Foo Sun Chuen. Whenever there is any incident relating to asset management occurring within the said area which requires reporting to the police, it has to be reported to her so that she could do the follow-up and inspection and to issue improvement notice and warning to the relevant person.

31． She stated that during her patrol in the years of 1998 and 1999, she found oil dripping from the vent at the back of Ocean Fast Food onto the ground of the common area several times. There were about 8 to 10 drops or a spot of oil on the floor. She requested the 1st Defendant to do the cleaning work immediately. She also notified the on-site cleaning contractor of the 2nd Defendant named Wai Hong Cleaning & Pest Control Co. Ltd. (hereinafter referred to as “Wai Hong”) to do the cleaning work immediately. She would then follow-up the situation after the cleaning work to make sure the cleaning had been completed. Whenever the Control room of the security guards receive a report related to grease being found on the ground they would immediately notify the on-site cleaning contractor, namely Wai Hong Cleaning Pest Control Co. Ltd. to do the cleaning work. There were workers from Wai Hong available to do the cleaning work.

32． Under cross-examination she stated that the time it would take for the oil stain if found to be cleaned up, would take several 5 minutes if it is fast. If the response is slow it would take about two hours. Under cross-examination, she admitted that she had not thought of putting up a rope to stop people from walking along the back wall of Ocean Fast Food during rain or put a handrail at the wall. In re-examination she said that even though she saw the oil stain about two to three times and oil drip at times, such incidents did not occur at regular intervals of time

Credibility of Witnesses

33． I accept the Plaintiff as a credible and reliable witness. I also accept Mr. Lee Pak Tong as a credible and reliable witness. There is nothing to suggest otherwise. I accept Ms. Wong Kwan Hing as a credible and reliable witness. As regards the 1st Defendant, from the manner he gave his evidence, his demeanour and the content of his evidence, particularly under cross-examination, it is obvious to me that he is not a credible nor reliable witness. He was prevaricating and evasive under cross-examination. It seemed to me that he told a lie whenever he felt it was necessary to extricate himself from being implicated in this case. I found that his evidence that from the time he commenced the business of Ocean Fast Food, the left vent at the back of Ocean Fast Food had 3 segments and had its opening to the side and upwards as shown in the middle and top photograph at page 209 of BD could not be believed, in the context of the evidence form the Plaintiff and Mr. Lee Pak Tong and Ms. Wong Kwan Hing who found oil drips from the left vent and below the left vent. The 1st Defendant’s evidence that there was no oil stain on the ground under the left vent when after the accident he was asked by the policemen to go and clean it and his evidence as to why he went to clean the ground and the location where he cleaned all seem unbelievable. I do not believe that in the business of the fast food shop that he had cleaned the exhaust vent of his fast food shop as regularly as he claimed. I do not accept the evidence of the 1st Defendant.

The Issues

34． It seems that there are four issues:-

1. Whether the patch of oil underneath the left vent at the back of Ocean Fast Food came from the left vent.
2. Liability for the accident.
3. Whether the Plaintiff was liable for contributory negligence
4. Quantum of damages.

The 1st Issue

35． Related to the 1st issue is the issue whether the left vent at the time of the accident had three segments as shown in the top and middle photographs at page 209 of BD, or whether it had one segment like the right vent as shown in the middle photograph of page 209 of BD with its opening pointing downwards as stated by the Plaintiff and Mr. Lee Pak Tong. I accept the evidence of the Plaintiff and Mr. Lee Pak Tong that the left vent at the back of Ocean Fast Food at the time of the accident, was not like that as shown in the top and middle photograph at page 209 of BD but was much shorter, had one segment with its opening pointing down onto the ground, like the right vent as shown in the middle photograph at page 209.

36． For the following reasons, I find that oil had dripped from the left vent at the back of Ocean Fast Food Restaurant and the oil fell on the ground beneath the left vent:

1. The evidence of DW3 Ms. Wong Kwan Hing stated that apart from seeing oil stains on the ground under the left vent, she actually saw oil dripping from the vent opening.

