DCPI 104/2002

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 104 OF 2002

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BETWEEN

LEUNG CHI PANG MICHAEL Plaintiff

and

CHAN MING FOO 1st Defendant

OCEAN KING ENGINEERING LTD 2nd Defendant

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Coram : H.H. Judge Muttrie in chambers

Date of Hearing : 23rd January 2003

Date of Ruling : 23rd January 2003

# Reasons for Ruling

There is no dispute that the 1st defendant was driving the 2nd defendant’s vehicle, when the accident occurred. The plaintiff claimed that the 2nd defendant was vicariously liable. The defendants filed separate defences. In the 2nd defendant’s defence, it admitted that the 1st defendant was driving its vehicle, but denied vicarious liability. The plaintiff requested further and better particulars. The 1st defendant said that the 1st defendant was driving the vehicle as an employee of one Sunshine Heavy Crane Co. Ltd. in the scope of his employment but was not a servant, employee or agent of the 2nd defendant. The 2nd defendant said that it had no precise knowledge of the capacity in which the 1st defendant drove its vehicle and did not know whether or not he was driving outside the scope of his employment or authority.

2. Apart from the two defences and answers to requests for further and better particulars, all other documents were filed by the same solicitors on behalf of both defendants. The solicitors act on the instructions of the 2nd defendant’s insurers.

3. The whole matter was nearly settled by consent. The defendants’ solicitors put forward a revised draft consent summons which provided simply for the defendants to pay the plaintiff’s costs of the action. However when the plaintiff’s solicitors tried to follow this up they got no further response.

4. The situation here is very similar to that in the various cases cited viz. **Florence Siu Hing Woo v. Wong Shing Cheong and Anor.**, HCPI 1301 of 1996, **Leung Chung Ngar v Yeung Man Wai & Anor.**, HCI 63 of 1999, and **Fung Bo Ha v Tang Chik Chung & Ors**., HCPI 1368 of 1999, where Seagroatt J took a simple and practical approach. He took the view that the only real issue throughout had been one of negligence, where the case including the trial had been conducted on the basis that vicarious liability was in practice irrelevant. It is true that the question of vicarious liability is still alive in this case, but I have noted that the 2nd defendant seemed to be quite unable to say in what capacity the 1st defendant drove its vehicle and I further note that although the trial is listed for next week there is no witness statement by the 2nd defendant to make its position clear.

5. In practical terms, the question of vicarious liability seems to be an irrelevance here. Further, in practical terms, the actual costs of work done by the solicitors which is actually referable to the 2nd rather than the 1st defendant should be quite small. All the costs are being met by the same insurer. In the circumstances I take the view that the question of vicarious liability is an empty one. The proper course is to allow the claim against the 2nd defendant to be discontinued with no order as to costs between the plaintiff and the 2nd defendant. As to the costs of this application I think the defendants must pay them; there was a simple, practical way out of this matter, by following the lead given in Seagroatt J’s cases, and they did not take it.

6. There will be an order in terms of the plaintiff’s summons as amended in para 6, to make the costs payable by both defendants.

(G.P. Muttrie)

District Judge

Mr. P.W. Fong of M/s Lau, Chan & Ko for Plaintiff

Ms. M. Chak of M/s Henry H.C. Wong & Co. for Defendants