IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 145 OF 2001

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| BETWEEN | Stephen Graham Olding | Plaintiff |
|  | And |  |
|  | Singapore Airlines Limited | Defendant |

Coram: H H Judge Carlson in Court

Dates of Hearing: 12 June 2002 and 13 June 2002

Date of Judgment: 17 June 2002

Present: Plaintiff in person

Mr N Watkins, of Stevenson, Wong & Co, for the Defendant

J U D G M E N T

1. On 26 September 2000 the plaintiff, Mr Stephen Olding, was a passenger on the defendant’s flight SQ002 from Singapore to Hong Kong. He was accompanied by his friend, Miss Cecilia Choi. During the course of the journey she had ordered pineapple juice. By the time the aircraft had landed at Hong Kong International Airport she had only consumed about a quarter of it. The plaintiff decided to finish it so that he might put the plastic container that it had been served in into the seat pocket of the seat immediately in front of the one that he had occupied for the journey prior to disembarking.

2. As he drank the juice he says that he felt that he had swallowed something sharp. He looked into the remaining contents of the container and saw what appeared to him to be fragments of glass. He felt these fragments with his finger and this served to confirm his suspicion that he might have swallowed glass particles. Subsequently he felt unwell and attended a hospital.

3. He now brings this action claiming damages for personal injury, pain and suffering and he also claims damages for related pecuniary losses which I must refer to more fully in due course.

4. The claim is vigorously resisted by the defendants who are an airline of the highest repute. The plaintiff has represented himself throughout with the result that his case has not had the attention to detail and indeed to the sort of evidence that perhaps ought to have been called and I have no doubt would have been called had he been represented by competent solicitors.

5. That having been said, he has given evidence himself. He has called Miss Choi, his travelling companion, and he has placed before me the medical notes of his examination at Tang Shiu Kin Hospital which he attended on the afternoon of 28 September, 48 hours after his arrival at Hong Kong, by which time he had been feeling unwell for some hours.

6. Much of this case turns on the credibility of the plaintiff and of Miss Choi and so I must attend to their evidence with some care.

7. It is necessary to begin with the plaintiff’s and Miss Choi’s departure from Sydney some weeks beforehand. He was due to fly first to Thailand to attend to business there, then take a short holiday before continuing his journey to Hong Kong. He and Miss Choi boarded one of the defendant’s flights at Sydney bound for Singapore which was delayed on departure. As a result, the connecting service to Bangkok was missed. This necessitated a night at an hotel in Singapore in order to take the ongoing flight the next day.

8. On checking in the next morning the defendant’s ground staff at Singapore refused to allow Miss Choi to board the flight. They said that as the holder of a certificate of identity she required a visa for entry into Thailand. In fact they were mistaken about that but they could not be persuaded to change their mind. The plaintiff flew on to Bangkok leaving Miss Choi in Singapore to obtain a visa from the Thai Embassy. In the event she remained in Singapore for a number of days attending to this and then joined the plaintiff at Bangkok. This incident greatly upset the plaintiff and he complained to the defendant’s office in Thailand. They appear to have accepted that they were wrong not to have allowed Miss Choi to board at Singapore and by way of showing good will issued free return tickets to the plaintiff and Miss Choi from Bangkok to Hong Kong routed via Singapore.

9. It is by means of these tickets that they flew out to Hong Kong on 26 September. At Hong Kong the defendants then lost the plaintiff’s suitcase. Given that unhappy series of events it has been put to the plaintiff that by the time that he eventually left Hong Kong Airport on 26 September to make his way to his hotel he was ill-disposed towards the defendants and that this has coloured his attitude and his evidence. I was anxious to enquire of Mr Watkins who appears for the defendants whether it was his case that the plaintiff was so ill-disposed towards his clients that he had invented the allegation that he had swallowed glass fragments contained in the pineapple juice with a view to getting his own back on them. Wisely, in my judgment, Mr Watkins does not go so far as to suggest anything of this sort. I will return to what he says probably happened when I come to the end of my recitation of this sorry tale.