2. The evidence of the Plaintiff and Mr. Lee Pak Tong accepted by me that the left vent, which originally opened downwards to the ground had been changed to a vent which opened sideways after the date of the accident. It is highly likely that the 1st Defendant changed the left vent to remove the possibility of oil dripping down to the ground from the vent opening.

3. After the accident, the 1st Defendant when told by the policemen that oil had dripped from the left vent onto the ground causing an accident, did not resist the policemen’s request to clean up the oil on the ground. Even though he insisted that there was no oil stain when he went to clean the ground, it seems that his evidence as referred to above is not credible. Were there no oil stain that came from the left vent, it is highly unlikely that he would have agreed with the policemen to go out of his shop to clean the ground.

4. Mr. Lee Pak Tong gave evidence that since the opening of the Ocean Fast Food, he had found oil stain on the ground for at least 6 to 7 times. He on instructions on one occasion went into Ocean Fast Food to warn the 1st Defendant not to allow oil to drip from the vent. Ms. Wong Kwan Hing gave evidence that on one occasion she went to warn the 1st Defendant of this fact.

37． I find the evidence from the Plaintiff’s oil stained clothing shows that the Plaintiff had slipped on oil and the oil came from the left vent at the back of Ocean Fast Food.

The 2nd Issue

38． The left vent was part of the exhaust vent of Ocean Fast Food. The 1st Defendant had before the accident been warned about the oil dripping from the left vent of his exhaust system yet he failed to take any adequate remedial measures to stop its recurrence. He had taken no remedial steps to eliminate the potential danger. As referred to aforesaid both Mr. Lee Pak Tong and Ms. Wong Kwan Hing had visited Ocean Fast Food before the accident to warn the 1st Defendant not to allow the oil to drip from the vent. Ms. Wong Kwan Hing stated that she informed either the 1st Defendant or his brother that there was oil underneath the vent and to clean the exhaust system as well as the oil on the ground outside underneath the left vent. She said that the 1st Defendant or his brother did not attend to cleaning the spot and she had to arrange for the cleaning contractor to clean it.

39． A warning notice dated 19th October 1998 had been sent out to all restaurant and fast food owners in Mei Foo Sun Chuen by the 2nd Defendant notifying them to regularly clean their exhaust ventilation system so that oil would not accumulate. This had been referred to and is at page 154 of the BD. The 1st Defendant stated that he did not read notices from the Management and that he simply threw it away.

40． It is clear that the 1st Defendant was fully aware of the danger of oil dripping from the left vent of the exhaust system of his fast food shop.

41. The 1st Defendant’s vent protruded onto the public area where passers by walked to and fro. The fan should have been regularly cleaned so that it does not become a public hazard. The fact that oil dripped from the left vent would show that the left vent had not been properly cleaned. The 1st Defendant owed a duty of care as an occupier of premises to keep the vent clean so that it would not become a danger to the public. This duty of an occupier to keep premises in sufficient repair so as not to cause danger to the public is a clear principle of law. Authorities on this point submitted by the 2nd Defendant’s Counsel are Leung Tsang Hung v. Tse Yiu Pui & Others (2004) HCPI 595 of 2002 and Wong Lai Kai v. Wu Chan Choi and Others (1999) HCPI 962 of 1996. As the 1st Defendant had failed to discharge his duty he is clearly liable for the accident. I find him liable for the accident.

42． As regards the liability of the 2nd to 4th Defendant, the particulars of negligence pleaded against them in the Statement of Claim inter alia include:-

1. Failing to ensure the accident scene was dry and clean.
   1. Failing to place any barrier to fence the accident scene after the leakage of oily and/or slippery substance.
   2. Failing to cause the oily and/or slippery substance to be cleaned up forthwith and/or before the accident.
   3. Failing to enforce any or any adequate system for the inspection and cleaning of the oily and/or slippery substance.
   4. Failing to give the Plaintiff any or any adequate warning of the oily and/or slippery substance.
   5. Causing or permitting the oily and/or slippery substance to be present at the accident scene.

