## DCPI 1020/2004

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1020 OF 2004

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##### BETWEEN

## NG MUI WAH Plaintiff

and

#### HONG YIP SERVICE COMPANY LIMITED Defendant

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

Dates of Trial : 15th , 16th & 20th September 2005

Date of Handing down Judgment : 29th December 2005

J U D G M E N T

1. The Plaintiff was residing at Hing Lam House, Kwong Lam Court, Shatin. It is an undisputed fact that the Defendant was appointed by the Hong Kong Housing Authority as the sole sub-manager to maintain, repair, renovate and manage Kwong Lam Court. Kwong Lam Court consists of three buildings, one of which is Hing Lam House (hereinafter referred to as “the said Building”. The only mode of access from the street to the said Building was by way of the entrance at the ground floor. There was a slanting metal plate ramp placed outside the entrance to the said Building. The Plaintiff’s pleaded case shows that at about 8 p.m. on 31 October 2001, while the Plaintiff was leaving the said Building by walking on the ramp, she slipped and fell on the surface of the ramp. As a result the Plaintiff sustained injuries. She claims the accident was caused by the negligence of the Defendant.

2. The Particulars of Negligence of the Defendant pleaded by the Plaintiff in the Statement of Claim stated in paragraph 3 a. to h. are:

1. Causing or permitting the ramp to be or to become or remain a danger to the visitors or residents of the said Building.
2. Causing or permitting the visitors or the residents to walk and/ or step on the slippery surface of the ramp.
3. Causing or permitting the surface of the ramp to become or remain in a dangerous slippery, old, worn out or defective condition.
4. Failing to maintain or repair or replace the ramp in a non-slippery or dangerous condition.
5. Failing to institute or enforce any or any adequate system of inspection and maintenance of the ramp.
6. Failing to place/erect warning sign at the scene to remind visitors or residents of the said Building of the slippery surface of the ramp.
7. Failing to cause the lighting to be adequately maintained at the scene.
8. Failing to install handrail or any device for the visitors or residents to secure their step while walking on the surface of the ramp.

3. The Defendant admitted that there was such an accident, but denied that it was negligent. Further, or in the alternative, the Defendant alleged that the accident was caused by or contributed to by the negligence of the Plaintiff.

4. The Particulars of the Plaintiff’s negligence pleaded by the Defendant in the Defence are:

1. Failing to pay any or any sufficient attention when she was leaving the said Building
2. Failing to keep her balance when she was walking on the ramp.
3. Walking too fast in the circumstances.
4. Overbalancing, losing her balance or stumbling in some manner unknown to the Defendant and falling by reason thereof.
5. Failing to keep any or any proper lockout.
6. In the premises, failing to take any reasonable care for her own safety and/or exposing herself to a risk of damage or injury of which she knew or ought to have known.

The Issues

5. Although in the Plaintiff’s pleaded case, the Plaintiff pleaded various particulars of the negligence of the Defendant. Yet in evidence, the Plaintiff and Mr. Chiu Kin Chor only gave evidence pointing to the slippery surface of the ramp. The main issue to be addressed first and foremost is the First Issue hereunder. If that is found in the positive, then I shall address the second and third and other issues.

1. Whether the surface of the ramp was slippery at the material times.
2. Whether the ramp was a danger to the visitors.
3. Whether the accident was caused by the negligence of the Defendant.
4. Whether the accident was caused by or contributed to by the Plaintiff’s negligence.
5. If the Defendant is liable the quantum of damages.

The Evidence

6. The Plaintiff’s evidence came from herself and Mr. Chiu Kin Chor, who was the friend the Plaintiff was on way to meet, when she met with the said accident. The Defendant called one witness, Mr. Lam Shing Kee who was a technician working for the Defendant at the material time.

The 1st Issue

7. The relevant facts show that the Plaintiff was aged 41 at the time of the accident. She stated that since September 2001 she had been working as a marketing assistant in Great Expect Development Limited. At the time of the accident she had arranged to meet Mr. Chiu Kin Chor her colleague whom she had to hand over some documents related to work at 8 p.m. that day outside Welcome Supermarket. Welcome Supermarket was about 80 yards from the entrance of the said Building. She stated that at the entrance of the said Building is a metal ramp made by three iron plates. It was used to bridge the height at the top of the step at the entrance to the level ground at the entrance. The ramp looks like the one in the photograph shown in Exh P2 although she says the one in Exh P2 is not the same one as at the date of the accident.

8. In her witness statement and in her Statement of Claim it was stated that on the 31 October 2001 at about 8 p.m. she left her home and went through the lobby of the said Building through the entrance and walked on the ramp. She walked down the left side of the ramp. The path she took when she walked down the left side of the ramp is delineated by her by a black line marked on Exh P2. It is a line from the lobby of the said Building to the left of the ramp outside the said Building. The part where she fell is marked with a black cross.