10. As I indicated at the outset, the plaintiff is convinced that he must have swallowed glass fragments contained in the juice because he felt he had ingested something sharp and that on inspecting the contents of the container he saw and felt what appeared to be glass fragments at the bottom. By then the aircraft had taxied to the terminal building and the passengers were on their feet and in the process of disembarking. He and Miss Choi were accommodated in the rear economy cabin. He called out to a passing steward and told him what had happened and he gave him the container. He says the steward looked into the container and asked him if he was all right. Still a little confused by what had happened he told him, “I think so”. The steward then removed the container and took it into the galley.

11. This was seen by Miss Choi who has supported what the plaintiff has had to say on this matter. Thinking that they had done enough to draw this to the steward’s attention, they then disembarked. After they had got to the arrival hall the plaintiff realised that his suitcase had gone astray. He approached the airline staff where he was attended to by a Miss Pamela Fan, one of the defendant’s ground staff. She was called by them for two purposes. Firstly to say that the plaintiff made no complaint to her that he had swallowed glass fragments whilst consuming a drink supplied by the airline during the flight and, secondly, that he appeared to be drunk. He appeared confused, had difficulty standing up properly and appeared incapable of filling out the missing luggage form without detailed assistance from her.

12. The plaintiff accepts that he made no complaint to her about swallowing glass. His explanation is that he had already sufficiently drawn the matter to the cabin crew’s attention and that his present concern was his suitcase. There was no reason to repeat the complaint to her. As to whether he was drunk, he accepts that he had had a couple of beers and a whisky on the flight and that he was tired when he had boarded the plane at Bangkok so that he was not at his sharpest. Miss Choi has also given evidence that the plaintiff does like to drink when he is not working. The effect of her evidence is that he is a seasoned social drinker. On this issue I find that the plaintiff was by a combination of drink and tiredness under the influence of alcohol and certainly may have given the impression of being drunk as described as Miss Fan. The plaintiff himself has been perfectly frank in this regard.

13. It is from this evidence that Mr Watkins really puts his case that the defendant’s condition was such that he was confused about what happened when he consumed the pineapple juice which of course was not his drink of choice. Whilst he thought he had ingested glass and that he thought the fragments that he touched at the bottom of the container were indeed glass, he was confused and quite wrong about that.

14. On this issue the defendants have called the steward assigned to that part of the economy section, Mr Bukoh Seng Khoon. He was the only male steward working in that part of the cabin. The plaintiff upon seeing him enter the witness-box told me that this was not the person to whom he directed a complaint and showed the plastic cup to. Not surprisingly therefore Mr Bukoh’s evidence was that no such complaint was made to him and that he was not aware of any being made to his colleagues on the flight. He gave evidence of a general nature as to the procedures which the defendants had in place as to the handling and recording of occurrences of this type.

15. If something of this sort was reported to the crew, all the details would be written down in the cabin voyage report. He said the airline took care to ensure that such matters were recorded and the crew were encouraged to do so, it would not be something that would be held against them and that the evidence, the container and its contents, would be preserved for investigation. I also have a statement from Cheng Ken Nuang, the in-flight supervisor, who confirms that there is no record of this incident having been reported to her for entry into the voyage cabin report.

16. Reliance is placed upon this evidence by Mr Watkins as demonstrating that the incident did not occur. Mr Bukoh has also explained that even though a complaint might be made as the passengers were disembarking, it would still be treated with the same degree of seriousness and recorded in the same manner. At this stage therefore the defendants rely on the absence of a record of a complaint in circumstances where one might expect a note to have been made had a complaint been forthcoming and further that the most likely individual to have received such a complaint is not the one to whom the plaintiff says he spoke to. This, of course, in the face of the plaintiff’s and Miss Choi’s evidence to the contrary.

17. From this I turn to the medical evidence.

18. The plaintiff says he began to feel unwell a few hours later. He tried to speak to the airline but could not get through directly and spoke to their ground agents, Cathay Pacific Airways. They were not able to provide much assistance and his condition deteriorated. He felt queasy and took to his bed. The following day and the day after the 28 September his condition, if anything, worsened and he was anxious because he was convinced that he had swallowed glass fragments. He feared internal bleeding and the potentially serious consequences of that. He also passed tarry (dark) stools which made him even more concerned.