43. The 2nd to 4th Defendants’ Counsel in his Closing Submission states, that it is accepted that the 2nd Defendant owes a duty to the general public to control and supervise the status of the pavement and has a duty as occupier under s.3 of the Occupiers’ Liability Ordinance. He further states that they accept that the duty would include the duty to inspect, to take all reasonable care to supervise, maintain and repair the premises. In order to discharge that duty, the 2nd Defendant will have to show that it has taken all reasonable and necessary steps to obviate the risk.

44. The 2nd Defendant’s Counsel submits that the 2nd Defendant has maintained a proper and adequate inspection system. From the evidence of Ms. Wong Kwan Hing it seems clear that a regular patrol system has been established for Stage V and VI of Mei Foo Sun Chuen for the 2nd Defendant’s guards to ensure general safety and cleanliness. Ms. Wong Kwan Hing has given evidence of the designated route which she patrols personally as it is within the scope of her duty in her job. She points out that the patrol route between the 4th Station to the 5th Station (marked on the colour plan, Exhibit D1) would be the closest to the scene of the accident. She also confirms that the duty to patrol the designated route is normally carried out by the Stage V and Stage VI security supervisors. She confirmed that the designated patrol route takes approximately 30 minutes to complete. Either one supervisor would carry out the duty on his/her own if the other is busy; or both supervisors would carry out the patrolling duties together. Therefore, if there were any noticeable cleaning or safety problems on the patrol route, the supervisors whilst on patrol would have noticed it and taken remedial measures against it immediately. Ms. Wong Kwan Hing further mentioned that if there were any oil stains detected during the patrol route, the supervisor would normally contact the foreman of the cleaning contractor to get the cleaners to come and clean the area immediately.

45. Apart from the aforesaid inspection, the 2nd Defendant’s security guard Mr. Lee Pak Tong also conducts a visual inspection of the area at the back of Ocean Fast Food whilst walking to his post to assume his duty about 3 p.m. everyday. On the day of the accident, when DW2 was walking to work at 3 p.m. in the afternoon he looked around the area where the accident occurred. He did not see any oil stain. He also said that though he did not physically go to a close distance to inspect the area, he stated that he walks past the accident site at a distance of approximately 8 ft away from the spot. He stated that he would normally notice if there are oil stains since oil stains are noticeable even from a distance.

46. Mr. Lee Pak Tong’s duty as a security guard stationed at Block 18 and 20 of Nassau Street included surveillance of the common area outside the two blocks. This included the site of the accident. His duty included walking out from the Lift Lobby of the Block he is stationed and to the canopy area under the Blocks and checking the vicinity of the Ground Floor of Blocks 18 and 20 to see if any problem had arisen then sign the book inside the lobby of the other Block. He did that every 30 minutes. He stated that he would also have a clear view of the accident site from outside the gate of Block 20. The photograph at “LPT-3” at page 108 of the BD shows his view of the accident site from Block 20. It is a clear view and it would seem that he could see clearly from that vantage point whether there was any oil on the ground. Before the accident from the time he assumed duty on the day of the accident, he did not see the oil stain in the accident site. If he saw anything that is unusual outside the canopy area, like objects falling from height, he would walk out of the canopy checking the situation.

47. The Counsel for the 2nd to 4th Defendants submits that from the evidence of Mr. Lee referred to earlier, it is clear that there is a system for effective remedy when Mr. Lee or any other security guard sees oil stains. Mr. Lee stated that he would immediately telephone the control room and they would dispatch cleaners to clean up the oil reasonably speedily.