9. The Plaintiff stated that at the time of the accident the weather was fine, the surface of the ramp was dry but it’s appearance was very glossy and shiny. The part of the ramp which had worn out and corroded looked like a mirror. It was not covered by any anti-slip material. She stated that there was not enough light at the entrance. Besides, there was no notices or words reminding residents and visitors that the ramp was slippery. She stated that all anti-slip material and the steel studs on the ramp had been worn out and corroded. The Defendant did not take any action to remedy this.

10. She stated that the surface on the left side of the ramp where she fell had no anti-slip tape. She said that the lighter colour of the surface on the left side of the ramp where she fell is bare metal surface. The light coloured surface as shown in the photograph in Exh P2 shows that it was not covered by anti-slip adhesive tape. She said that it was the darker parts of the surface in the zebra type markings on the centre part of the ramp has the anti-slip adhesive tape.

11. She stated that she was wearing rubber slippers when she walked out of the said Building. In oral evidence she stated that she left her home in the said Building at 7:30 p.m. and not 8 p.m. to meet Mr. Chiu Kin Chor. She denied that she was in a hurry when she walked out. Some how, in my view, the Plaintiff was deliberately trying to correct her pleaded case and her witness statement where she stated that she left her house at 8:00 p.m. By saying that she left at 7:30 p.m. she gave the impression that she was not in a hurry when she left the said Building and had plenty of time to get to the meeting location 80 meters away from the entrance of the said Building. I had the distinct impression that she was not truthful when she said that. I believe that she left her home in the said Building at about 8 p.m. as pleaded and as stated in her witness statement and hurried out of her home. Hence, instead of walking down the centre of the ramp and then turn left at its bottom, she was in such a hurry that she walked on the left side of the ramp which was more steep to cut the corner to go to the location where she met Mr. Chiu. It seems that she did not even have time to change into shoes and just wore rubber slippers to rush out of her house. If she had plenty of time she would not have to do that. I therefore do not believe that she left her home at 7:30 p.m. when the location where she was to meet Mr. Chiu was only 80 meters from the entrance of the said Building. She stated that she gave herself plenty of time because she allowed for time to wait for the lift. However, I believe she was covering up the fact that she was in a hurry when she said that.

12. Under cross-examination, it became clear, that immediately after the accident, when the Plaintiff saw the security guard of the said Building, she did not tell the security guard that she slipped on the surface of the ramp because it was slippery. Nor did she tell Mr. Chiu Kin Chor or anyone that she had slipped on the ramp because it was slippery when she fell. She said that she had fallen half a year earlier on the ramp because it was slippery. When she was asked, since when had she noticed that the ramp was slippery, she said she was not clear. She did not pay attention to it. It was put to her that she fell because she was in a hurry. She made a wrong step and fell. She disagreed. It was suggested to her she was walking in a quick pace. She did not agree.

13. Mr. Chiu Kin Chor said that after the accident the Plaintiff went to meet with him and told him she had slipped and fell. He saw that she was injured. He suggested that she reported it to the Police and she took him back to the place of accident to request the management office to report the matter to the Police. He stated that he saw that the left side of the iron ramp was glossy without any anti-skid material covering on it. He stated that there was no anti-slip material on the ramp. He said the left side of the ramp was slippery and potentially dangerous. He walked on it after the accident on the same day and found it quite slippery. He said that he had noticed the situation some months before but he did not complain or report to anyone. He stated that within roughly one month after the accident the Defendant replaced the iron plated ramp outside the entrance to the said Building.. He stated that he did not know whether the Plaintiff or anyone else had slipped on the ramp before. He supported the Plaintiff’s evidence that he was sure that the iron ramp shown in Exh P2 or the middle photograph in page E15 of the Bundle is not the same one on which the Plaintiff fell. Neither the Plaintiff nor Mr. Chiu had ever told the Defendant that the ramp surface was slippery before the date of the accident. In relation to the lighting outside the said Building, he said that there was an overhanging light outside the entrance. The lighting is acceptable. It is neither bright nor dim. When he said it was not sufficient, he meant it was not that bright but one can see the things clearly.

14. However, Mr. Lam Shing Kei stated that the lighter coloured surface of the ramp as shown in Exh P2 is the surface that has the anti-skid adhesive tape on its surface. He stated that the ramp shown in Exh P2 is the same ramp as the one on which the Plaintiff walked on the date of the accident. He stated in evidence that he himself had stuck the anti-slip adhesive tape thereon in January 1999. He annexed the work orders for that job to his witness statement. He stated that since the date of the accident nothing had been done on the surface of the ramp. He stated that the surface of the ramp was not slippery from inspection of it on the date following the date of the accident. He had to walk on the ramp every day at work and he found that it was not slippery when he walked on it. However he admitted under cross-examination that he wore work boots when he walked on the ramp and residents would be wearing a range of shoes or even sometimes slippers but he did not agree under cross-examination that residents mostly wore slippers when they walk on the ramp. I tend to agree as residents who go to work or go to school, would not wear slippers. He stated that he was asked to go to inspect the ramp the date after the date of the accident. He did so but he did not keep a written record of the result of the inspection. He stated that he did not find the surface to be slippery. He spoke from memory because he did not keep any written record. He said that he did not know of any other incident of a fall on the ramp outside the said Building.

