###### DCPI 185/2003

### IN THE DISTRICT COURT OF THE

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**PERSONAL INJURIES ACTION NO. 185 OF 2003**

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##### BETWEEN

## TANG CHIN MING Plaintiff

### and

#### LUCKY BAKERY HOUSE LIMITED 1st Defendant

THE INCORPORATED OWNERS OF

TUNG MING INDUSTRIAL BUILDING 2nd Defendant

SCHINDLER LIFTS (HONG KONG) 3rd Defendant

LTD.

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Coram: H.H. Judge C.B. Chan in Court

Date of Hearing: 26th, 29th, 30th,31st March and 2nd April 2004

Date of Handing down of Judgment: 19th May 2004

J U D G M E N T

1. This is a personal injuries claim by the Plaintiff against the 1st Defendant who was the employer of the Plaintiff, the 2nd Defendant, the Incorporated Owners of Tung Ming Industrial Building (hereinafter referred to as “the Building”) wherein the Plaintiff was taking delivery of certain goods in the course of employment and the 3rd Defendant, the contractor of the 2nd Defendant providing maintenance and repair services in respect of the lift of the Building wherein the accident occurred.

The Accident

2. The accident happened on the 4th April 2001, at about 10:30 hours, at the ground floor of the Building when the Plaintiff was in the course of taking back empty cake/bread trays to the 1st Defendant’s premises.

3. The pleaded case in the Statement of Claim concerning the accident was that, whilst “the Plaintiff was using a metal hook to take some of the trays to and into the lift at the ground floor of the building, the lift door suddenly closed as his co-worker Yeung Wing San pressed the lift button without checking first with the Plaintiff. Despite the Plaintiff’s colleagues (and Yeung Wing San in particular) pressing the open button, the lift door did not open again and the Plaintiff’s fingers were crushed by the hook as it was caught by the lift door and the lift went up to the 2nd Floor”.

Liability of the 1st Defendant

4. The Plaintiff pleaded in the Amended Statement of Claim that the accident was caused by the 1st Defendant’s :-

1. breach of statutory duty under s.6(2)(a), 6(2)(d)(i) and 6(2)(e) of the Occupational Health and Safety Ordinance (Cap. 509) (Amended statement of Claim, para.8)
2. negligence and/or breach of common duty of care (Amended Statement of Claim, para. 9) and
3. breach of the implied terms of the contract of employment (Amended Statement of Claim, para. 10)

5. Particulars of Breach of Statutory Duty were :-

1. failed to ensure that the lift door and/or button control was safe in the circumstances;
2. failed to provided sufficient competent staff to help the Plaintiff in carrying out his duties;
3. failed to give any warning as to the dangerous conditions of the said lift door and thus exposed the Plaintiff to risks;
4. failed to provide or maintain a safe system of work;
5. failed to maintain, keep and make the workplace safe and without risks to health; and
6. failed to provide, maintain, keep and make the working environment safe and without risks to health.

6. In the Amended Statement of Claim, the Plaintiff added the following allegations :-

1. Mr. Yeung Wing Sang (“Ah San”) failed to warn the Plaintiff that the lift door would be closed and he should remove his hand and/or the hook before the doors closed; and
2. Mr. Yeung failed to stop the lift as the hook was caught in the doors.

The 1st Defendant’s Case

7. The 1st Defendant denied the Plaintiff’s aforesaid allegations. Further the 1st Defendant pleaded that the accident was caused or contributed to by the Plaintiff’s own negligence for failing to take sufficient precaution or care for his own safety and failing to release the hook when the lift door crushed it. Further or alternatively, the 1st Defendant pleaded that the accident was caused or contributed to by the negligence and/or breach of statutory duty and/or breach of common duty of care of the 2nd and 3rd Defendants. The 1st Defendant adopted the particulars pleaded by the Plaintiff in this regard.

Liability of the 2nd Defendant

8. The Plaintiff’s pleaded case against the 2nd Defendant was that the accident was caused by the 2nd Defendant’s breach of statutory duty under section 3 of the Occupier’s Liability Ordinance, Cap 314.

