###### DCPI 228/2004

### IN THE DISTRICT COURT OF THE

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**PERSONAL INJURIES ACTION NO. 228 OF 2004**

**--------------------**

##### BETWEEN

## TO SIN CHING Plaintiff

### and

#### MTR CORPORATION LIMITED

#### trading as MTR Corporation Defendant

**--------------------**

Coram: H.H. Judge Chow in Court

Date of Hearing : 6th and 7th April 2005

Date of written submission : 5th May 2005

Date of handing down of Judgment : 6th July 2005

Judgment

1. This is an application by the Plaintiff for compensation due to injuries suffered by her at an accident at the Tseung Kwan O MTR Station on 5th April, 2003, in which she sustained injury on her right index finger (“her finger”). On that day after she had used the toilet in the mess room of the MTR Station her finger was injured. In the Statement of Claim she pleaded that when she was leaving the washroom, her finger was crushed by the washroom door, but she did not specify how it was crushed. In her witness statement dated 1st March, 2004, she said that when she was leaving the toilet her finger was trapped by the closing door, that the accident was caused by the heavy closing door, and that the valve door closer caused the door to close in a very short period of time. She did not specify how her finger was trapped. She also did not specify which part of the door trapped her finger.
2. It is not disputed that her finger was crushed by the closing door. This could only have been caused when her finger was caught between the edge of the closing door (“the door edge”) and the edge of the door frame. Before the accident she used to use her right hand to pull the handle to open it. She used to use the toilet quite often before the accident.
3. In examination-in-chief, she said that the door closed too quickly, and her hand was trapped. She said that she could not recall if she used both hands or one hand to pull the handle of the door. She repeatedly said that due to the lapse of time she could not recall how she pulled the door. When asked if the door closed continuously, she said that she did not pay attention. She turned her body diagonally because the door was too heavy.
4. She opened the door by pulling the handle as depicted by a need circle marked at P.169 of the Trial Bundle. Because of the long lapse of time she could not remember if she used her right hand or left hand to pull the handle. When she went out she used her right knee to support the door. She was a right-handed person. It is not known whether she used both hands or only one hand to pull the door handle. If she only used one hand to pull the door handle, it is not known which hand she used. If she used her right hand to pull the door, her right hand could not have been trapped between the door edge and the door frame, because right after that moment her body was between the door edge and the door frame. Up to the moment she used her right knee to support the door, it must be that her finger had not been injured. At that moment her body was between the door edge and the door frame. From this moment to the time when her finger was injured, what really happened? There is a complete lacuna of evidence in this regard. The door could only be opened to her right. If she used her left hand to pull the door handle, it would be very awkward for her to do so, particularly when she was a right-handed person. If she really did so, what happened which caused the injury to her finger? Again, there is a complete lacura of evidence in this respect.
5. If she used both hands to pull the door handle, the next thing which happened is that she used her right knee to support the door. Then it is difficult to see how her right index finger could be trapped between the door edge and the door frame.
6. Madam Leung Kit Sum is the witness for the Plaintiff. She did not see how the accident happened. Her evidence does not advance the Plaintiff’s case any further.
7. The Plaintiff’s Counsel submitted that “In fact whether she used her right hand or both hands when she initially grabbed the handle and pulled the Door open makes no difference. She also had to support the door. As she left the washroom she would naturally release hold of the door handle. As she stepped out of the washroom her right hand was left a little behind her and was caught and trapped in the closing Door near the lock. That is the most natural course of events. She was holding supporting the door trying to escape through the gap before the Door slammed shut. Naturally her right hand would be the last part of her body to exit but the Door closed with such speed her hand did not quite get clear.” But that is not the Applicant’s evidence. She did not say that when she stepped out of the washroom her right hand was left a little behind her. If that really had been the situation then her right palm, and not her finger, would have been trapped by the door. Her right palm, instead of her finger, would have been injured. But she never complained that her right palm was caught by the door. The scenario depicted by the submission is not supported by evidence.
8. At the moment the Plaintiff used her right knee to support the door, her finger had not been trapped yet. Her body was then diagonally to her right. She was then at the door edge. She did not go on to describe what happened next. Her intention was to go out of the toilet. So she had to move her body forward in order to leave the toilet. Her body, which was diagonally to her right, would naturally turn a bit to her left, in order for her to move forward to leave the toilet. If that is the situation, her finger would be far away from the edge of the door and the door frame. That being the case, her finger could never have been trapped by the door.
9. When her right knee was supporting the door, her finger could not be trapped, because the knee would keep the door edge away from the door frame. Her finger must have been trapped at the time after she had discontinued supporting the door by her right knee. But what happened next which caused the injury to her finger? If her finger was trapped at the moment when she was leaving the door, her finger could never be trapped without her right palm being trapped as well. This is because she right palm would be placed nearer to the gap between the door frame and the door edge than her finger. But there is no evidence that her right palm was trapped as well.
10. In conclusion I find that based on the evidence adduced by her, the Plaintiff simply fails to discharge her burden of proof, on the balance of probability, that the Defendant was liable for her injuries either under the common law or under the Occupiers Liability Ordinance.
11. In her written submission, the Plaintiff’s counsel objected to the admissibility of a number of documents already adduced as exhibits in Court. Her objections cannot be entertained. The objections should have been made when the documents were produced as evidence during the trial, and not afterwards.
12. By reason of the matters aforesaid, I dismiss the Plaintiff’s application.

Costs

1. I make an order nisi for costs, to be made absolute in 14 days’ time, that the Plaintiff is to pay costs of the Application to the Defendant, to be taxed, if not agreed, with certificate for counsel. The Plaintiff’s own costs to be taxed in accordance with the Legal Aid Regulations.

(S. Chow)

District Judge

The Plaintiff: represented by Miss Liza Jane Cruden, instructed by M/S. Oldham, Li & Nie, Solicitors.

The Defendant: represented by Mr. C.K. Wong, instructed by M/S Deacons, Solicitors.