15. The Plaintiff’s Counsel in cross-examination of Mr. Lam put to him that it has been 2-3 years since the time he applied anti-slip adhesive tape on the surface of the ramp and there must be wear and tear on the anti-slip adhesive tape and also on the metal studs on the surface of the ramp. He agreed there would be some slight wear and tear but he did not agree that the ramp was slippery.

16. I find Mr. Lam Shing Kei to be a credible witness. I find that he tried to speak the truth. I accept his evidence as reliable. I therefore find that there was anti-slip adhesive tape on the surface of the left side of the ramp where the Plaintiff walked. I find that the anti-slip adhesive tape was applied on the ramp surface by him, Mr. Lam Shing Kei, in January 1999. Since then there has been no change in the ramp nor is there any additional adhesive tape put on the surface of the ramp. I find that if there had been any change he is sure to notice it as he could see that it is different from the old one since he must be very familiar with it as he has not only walked on it almost every day at work but he had also worked on it having stuck adhesive tape on it. In his view the ramp surface was not slippery from inspection but he found it was not slippery when he walked on it but he wore work boots when he walked on it and he would not know whether it would be slippery if anyone wore shoes with other types of sole or for those who wore rubber slippers. I accept his evidence that there has been no record known to him of any other fall or slip on the ramp before this accident. .

17. In relation to whether the ramp is slippery, the burden of proving that it is slippery is on the Plaintiff. The fact that a fall occurred does not necessary point to the fact that the ramp was slippery and that the reason for the fall was because the ramp was slippery. The evidence that it was glossy, shiny and slippery, with no anti-slip material on the surface of the left side of the ramp was stated by the Plaintiff and Mr. Chiu Kin Chor. I do not accept that there was no anti-slip tape on the surface of the left side of the ramp as I accept the evidence of Mr. Lam that there was anti-slip adhesive tape on the surface of the left side of the ramp. I therefore do not accept that the left side of the ramp was glossy or shiny. I also do not accept the evidence of the Plaintiff and Mr. Chiu Kin Chor that the ramp at the time of the accident is different from that shown in the photo in Exh P2. I do not accept that the ramp had been changed a month after the accident and replaced by the one shown in the photo in Exh P2. It is clear that the ramp shown on the photo in Exh P2 is not new. It is not believable that the Defendant would replace the ramp with an old ramp and in the same design rather than another design. These suggestions are highly improbable. The photo in Exh P2 show that the left side of the ramp is neither glossy nor shiny and that there are studs on the iron surface. I accept the evidence of Mr. Lam that although the anti-slip adhesive tape was affixed on the ramp 2-3 years before the accident yet from his inspection of it on the day following the accident, he found that its anti-slip effect was not worn out although it would not be new as when it was first affixed on the surface. I find that as a technician, through visual inspection he is able to assess this. Further, there is no evidence of the how long the effectiveness of this type of anti-slip tape could last through use. The photo in Exh P2 shows that the anti-slip tape on the surface of the left side of the ramp is not torn or broken. I therefore find that the evidence of the Plaintiff and Mr. Chiu Kin Chor that the surface of the ramp was glossy and shiny, and the evidence of the Plaintiff that it was worn out and corroded and looked like a mirror could not be true. I found that the Plaintiff left her home at 8 p.m. or close thereto and hurried out of the entrance of the said Building and stepped onto the left side of the ramp which is steeper and did not slope gradually as on the middle of the ramp she took this route because she was in a hurry. She fell because of a number of possible reasons such as falling because she failed to pay attention to where she was walking, walking too fast, wearing rubber slippers, stumbling when she took the wrong step. I find that the Plaintiff has not established on a balance of probability that the fall was caused by the slippery surface of the left side of the ramp where she fell.

18. Having found that the ramp is not slippery, I do not find that the Plaintiff has established the 2nd Issue namely that the ramp is a danger to visitors. The Plaintiff has not adduced other evidence to substantiate that the ramp is a danger to visitors apart from the allegation that its surface is slippery. In view of this, I also find that the Plaintiff has not established negligence on the part of the Defendant.

19. I therefore find that the Plaintiff’s case fails and I have to dismiss her action.

20. The Plaintiff’s claim is dismissed with costs of the action to be paid by the Plaintiff to the Defendant to be taxed if not agreed with Certificate for Counsel. The Plaintiff’s own costs be taxed in accordance with the Legal Aid Regulations.

( C. B. Chan )

District Judge

Representation :

Ms. Carol S.K. Fung instructed by Messrs. Yip & partners assigned by D.L.A. for the Plaintiff.

Mr. H.Y. Wong instructed by Messrs. Woo, Kwan, Lee & Lo for the Defendant.