9. Particulars of the Plaintiff’s alleged claim are:-

1. Paragraphs 8 and 9 of the Amended Statement of Claim were repeated, in so far as the same applies.
2. Failing to keep the lift of the Building properly maintained.
3. Failing to have the lift updated and to have the lift doors fitted with an infrared safety device, as the reliance upon a “safety edge” was not sufficient.

The 2nd Defendant’s Case

10. The repairs and maintenance of the lift is subject to the Government’s requirements that lift specialist contractor be employed to ensure the safety of the lift users.

11. The 2nd Defendant is not a registered lift specialist to carry out the repairs and maintenance of the lift so as to meet the safety requirements under the EMSD Code of Practice. It must delegate its duties of maintaining the lift to the specialist.

12. The 3rd Defendant was the installer of the lift when the Building was built in 1977 and had since been appointed as the lift maintenance contractor. Upon its incorporation in 1989, the 2nd Defendant continued and still continues to engage the 3rd Defendant as the maintenance contractor of the lift.

Liability of the 3rd Defendant

13. The Plaintiff’s pleaded case against the 3rd Defendant was in negligence and breach of common duty of care. Particulars of negligence was pleaded as follows:-

1. failing to repair/fix the open door button;
2. failing to check/ensure that the lift buttons were working properly;
3. failing to ensure that the lift door was controllable by the lift button;
4. failing to inform/provide warnings that the lift was not controllable by the lift button;
5. failing to inform/provide warnings that the door cannot be opened when something was jammed/crushed by it; and
6. failing to inform the 2nd Defendant that the lift needed updating.

The 3rd Defendant’s case

14. The 3rd Defendant denied each of the aforesaid particulars of negligence.

Evidence of the Accident

15. The Plaintiff gave this. The 1st Defendant’s Counsel submitted that the Plaintiff had given no less than four versions of how the accident happened. The Plaintiff also gave various versions as to how his fingers were injured. I shall cite the different versions of the Accident both in the Statement of Claim and in the evidence.

In the Statement of Claim

16. That had been referred to above.

In the Witness Statement

17. At about 10:10 a.m. he and Ah San came back to the car park of the Building situated at the ground floor of the Building to send some empty bread containers back to the workshop of the 1st Defendant for cleaning and re-use. To assist in transporting the empty bread containers, he used an iron hook (about 2 feet long) with handle to transport the empty bread containers to the lift on the ground floor.

18. Then the following sequence of events were described:-

1. after he and Ah San had entered into the lift, he hung the iron hook on one of the empty bread tray on his left;
2. Ah San then pressed the button to close the door;
3. when the lift door was almost closed, the Plaintiff found that the iron hook was hit by the lift door;
4. he immediately informed An San to open the lift door;
5. he saw Ah San immediately pressing the open button of the lift to try to stop the lift door from closing;
6. because the open button of the lift was out of order, the lift door still continued to close;
7. the Plaintiff could not take back the iron hook in time and withdraw his hand;
8. therefore, his left hand index finger and middle fingers were hurt by the iron hook when it was hit by the lift door during closing.

Evidence-in-Chief

1. In his evidence-in-chief, the Plaintiff said that :-
2. inside the lift, the Plaintiff was facing a stack of trays, No. 4 stack of trays as shown in the diagram at p.102;
3. when the lift door was closing, it hit the handle of the hook and the hook fell down;
4. the hook fell on the floor of the lift, near his left leg;
5. according to Exhibit P-2 (marked diagram), the position of the hook, after falling onto the floor of the lift, was very near to the closing point of the lift door;
6. he told Ah San to re-open the door as he wanted to pick up the hook;
7. he wanted to pick up the hook but the door closed quickly that it trapped his hand;
8. before his hand was trapped by the lift door, he told Ah San to open the door;
9. he bent his back to the left slightly when he was picking the hook up;
10. when he was bending down his back, the lift door was not fully closed;
11. when the lift door hit the hook, the Plaintiff was holding the hook by his left hand, within 6 inches from the end the hook, as he demonstrated in the Court; and
12. after the hook injured him, it went out from the lift.
13. Later, he corrected himself to say in-chief that :-
14. he had not picked up the hook but his hand was in contact with it;
15. Q: “Ah San said your hand was trapped by the door. It’s not”