19. All of this evidence is confirmed by Miss Choi, even as to the colour of the stools. In view of the fact that he was still feeling ill on the afternoon of the 28th, 48 hours after the alleged consumption of glass fragments, with Miss Choi’s encouragement and assistance he got himself into a taxi and went to Tang Shiu Kin Hospital. That hospital’s reports are at pages C28 and C29. Almost certainly had the plaintiff been represented by solicitors arrangements would have been made to call at least two of the doctors who examined him to explain their findings, particularly Dr Wong, who I presume is a radiologist and who reviewed the plaintiff’s X-ray on 4 October 2000 at 1705 hours (see page C28, right-centre reading across the page).

20. He has said “film reviewed likely to be glass particles”. To this finding I must make further reference presently. At the hospital his complaint that he had ingested glass fragments was recorded and the doctors’ investigation was therefore directed to this. The notes record that “lower abdomen cramping this morning associated with tarry stool, bleeding”. Dr Yuen who conducted the examination has provided a letter at C29 which records his findings. It would appear that his medical condition was normal and that the X-rays were normal. He has also recorded that the plaintiff then absented himself from the hospital. The plaintiff has explained that due to the nature of his complaint Dr Yuen had told him that he should remain in hospital at least overnight for observation. He was then informed that he would have to pay a deposit of $20,000 which he did not have. His wallet had been stolen in Bangkok, together with his credit cards, which he had no time to replace.

21. And so he took himself back to bed in his hotel room to await developments. His condition did not improve. Subsequently he got in touch with the defendant’s office and told them what had happened to him. They asked him to see Dr Frank Innes, a medical practitioner retained by them. Dr Innes’s report is at C32. Dr Innes performed all the appropriate tests including X-ray examination and pronounced that all the findings were normal but given the nature of the plaintiff’s complaint he referred the plaintiff that same day to Professor Lam for a gastroscopy.

22. Before I turn to Professor Lam’s report I should observe that a mistake appears to have occurred over the labelling of the X-ray which Dr Innes examined (see page 32A) so that there is no certainty that the X-ray seen by Dr Innes was in fact that of the plaintiff. To this extent therefore I must ignore Dr Innes’s comments about the X-ray that he examined.

23. Professor Lam’s report is at page C31. He performed a gastroscopy. No abnormality was found in the oesophagus, stomach or duodenum. Professor Lam has observed that this test did not rule out the presence of a foreign body in other parts of the intestine. On examination Professor Lam found the plaintiff to be under stress from the incident. He had no pallor, by which I assume he means that the plaintiff was pale. There was a mild degree of tenderness in the centre of the abdomen over an ill-defined area. A rectal examination was performed and found to be normal.

24. Because the plaintiff was anxious and worried he prescribed diazepam, a tranquilliser, and told him that if he felt unwell further tests needed to be done. As to the absence of any physical signs of glass fragments by 9 and 10 October the plaintiff has made the perfectly good point that by then anything ingested on 26 September would have passed through his system.

25. This therefore leaves the review of the X-ray by Dr Wong on 4 October, I assume as part of the Tang Shiu Kin Hospital’s procedures, with the comment “likely to be glass particle”, this referring to the X-ray taken on 28 September. 26. That concludes the material evidence on the main issue as to whether the plaintiff ingested glass fragments during the flight whilst drinking what remained of Miss Choi’s pineapple juice.

27. As I indicated, this largely falls to be determined by the view that I form of the plaintiff and Miss Choi’s credibility but of course in doing so I must have regard to the evidence as a whole, including what the plaintiff has had to say on the question of quantum where he has been criticised by Mr Watkins for grossly inflating his claim. In coming to a decision on this aspect I have had regard to the whole of the evidence in the case.