48. Ms. Wong Kwan Hing who referred to the contract entered into in with cleaning contractors Pollution & Protection Services Ltd (“P. & P.”) for the year from 1st January 1999 to 31st December 1999. At page 226.62 of the BD, it states that Twice Monthly they have to wash and cleanse with (Hot Pressure Machines) power wash the whole common area as well as remove oil stains on floors, ground and podium caused by exhaust fans. At page 226.63 it states, “When Required”, they have to “Remove stains caused by candle wax etc. using Hot Water Pressure Machine if necessary”. They have to “ensure a spotless clean condition of the Estate for visitors”. The number of staff that P & P had to provide for Stage V is stated at page 226.78 of the BD. They have two part time cleaners between 16:30 – 2030 each day. That is the time when the accident occurred. For Stage 6AB1 they have to provide the same number within that time frame. Similarly for Stage 6B2. It seems that the accident site is in Stage 5 but close to Stage 6. Ms. Wong states that if there is any special cleaning work, they will contact the cleaning company. There is no evidence to contradict the adequacy of the cleaning services.

49. There is no evidence that directly points to a time when the left vent at the back of Ocean Fast Food started to drip oil on the 23rd August 1999, or how long it took for the patch of the oil to form before the accident. There is evidence of the size of the patch of oil stain on the shirt and trousers of the Plaintiff as can be seen on the shirt and trousers shown at the trial and shown in the photographs at pages 226.1 and 226.2 and 226.3. Mr. Lee Pak Tong stated that after the accident he inspected the accident site and found that the area of the oil stain was about 1 square feet. There had been drizzling rain and so the oil must have been mixed with some water as oil floats on water. Further as submitted by the Plaintiff’s Counsel the oil stain would have spread to a larger area as a result of the fall of the Plaintiff. Because of the paucity of evidence, no inference could be drawn as to when the dripping of the oil started or how long it took to form the quantity of oil on the ground, whether it took an hour or half an hour. As submitted by the Counsel for the 2nd to 4th Defendants it depends on factors as to the state of the accumulation of grease in the exhaust fan and whether the 1st Defendant was deep-frying a large quantity of food.

50. Counsel for the 2nd to 4th Defendants refer to Cheung Wai Mei v The Excelsior Hotel (HK) Ltd. unreported CACV 28/2000 (Mayo VP; Rogers VP; Stock JA 22.11.2000). In that case, the Plaintiff a young woman slipped at the entrance of the Defendant’s premises allegedly having stepped on some liquid. There, Mayo VP stated in his judgment,

“What steps would it be necessary to take to obviate this risk. It would appear that it would be necessary for staff to be posted at every entrance to the hotel and for them to be equipped with cleaning utensils capable of removing any liquid detected on either the marble or more likely coconut matting at short notice. To state this proposition in this way is to virtually state that the hotel in the present case had an absolute duty to ensure the safety of the plaintiff. Or to put the matter another way all the plaintiff would have to establish is that she slipped and fell and suffered injury for her to recover damages. This is not the law.”

51. In this case it seems to me that the 2nd to 4th Defendants had established an adequate system of inspection and patrol of its estate. I have considered the route of the patrol taken by Ms Wong Kwan Hing between Station 5 and Station 4. The route passes close enough to the accident site, judging from the photograph at page 209, for her to have a clear visual view of the ground underneath the left vent to see if there is any oil on the ground. The route taken by Mr. Lee Pak Tong to go to work similarly passes close enough for him to have a clear view of the accident spot to see if oil is on the ground. Mr. Lee Pak Tong could also have a clear view from outside the gate of Block 20. As noted earlier the 2nd Defendant has readily available cleaners to clean up any oil stain found. It has a cleaning contractor who can be called on at reasonably short notice to clean any oil stain. It must be remembered that Mei Foo Sun Chuen is a large estate and consists of an extensive common open area. To ensure that every part of the common area is at a moment’s notice cleaned of all spills and stains would take staff to be posted everywhere in the extensive common area. Not only that, they would have to supply cleaning workers available at a moment’s notice. As stated by Mayo VP above, to require such a stringent duty is to impose absolute duty to ensure the safety of the numerous number of passers by and residents of the estate. As stated by Mayo VP, this is not the law.