A: “Correct”;

1. when the lift door was closed, it trapped the hook and the hook scraped him;
2. after the hook fell on the floor of the lift, he told Ah San to re-open the door. Later he said he had “No idea” as to whether he asked Ah San to re-open the door before or after his hand was injured and in the cross-examination by the counsel for the 3rd Defendant, he said that it was “before” he got injured, he asked Ah San to re-open the door; and
3. as he was facing the stack of trays, he could not see Ah San pushing the button.

Upon Cross-Examination by the 3rd Defendant’s Counsel

21. Further contradictions appeared when the Plaintiff was cross-examined by the counsel for the 3rd Defendant, he said that :-

1. inside the lift, the stack of trays that he was facing was about 4.5 inches from his body;
2. the hook was hanging on the top tray at his left hand side;
3. between the lift door and the trays, he could stand sideways. The initial measurement of the shoulder to shoulder width was a bit less than 18 inches. Later he said he was crushed when standing sideways so the measurement was reduced to 12.5 inches;
4. he “touched” the end of the hook by his left hand;
5. when the lift door was closing, he looked at his right back;
6. “may be”, during this juncture, his left elbow unintentionally hit the hook making the handle of the hook lift up and protrude; and
7. the handle of the hook was hit by the closing lift door. The hook fell down.

22. Even according to the Plaintiff’s own evidence, when the lift door started to close, nothing had protruded to block the path of the lift door. Only when the lift door passed the position of the Plaintiff, that is, near the closing position of the lift according to the diagram at p. 102, that the handle side of the hook lifted when hit by the Plaintiff’s elbow.

23. Accordingly, before closing the lift door, the path of the closing door was clear.

24. The 1st Defendant’s Counsel submitted that the last version of the accident namely that the hook had been hit by the Plaintiff’s elbow and thus lifted up to hit the lift door had never been mentioned either in the Statement of Claim, the Plaintiff’s Witness Statement or in his evidence-in-chief.

How the Injury Was Caused

Statement of Claim

25. Before amendment it was stated that the lift door crushed his fingers together with the said hook.

In his Witness Statement

26. His fingers were hooked and injured by the iron hook when the lift door hit the hook.

Evidence-in-Chief

27. He stated, “At first I wanted to pick up the hook but the door closed so quickly it trapped my hand. Then he stated that he bent his body to the left sideways to pick up the hook. The hook had fallen down to the floor with the handle outside the lift door and the hook end inside. The lift door closed trapping his hand in the door. He had not yet picked up the hook yet his hand was trapped in the door. When the door was closed it trapped the hook, the hook scraped him. Again later he said, when he went to pick it up, the hook was caught. The hook end hurt him. The hook was thrown. His hand that held the hook was hurt. As the hook was thrown out of the door, the pointed part of the hook scraped him when it was thrown out.

Under Cross-examination by the 3rd Defendant’s Counsel

28. The Plaintiff stated that after the hook fell on the floor, and when he picked or was about to pick it up, the lift door caught the middle part of the hook and the hook was flung out. At this point, the hook end hit his fingers.

Finding of Facts - the Accident

29. The Plaintiff’s version of facts was that he hung the hook on the topmost tray in front of him on his left. Having regard to the fact that he was facing the tray, that there was a distance of between 18 inches to 12.5 inches between the tray and the door, it is inherently improbable that the hook could have been hit by the closing lift door. The hook was heavy and the lift was not moving. Given the distance between the lift door and the hook, there could be no possibility for the lift door to hit the hook or the handle of the hook.