28. What of the plaintiff’s credibility? He is a technical man, an expert on the production of glass products and it is this work that had brought him to Hong Kong. He did not tell me whether he has a university degree in this field. I presume that he has not. I mention this because in assessing his demeanour and the content of what he said in evidence, I found him to be a rather unsophisticated individual and in saying that I do not wish to appear or mean to be gratuitously unkind about him. He is originally from Wales but has lived in Australia for some years now and has acquired something of that country’s accent.

29. I am bound to say that I found him perfectly straightforward as a person, although by now one who is no particular fan of the defendants. On all the evidence he has persuaded me on a balance of probabilities that the incident occurred in the manner that he described. In coming to this view I very much bear in mind that the immediate past history of his travels with the defendants and the loss of his luggage might well have provided him with a motive to exaggerate or indeed invent this account. The potential for confusion is also there given his consumption of alcohol on the flight and his tiredness. I was impressed by the fact that he did not try to hide this from me. His evidence is supported by Miss Choi. She was neither tired nor drunk. She was a perfectly straightforward person.

30. She is from Hong Kong but now based in Australia and she speaks English well and she has given her evidence in English. She saw what appeared to be glass fragments at the bottom of the cup. It had been suggested that these could have been ice but I accept her evidence that she does not take ice in drinks. I have also had regard to Mr Bukoh’s evidence that pineapple juice only comes in paper cartons or tins. It is not dispensed from glass bottles. I am also conscious of the fact that there is no evidence to show how the glass fragments would have got into the plastic cup into which the pineapple juice was poured. To do so now would be pure speculation.

31. As to whether such an incident ever occurred I am also very conscious of the fact that there is no record of a complaint having been made to the cabin crew and I have considered, given the procedures which this airline has in place, whether this might indicate that no such complaint was made. I also have in mind that this flight, according to Mr Bukoh, had four male flight attendants. Although assigned to a particular area of the cabin, there is no prohibition on them moving from one section to the other, particularly after the aircraft had landed and come to a complete halt and persons would therefore be able to move about.

32. The next question that I have considered is why therefore did the steward to whom the complaint had been made not recorded it? The exchange, according to the plaintiff, was that he said he thought that he might have swallowed some glass and upon being asked by the steward if he was all right he said “I think so”. The cup was then removed and nothing further was done about it. The steward therefore acted contrary to the airline’s regulations in not making a record. Is this likely?

33. Common human experience tells one that such breaches of internal company rules of this type do happen from time to time. This is what occurred on this occasion. I am satisfied that the steward concerned, on the plaintiff telling him that he thought that he was all right, decided to remove the cup and thought nothing more of it, especially as the flight was over and everybody was in the process of disembarking.

34. Next I accept the plaintiff’s reasoning for not making a further complaint to the ground staff. He was busy dealing with his lost bag and at that stage was not feeling unwell, save for the effects of drink and tiredness, neither of which, I am satisfied, was sufficiently severe to cause him to be confused about the ingestion of a sharp substance and seeing fragments in the cup.

35. In any event, all of this is corroborated by Miss Choi whose evidence I am prepared to accept. Lastly, the plaintiff gets support for his case from what followed on 28 September. He was unwell. I accept that, and Miss Choi has also said so and I accept her evidence. He passed tarry stools and as to this the plaintiff is also corroborated by Miss Choi. The Tang Shiu Kin Hospital X-ray when reviewed by Dr Wong on 4 October shows evidence of a likely glass particle. This presence of independent evidence, although by no means absolutely conclusive by itself, the words used by the doctor here were “likely to be glass particle”, assumes particular weight because it has the effect of supporting the whole thrust of what the plaintiff and Miss Choi have had to say on this issue.

36. The evidence of Professor Lam is also persuasive in the sense that it shows consistency on the part of the plaintiff in his report of his symptoms and as to how those symptoms were caused. On 9 October the professor found the plaintiff to be pale and anxious so that he prescribed diazepam and told him to return for more tests if he continued to feel unwell.

37. On all this evidence I am satisfied that the plaintiff has carried the persuasive burden on a balance of probabilities. I find that defendant’s cabin staff had served Miss Choi with a pineapple juice which contained glass fragments, some of which the plaintiff ingested when he decided to finish her drink but still leaving some further fragments at the bottom of the cup.