52. Although the 2nd Defendant had noticed oil stains caused by the 1st Defendant’s shop for between 6-7 times or 8-9 times depending on whether the times noticed by Mr. Lee Pak Tong included those noticed by Ms. Wong Kwan Hing, this was within a period of 16 months from the time of the opening of the 1st Defendant’s shop to the date of the accident. The occurrence of such is not so frequent as to require constant monitoring of the accident site. In any event, the area of the oil stain is not an area for usual pedestrian traffic. It is only during actual rainfall that some residents would walk pass there in order to seek some degree of cover from the wall. On the day in question, there was drizzle but not rain. In view of the aforesaid, I find the 2nd to 4th Defendant were not negligent. Further, in view of the irregular and infrequent occurrence of the dripping of oil from the 1st Defendant’s shop in the accident site, the 2nd Defendant is not negligent in failing to cordon the area off from pedestrian traffic or in failing to put up a warning notice to pedestrians of the possibility of oil on the ground. I am of the view that the 2nd to 4th Defendants are not liable for the accident. Liability for the accident falls on the 1st Defendant alone.

3rd Issue

53. In my view, as the Plaintiff had no prior notice that there was likely to be oil on the ground, it is not reasonable for him to anticipate that the area was an area where he is likely to slip and fall. He was not walking too fast. He had purchased food and had things in his hand. He was walking normally and he did not anticipate any danger from the condition of the ground. It is not reasonable to expect that he would focus all his attention wholly on the ground when he is walking. When he was not expecting oil on the ground. He stepped from the steps onto the ground where the oil was located. I find that he is not liable in contributory negligence. To find otherwise would be unreasonable. He was taking care as any reasonable man would who was not aware that the ground he was walking on was likely to have an oil patch.

4th Issue

Quantum

54. The Plaintiff was born in 1938. On the date of the accident he was 61 years old. On the date of trial he was 66 years old. He was retired on the date of the accident.

55. The Plaintiff was admitted to the Accident & Emergency Department of Princess Margaret Hospital after the accident. Physical examination showed that there was swelling and deformity of his right wrist. X-ray films revealed that he suffered from fracture of his distal radius and ulna bone. After admission to the Orthopaedics Department, physical examination revealed mild tenderness over the right side of his mid-lumbar spinal region and a tender deformed right wrist.

56. Radiological examination of the right wrist showed displaced fractures of his right distal radius and ulna. The Plaintiff’s right wrist injury was treated by closed reduction and plaster immobilization on the same day. He was discharged on 24 August 1999. After discharge, the Plaintiff attended regular follow-up at the Orthopaedics Department of Princess Margaret Hospital. During his initial follow-up visits, he was found to have complications with mild skin abrasion within the plaster and thus the plaster was changed. Fracture collapse was noted but the alignment was satisfactory. The plaster was taken off on 6 October 1999.

57. The Plaintiff was then referred to physiotherapy for mobilization and strengthening exercises. He received a total of 25 sessions of physiotherapy at the Department of Physiotherapy until 22 September 2000. Thereafter, he continued with home exercises. The Plaintiff also visited bonesetters on a few occasions.

58. The Plaintiff is right hand dominant. Apart from the condition of his right wrist, where he suffers from pain and weakness, the Plaintiff also suffers from tightness and numbness of his right fingers as well as stiffness, tiredness and tremor of his right hand. Apart from that he suffers from occasional sharp pain at his back. Moreover, the Plaintiff has bilateral shoulder pain, which is more severe on the right. He also has bilateral calf cramps in the morning or after prolonged sitting.

59. Dr. Jack Wong, whose medical report is at pages 233 –242 of the BD commented that the Plaintiff’s right wrist has healed with collapse, impaction and deformity. There are radial deviation, dorsal angulation and widening in antero-posterior dimension. There is also relative shortening of the radius compared with the ulna. Moreover, the fracture is complicated with Complex Regional Pain Syndrome and shoulder hand syndrome. Dr. Wong also recommended that the Plaintiff should undergo treatment when there is exacerbation of pain at right shoulder, wrist and back pain. I take note of the fact that Dr. Danny Tsoi the other medical expert on the other hand does not accept Dr. Wong’s finding of Complex Regional Pain Syndrome causing shoulder pain.