30. The Plaintiff gave this explanation under cross-examination by the 3rd Defendant’s Counsel,

Q. You have to explain how the lift door could have hit the handle?

A. As I was inside, I pressed towards the hook. I was not standing very firmly. My hand was touching the top part of the hook. The hook was not still. I was holding the top part. The door hit the handle.

31. It was then that the 3rd Defendant’s Counsel asked the Plaintiff to demonstrate how the hook could be hit by the closing lift door. The Plaintiff then said,

1. I was touching it but I did not grab it when the lift door closed from behind. The position behind was narrow. I was concerned the door did not have sufficient space to close. I moved close to the tray. Maybe my elbow hit the hook.

32. He then stated that the space between the lift door and the tray was not that wide. When he said that he could stand sideways, he had to tighten his body to do so. He demonstrated this and the measurement taken of the space of his squashed shoulders was 12.5 inches.

33. Again he stated,

1. The hook was hanging there 4 inches to my left and 4.5 inches in front. The lift door was very close to my body. The door had two layers. I had to accommodate to let it close. As it was closing, because the tip of the hook was just hung onto the tray but not touching securely, maybe I had to move my elbow to accommodate the door. Maybe I looked to see if the door closed. My elbow hit the hook and its handle protruded upwards and the lift door hit it.

34. In the course of demonstration of how this could have happened, it became clear that it is not easy for his elbow to hit the hook in a way in which the hook could have lifted up to hit the lift door. As could be seen from the answers given by the Plaintiff above, his explanation of this was tentative. He stated that “maybe” this was how it happened. In actual fact for his elbow to hit the hook in such a way that it lifts it rather than push it sideways is an extremely difficult feat. For his elbow to hit the hanging hook in such a way as to lift it upwards the elbow has to hit the hook in the space between the hanging hook and the bread tray. It is not possible for the Plaintiff’s elbow to hit the hook in that way.

35. The Plaintiff tried to demonstrate how his elbow could have lifted the handle of the hook. He could only do so if the hand which held on to the hook at the top of the tray moved the hook upwards. Otherwise, his elbow could not have hit the hook so as to lift it up sufficiently for it to hit the lift door.

36. I therefore find his version of the manner in which the lift door hit the hook to be highly improbable. None of the other versions could explain how the lift door could have hit the hook.

37. In relation to how the Plaintiff’s fingers were injured there were also discrepancies in his evidence.

38. In view of the aforesaid, I find that the Plaintiff’s evidence in relation to how the accident happened is inherently improbable. I cannot accept his evidence of this.

39. The manner in which the accident occurred is important to find out whether there is any negligence attributable to any party. When the Plaintiff’s evidence of how the accident happened could not be accepted, there is in fact no evidence related to how the accident happened to make a finding on the Plaintiff’s claim of negligence in relation to the occurring of the accident.

The Plaintiff’s Case against the 1st Defendant

Was Yeung Wing San Negligent?

40. When the Plaintiff was cross-examined by the counsel for the 1st Defendant, he agreed that before closing the lift door, Ah San had ensured that the Plaintiff was ready for it. The Plaintiff admitted that in fact, he was well prepared for the closing of the lift door at that time.

41. As mentioned above, even according to the Plaintiff’s own evidence, before he looked at his right back, the hook did not protrude into the path of the lift door. Clearly, when Ah San closed the lift door, it was safe for him to do so.

42. In the premises, Ah San was not negligent when he pressed the lift button to close the door.

43. In his witness statement, the Plaintiff stated that after the lift door hit the hook and upon his request, he saw Ah San immediately pressing the open button of the lift .

44. However, in his evidence-in-chief, the Plaintiff stated that he could not see Ah San push the button to re-open the door. He just felt or heard that.

45. Whether he saw it or not, it was the Plaintiff’s clear evidence that once he informed Ah San to re-open the lift door, Ah San did so immediately. The allegation in paragraph 9 of the Amended Statement of Claim that Ah San failed to stop the lift is not the relevant issue. I agree with the 1st Defendant’s counsel that the core issue is whether Ah San had taken reasonable steps to stop the closing of the lift door. According to the Plaintiff’s own evidence, Ah San had done so. The allegation that the lift door could not be stopped was beyond Ah San’s control.