38. The next issue to decide is whether this amounts to negligence by the defendants. Mr Watkins I think quite rightly has not sought to argue otherwise. Clearly they owe their passengers a duty of care not to serve them drinks containing potentially harmful substances, such as particles or fragments of glass, as was done on this occasion. The duty of care in such circumstances must be a high one. Insufficient care had been taken on this occasion to ensure that this did not happen. It was negligent not to have done so. I find the particulars of negligence pleaded by the plaintiff proved.

39. Whilst I have found negligence of the requisite degree present on this occasion, I wish to expressly say that an isolated incident of this sort should do nothing to tarnish the high and well-earned reputation of these defendants. Even with the best run organisations, and these defendants I am sure are such an organisation, mishaps of this kind will from time to time occur. I wish to say this because if this case receives widespread publicity, and it might, it should be reported fairly and accurately and the remarks that I have just made should form part of any such report.

40. Negligence having been proved, I now need to turn to the amount of damages the plaintiff would be entitled to recover. In this regard, I should now pay attention to the terms of the re-amended defence. Paragraphs 3 and 4 are relevant.

41. Paragraph 3: “It is further averred that the carriage of the plaintiff on the defendant’s flight SQ002 aforesaid was non-international carriage within the meaning of section 13 of the Carriage by Air Ordinance, Cap. 500 “the ordinance”, and in the premises Article 1 of the Warsaw Convention as amended by The Hague Protocol (the amended Warsaw Convention) as adapted and modified by Schedule 3 of the ordinance governs the plaintiff’s claim herein. Paragraph 4: If, which is denied, the plaintiff suffered injury on flight SQ002 aforesaid it is denied that the same was bodily injury within the meaning of Article 17 of Schedule 3 of the ordinance.”

42. Mr Watkins’s first point is that this flight falls to be considered as non-international carriage within the meaning of section 13 of the Carriage by Air Ordinance “the ordinance”, which is perhaps a surprising submission given that the flight involved a journey from Bangkok to Hong Kong. This ticket (page D34) which was a free ticket was routed Bangkok - Hong Kong - Bangkok. It was an open return ticket. There was no return booking but the ticket was valid for a return journey up to 26 December 2000.

43. Section 13 of the ordinance refers to Schedule 4 which defines non-international travel in a rather circuitous way by defining international carriage as follows (see paragraph 2 of Article 1, Schedule 4, which is in these terms): “International carriage means any carriage in which according to the contract made by the parties the place of departure and the place of destination, whether or not there be a break in the carriage or a trans-shipment, are situated either within the territories of two states parties to the Warsaw Convention or within the territory of a single such state if there is an agreed stopping place within the territory subject to the sovereignty mandate or authority of another state even though that state is not a party to the Warsaw Convention.”

44. This was a return ticket from and back to Thailand. Thailand is not a party to the convention. So much is clear from section 4 of the ordinance and the gazetted order made thereunder. Accordingly, says Mr Watkins, this must be non-international carriage because it is not an international carriage. If that is so, then section 3 applies and in particular Article 17 which limits liability as follows: “The carrier is liable for damage sustained in the event of death or wounding of a passenger or any other bodily injury suffered by a passenger which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.”

45. The significance of this from the defendant’s point of view is that the claim is restricted to bodily injury and not other pecuniary losses of the type claimed by the plaintiff. Further, under Article 22 quantum is limited to the sum of 100,000 SDRs which comfortably exceed the jurisdiction of this court. So the only issue under Schedule 3 is whether the plaintiff suffered any bodily injury which of course is denied by the defendants. I am satisfied that Mr Watkins is correct and that the surprising outcome based on the routing of this ticket is that this falls to be classed as non-international carriage. But even if I am wrong about this, and this is to be properly classed as international carriage to which Schedule 4 of the ordinance applies, then under Article 17 of Schedule 4 the classes of recoverable damage are the same, save that Article 22 the limits of liability are higher although irrelevantly so for present purposes given the $600,000 limit in this court.