PSLA

60. The Plaintiff’s Counsel referred to Chung Hok Sung and Li Kam Ming & Another HCPI393 of 1995, Master Chung 19 May 1997. In that case, the Plaintiff suffered fracture of left ulnar and radius. Open reduction and internal fixation was performed. 1-1/2 years after the accident, he suffered from snapping of the muscle over the left elbow joint, development of “tennis elbow”, loosening of the distal radio-ulnar joint giving rise to some pain and weakness of the left grip of the Plaintiff, a bursa over the left forearm. 3 years after the accident the “tennis elbow” has subsided but other symptoms remain. The Plaintiff was awarded $200,000.00 for PSLA.

61. The 2nd Defendant’s Counsel referred to Chan Cheuk Yiu v. Chan HO Kwan (2001) HCPI 879 of 2000 and Lam Chi Fat v. So Kam Sui and Others (1995) PI 167 of 1994. In relation to Lam Chi Fat, the 2nd Defendant’s Counsel submitted that the injuries to the wrist were similar to this present case. PSLA was awarded at $180,000.00. The date of judgment was 26 October 1995. He also referred to Sin Sau Mui v. Yuen Chung Kit and Others (1996) A11319 of 1993. The injury suffered was a displaced Colles’ fracture of the Plaintiff’s right wrist which was treated by close reduction and immobilization in a plaster cast for three months. The Plaintiff thereafter suffered weakness and pain in her right hand which is her preferred hand. She was awarded $200,000.00 in PSLA.

62. Dr. Danny Tsoi also noted that during the accident, the Plaintiff sprained his back. There was residual but mild tenderness over the right paraspinal muscles. The other function of the back was unaffected. Dr. Tsoi stated that the residual back discomfort secondary to the accident accounts for 1% permanent impairment. He gave allowance for the discomfort at the back when he considered the overall impairment caused to the Defendant by the injuries.

63. Having reviewed the above authorities I compare them with the Plaintiff’s condition. When assessing PSLA for the Plaintiff I take into account his injury to his right wrist. In addition to the injury to his wrist I also take into account the discomfort in his back that had been referred to by Dr. Danny Tsoi aforesaid. I am of the view that PSLA should be awarded to him in the sum of $220,000.00.

Special Damages

64. Of the items of special damages, I grant the following,

Medical Expenses $3,444

Travelling Expenses $2,205

Tonic Food $3,000

Medication $500

Clothing $300

\_\_\_\_\_\_

$9,449

Future Medical Treatment

65. In relation to future medical treatment for the residual back pain, I grant the sum of $3,000 p.a. and I take a multiplier of 7 making a total of $21,000.00.

Interest

66. Interest on damages for PSLA at the rate of 2% p.a. from the date of service of the writ to date of judgment comes to $220,000.00 x 2% x 25/12 = $9166.66. Interest on special damages at 4% from the date of the accident up to the date of judgment comes to $9,449 x 4% x 63/12 = $1984.29.

67. Total damages come to $220,000.00 + $9449.00 + $21,000 + $9166.66 + $1984.29 = $261,599.95.

68. Judgment for the Plaintiff against the 1st Defendant in the sum of $261,599.95. I grant an order nisi for costs of the action to the Plaintiff to be paid by the 1st Defendant to be taxed if not agreed with Certificate for Counsel and an order nisi that the costs of the 2nd to 4th Defendants be paid by the 1st Defendant to be taxed if not agreed with Certificate for Counsel. The Plaintiff’s claim against the 2nd to 4th Defendants be dismissed.

C. B. Chan

District Judge

Representation :

Mr. Dennis Law instructed by Messrs. Or & Company for the Plaintiff.

Mr. Yip King Sum instructed by Messrs. Johnny Chiu & Co. for the 1st Defendant.

Mr. Andrew S.Y. Li instructed by Messrs. W.K. To & Co. for the 2nd to 4th Defendants.