46. I therefore find that Ah San was not negligent. I also find that the allegation of vicarious liability on the part of the 1st Defendant arising from Ah San’s negligence has no substance.

Did the 1st Defendant Prohibit the Plaintiff to Seek Medical Treatment?

47. In his witness statement, the Plaintiff stated that after the accident, as he and Ah San were the only persons responsible for delivering bread outside, the 1st Defendant did not allow him to get off duty earlier to seek medical treatment.

48. When he was cross-examined by the counsel for the 1st Defendant, the Plaintiff agreed that after the accident, he did not realize that he got a fractured index finger. After his supervisor had fixed his bleeding by some Chinese medicine, he believed he could continue working. He did continue to work for a further 6 hours before he went to seek treatment from the hospital. He agreed that it was his decision to see a doctor after work.

49. I agree with the 1st Defendant’s counsel that the aforesaid allegation in the Plaintiff’s witness statement is not substantiated.

Safe System of Work

50. The Plaintiff’s work involved pulling the cake/bread trays into the lift to take them into the 1st Defendant’s workshop. The use of the hook was necessary to help pull those cake/bread trays that were not put on trolleys. The system of work was not inherently unsafe. The hook could not be viewed as an unsafe implement. The Plaintiff was familiar with his work and his working environment. The task was simple. It was reasonable for the 1st Defendant to leave the execution of such a simple task to the employees. There is no evidence that the accident was caused by an unsafe system of work. In the ordinary course of events, an accident should not have happened in relation to the use of the hook.

51. Mr. Lee Ki Wing the Production Manager of the 1st Defendant gave evidence that he often reminded the drivers and delivery workers to be careful when loading and unloading the goods in order to prevent the goods from toppling during delivery and to prevent accidents from happening. He also stated that the 1st Defendant had internal guidelines to be followed by drivers and vehicle attendants. Such guidelines are posted next to the clock-in machine of the Company and all staff should have notice of it. He also daily reminded the staff that safety is the utmost importance and care should be used when using any ancillary tools.

52. In relation to the problems with the lift, he stated that when any staff member discovered any malfunction of the lift, he would contact the management office of the Building to repair it. He stated that on the date of the accident he did not see that the lift was under repair.

Ownership of the Lift

53. It is not in dispute that the ownership and occupier of the lift vested with the 2nd Defendant. As the owner and occupier of the vested on the 2nd Defendant, the responsibility therefore should not vest on the 1st Defendant.

54. Having considered the aforesaid, I find that the Plaintiff’s claim against the 1st Defendant cannot be proved on a balance of probability.

The Plaintiff’s Case against the 2nd Defendant

55. The Plaintiff’s case against the 2nd Defendant has real difficulties because the way in which the accident happened is not clear, as the Plaintiff’s evidence of how the accident happened have not been accepted by me.

56. The Plaintiff’s evidence was that by the time the hook fell the door had already almost closed when the hook hit it. He drew on a plan marked Exh P-2 to show the position of the hook when it fell. It fell with the handle side of the hook outside the lift door. The position of the hook lying on the floor of the door was close to the edge of the door.

57. The Plaintiff’s evidence related to the “open” button of the lift was that, in evidence-in-chief, the Plaintiff stated that he could not see whether Ah San had pressed the “open” button of the lift after the hook fell. That was because he was facing the stack of trays. In para 16 at page 90 of his witness statement he stated that he saw Ah San immediately press the open button of the lift. Under cross-examination by the 3rd Defendant’s Counsel the Plaintiff stated that he told Ah San to hold the lift door for him before he bent down to pick up the hook. At the time he was bending down, it was not possible for him to see Ah San. He could hear the flicking of the open button for the flicking of the open button made a noise. He did not see what Ah San was doing. Under cross-examination by the 3rd Defendant’s Counsel when asked how he could be sure that Ah San flicked the open lift switch, he stated that,

“…this is the sort of old factory lift . . .a passenger/goods lift. It has more than an open door button. It has an open door switch to help delivery workers to deliver goods. . . That is a design that makes a sound when the switch is flicked.”