46. The Warsaw Convention is recited on the passenger ticket. The plaintiff says he never read it nor was he aware of it nor was it drawn to his attention. None of this avails him. I am satisfied that the defendant’s printed terms apply to this contract. This means that the claim is limited to bodily injury only. Has the plaintiff suffered such an injury? As I say, the defendants deny this. Neither the ordinance nor the convention define “bodily injury”. On the medical evidence the plaintiff has suffered some physical discomfort consequent upon the ingestion of these fragments of glass. The tarry stools would appear to be associated with internal bleeding but even without that the undoubted physical discomfort suffered by him must qualify as bodily injury.

47. I get some assistance from the definition applied to the offence of assault occasioning actual bodily harm which is taken to mean the inflicting of some physical discomfort to the victim. I am satisfied that this ingestion of particles has caused the plaintiff bodily injury as contemplated by the ordinance. This therefore is the first head of damage in the claim which is for pain and suffering. It is convenient to assess the quantum for this now. The pleaded claim is for $80,000 which, in my judgment, is too high. Nevertheless it is by no means a minimal claim. There was pain and discomfort for about 12 to 14 days before the plaintiff was back to his old self, during which time he was laid low and mostly confined to bed. There was the anxiety that he might have done himself a real mischief internally and this was recognised by Professor Lam who prescribed diazepam to keep him calm.

48. He had to go an gastroscopy aided by a tranquillising injection. This invasive procedure was not pleasant of course and he also had the inconvenience of having to be X-rayed and investigated at Tang Shiu Kin and by two airline-appointed doctors. These relatively minor situations are difficult to assess with great precision but doing my best I find that the appropriate damages under this head should be $52,000.

49. I now turn to the rest of the claim which is entirely of a pecuniary nature. It is set out at page D40 limited to $500,000. It is described as loss of income. In view of the fact that I found that on either view of the class of carriage, international or non-international, the claim is limited to bodily injury in this case, this part of the claim must fail save for those elements relating to assistance from solicitors and professional correspondence and time for attending court, research and preparing summonses for which the plaintiff would be able to make a claim as costs of the action.

50. I shall allow one item of special damage which relates to obtaining medical reports and hospital fees. I take the view that a reasonable amount for this is $1,000. The total amount of the claim that succeeds therefore amounts to $52,000 for general damages, pain and suffering and $1,000 for special damages.

51. But for the sake of completeness I should say that even if the ordinance and the Warsaw Convention had not operated to limit the scope of this claim to bodily injury, I would have found that the rest of the plaintiff’s claim has as a matter of evidence failed to carry the required standard or proof. The essence of it is that he was coming to Hong Kong to carry out a contract to supply specially toughened glass sheets which were to be manufactured in China. This would have required his attendance in China to oversee the manufacture. He had Miss Choi with him who was to act as his assistant and to interpret for him.

52. By 3 October, only four working days after his arrival in Hong Kong when one takes into account the national holiday on 1 and 2 October, he had communicated with his Australian clients to tell them that he could not perform his contract with them because he was unwell. Even making every allowance for his condition, I find that he acted unreasonably quickly in withdrawing from this contract. It is clear that by 9 or 10 October he was up and about and could have started work. In my view, he was precipitate in withdrawing so soon after his arrival in Hong Kong. In any event, he seems to making his claim and that for Miss Choi on the basis of salary paid or to be paid. As to Miss Choi’s, most of this had already been paid to her in Thailand and by November 2000 she had found other work.

53. As to his salary, I fail to see how this can form the basis for a claim. If anything, it should be for loss of profit on the contract which has simply not been proved. For these additional reasons the claim quantified at page D40 would also have failed.

54. There will be judgment therefore to the plaintiff in the total amount of $53,000 together with interest. I will award interest on general damages at 2 per cent from 26 September until judgment and on special damages from the date of the writ until judgment at half the judgment rate and on both there will be interest at the judgment rate from today until payment, together with the costs of the action which will be

paid by the defendants to the plaintiff.

Ian Carlson

District Court Judge