58. In relation to the condition of the lift door, the Plaintiff stated that in the two months when he had been working for the 1st Defendant, he noticed that the lift was out of order. He was not sure what caused the problem. Even if he pressed the “close” button of the door, the door could not close but only half close. He noticed that about two weeks before the accident. He stated that the lift continued to be used. There was no caretaker outside or somewhere near the lift door. The lift where the accident happened was the only lift. He stated that when the lift could not be used, with the doors suspended open for a long time, only happened once. He stated that what Ah San stated in his witness statement that even if the lift door trapped something or when people pressed on the “open” button, the lift door would still continue to close was right. As regards whether the lift button was out of order, he stated again under cross-examination by the Counsel for the 3rd Defendant that even when Ah San flicked the open button the door did not re-open. He said that normally, even if the open button were not pressed, the lift door would not close because in between the door there was a safety edge device that had to be pulled to close the door.

59. The Plaintiff had admitted that after the accident, he did not inform the 1st Defendant that the lift door was out of order. If indeed the lift door was out of order, and as a result of that he had been injured, it is very unusual for someone injured or hurt by this not to report this to the building management or to his employer. It seems that the lift was not thereafter unused as there was no mention of that by the Plaintiff who had to do two further rounds of deliveries of cake/bread trays back to the 1st Defendant’s premises after the accident. There was no mention that he did not take the lift on those two further rounds or that he took the stairs.

60. According to the evidence of the 2nd Defendant’s witness Mr. Koo Hung Hing, there has been no record of any complaint related to the malfunction of the lift door on the date of the accident being 4th April 2001. The 3rd Defendant with whom the Plaintiff had a maintenance contract for the lift had a 24-hour service for repair and maintenance of lifts. Were there any malfunction of the lift, the caretaker would immediately telephone this service of the 3rd Defendant. There has been no service of the lift between 23 March and 6 April 2001 when routine maintenance checks were made.

61. Mr. Huen Wah Sang an Area Manager of the 3rd Defendant gave evidence to say that there was no report of any accident caused by the lift in the Building on the 4 April 2001. There is a logbook recording incidents related to the lift of the Building. The logbook showed that Engineers performed routine checks of the lift at the Building on 23 March 2001. Save that it was recorded that there was a crack in the landing door panel and repairs were carried out, there was no other unusual finding. The logbook recorded that “lubrication was applied” to the lift. On the 6 April 2001 their Engineer attended the Building to perform a routine check of the lift. There was no unusual finding and the logbook merely recorded “lubrication was applied”. It would therefore seem that there was no record of the lift door having failed to operate normally. There was no repair done to it.

62. From the aforesaid evidence, it is highly unlikely that the open switch of the lift was not operating normally on the 4 April 2001. As it is the only lift in the Building and is a goods/passenger lift, the operation of the open switch is extremely important to delivery workers. It is highly unlikely for there to be no complaint of this were the open switch not working during this time. In my view, it is highly unlikely that the accident was caused by the malfunction of the open switch of the lift.

63. With reference to para 12 (d) of the Amended Statement of Claim, the Plaintiff’s Counsel submits that the 2nd Defendant owed a duty to ensure that the building they own is reasonably fit and safe for use. This meant that they owed a duty to ensure that the equipment used thereat, is as good as reasonable care and skill can make it. He submitted that according to the 3rd Defendant’s supplemental witness statement, the reopening device of the lift when the open switch was pressed would be neutralized within 50 mm of the last open section of the closing door. It is not disputed that despite this, the reopening device of the lift met the Government safety standards.

64. Mr. Huen, the 3rd Defendant’s witness stated that the safety edge and corresponding open switch would not operate if he put his little finger in the door at the last 50 mm part of the door at the end of the closing door. He further stated that when he put his whole hand there, the switch would not be able to stop the lift door from closing.

65. The Plaintiff’s Counsel submitted that the 2nd Defendant had the duty to have the lift updated so that the lift doors are fitted with an infrared safety device, as the reliance upon a “safety edge” was not sufficient. Mr. Huen stated in para 7 of his Supplemental Witness Statement that,

“The safety edge is not as sensitive as the infra red safety devices commonly used in newer passenger lifts these days”.

66. The common duty of care is defined in Section 3(2) of the Occupier’s Liability Ordinance as 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. In The Law of Tort in Hong Kong by DK Srivastava & AD Tennekone, at page 313 in the 2nd paragraph under the heading “General principles” it is stated,

“At common law, as we have already mentioned, the degree of care varied depending on the class to which the visitor in question belonged.. . Accordingly, the degree or standard of care must vary with the changes in the circumstances. What may be reasonable in one situation may not be so in another.. . Whether or not the occupier has breached his common duty of care is a question of fact. It is determined by applying the same tests as may be applied in the case of a breach of the general duty of care. For example, the courts will inquire into such matters as foreseeability of the occurrence of the injury, (see Chordas v Bryant (Wellington) (1988) 91 ALR 149), the risk of greater injury if caused, the cost of avoiding such injury, the utility of the defendant’s act, and the frequency of accidents causing such injury… By the same token, the occupier is not required to guard against improbable risks.”

67. The aforesaid principles will be applied to the facts. The principles would be applied to the scenario that the accident most probably was caused because the hook was hit by the door at the last 50 mm of the end of the closing door when the open door safety device was neutralized. It seems that there is no other record of such an accident having taken place in the Building. The accident that happened is in the nature of a freak accident or an unusual accident where a hook had inexplicably got in between the last 50 mm of the end of the closing door. The possibility of such an accident is most unusual. It seems to me that an accident of this type is not easily foreseeable. Although there is no evidence of the costs of installing an infrared safety device to the lift door, nor is there evidence as regards whether this is possible without the need to install a new lift, it is highly likely that this would be costly. I have regard to the fact that the present device of a safety edge device is still within the Government approved safety standard. Having considered the aforesaid I find that the 2nd Defendant has not breached the common duty of care by failing to have the lift updated as particularized in paragraph 12 (d) of the Amended Statement of Claim. I am of the view that the 2nd Defendant has taken reasonable care to see that the Plaintiff was safe whilst using the lift.

68. I therefore find that the case against the 2nd Defendant has not been established.

The Plaintiff’s Case against the 3rd Defendant

69. I have found that the Plaintiff has not established that the open switch of the lift door was out of order. There is no evidence of failure of the 3rd Defendant to properly maintain the open switch of the lift door. In relation to particular (f) of para 13 of the Amended Statement of Claim which states, “Failing to inform the 2nd Defendant that the lift needed updating”, I accept the evidence of Mr. Huen that within the terms of the maintenance contract the 3rd Defendant had no duty to advice the 2nd Defendant of the need to update the lift. Further as I have found that the 2nd Defendant has not breached the common duty of care by failing to have the lift updated, consequential to that the 3rd Defendant has not been negligent in failing to give the advice to the 2nd Defendant to update the lift.

70. I therefore find that the Plaintiff’s case against the 3rd Defendant has not been established.

71. I dismiss the Plaintiff’s claim against the 1st, 2nd and 3rd Defendants. I grant an order nisi for costs of the action to the 1st, 2nd and 3rd Defendants to be taxed if not agreed with Certificate for Counsel. I grant an order nisi that the Plaintiff’s own costs be taxed in accordance with the Legal Aid Regulations.

C. B. Chan

District Judge

Representation :

Mr. Nicholas Pirie instructed by Messrs. Huen & Partners for the Plaintiff.

Mr. Joeson Wong instructed by Messrs. Chong & Partners for the 1st Defendant.

Mr. Louie Chan instructed by Messrs. Wong & Poon for the 2nd Defendant.

Ms Joanna Molloy instructed by Messrs. Deacons for the 3rd Defendant.