DCPI 97/2002

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 97 OF 2002

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BETWEEN

HUNG YIN MUI Plaintiff

and

SUN POWER ELECTRICAL COMPANY 1st Defendant

FREELAND ELECTRICAL COMPANY 2nd Defendant

LIMITED

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Coram : Her Honour Judge Yuen in Court

Date of Hearing : 13-14 May 2003, 16 May 2003 and 19-20 May 2003

Date of Handing Down of Judgment : 13 August 2003

# Judgment

This is a personal injury compensation claim. Parties have agreed, assuming 100% liability on the part of the defendants, that the plaintiff’s quantum of damages should be assessed at HK$200,000.

2. The issue on trial is a question of liability between the plaintiff and the two defendants and the contribution, if any, between D1 and D2 in respect of the damages to be awarded to the plaintiff.

3. The plaintiff is a housewife. D2 is the sole agent of a brand of cooking hood manufactured by a mainland producer. D1 is the retail seller of the cooking hood imported by D2.

4. The plaintiff bought a cooking hood from D1 on 20/1/01 for HK$1600. The cooking hood was delivered to the plaintiff on 22/1/01 and was installed by the staff of D1 on the same day.

5. The events happened in the afternoon on 21/5/01, about 4 months after the cooking hood was installed. While the plaintiff was cooking, the glass panel fell. The glass landed on the plaintiff’s right foot and almost severed the tendon on her right foot.

6. The disputes before me between the consumer plaintiff, the importer D2 and the retailer D1 are the factual causation of the injury, the cause in bringing about the fall of the glass panel, the standard of safety expected in the installation, usage, the issue of instructions for use and the cleaning of the glass panel of the cooking hood in question.

7. Neither the plaintiff nor the defendants sought to adduce any technical or medical evidence to assist this court to determine the factual causation of the fall of the glass panel and the foot injury. All that the parties have sought to do was to invite this court to draw inference from the evidence of the factual witnesses on what would most likely be the cause of the events.

8. The plaintiff is inviting this court to accept the glass panel fell through the faulty design of the hood and/or the faulty installation of D1. The defendants, on the other hand, are hypothesizing on the cause of the fall of the glass panel and urge the court to accept the glass fell through the negligent cleaning or the negligent handling of the hood by the plaintiff. In addition it is D2’s contention that D1 has negligently installed the hood which contributed to the fall of the glass panel.

***The Plaintiff’s Case***

9. It is the plaintiff’s case that the glass fell whilst she was wiping and cleaning the glass panel with a piece of cloth in the course of her cooking. It is her contention that the glass fell on account of the faulty design of the cooking hood. She denied ever dismantling the cooking hood for the purpose of cleaning it. Should this court accept factually that the glass fell through no negligence of the plaintiff, res ispa loquitur the responsibility of disproving negligence falls upon the defendants.

10. The plaintiff’s case against D1 is as follows:-

1. negligent installation of the hood by D1’s employee;
2. breach of an implied condition of purchase in that the hood must be of a merchantable quality within the Sale of Goods Ordinance Cap 26. The falling of the glass panel showed res ispa loquitur that the cooking hood was neither safe, durable nor free from defect;
3. failure to take reasonable steps to check and ensure the safety of the hood when delivered to the plaintiff;
4. failure to take reasonable steps to ensure that the glass panel of the hood was properly installed;
5. failure to give sufficient or effective warning or notices to the plaintiff or to draw to her attention:-
   1. the possible defects of the glass panel;
   2. the safety precautions in the use of the glass panel;
   3. the likelihood of the glass panel falling off in the course of normal cleaning unless handled in a particular manner;
   4. the maintenance of the hood, in particular, about the cleaning of the glass panel in question.

11. Regarding D2, the plaintiff submits that being an importer and distributor of the hood, D2 breached his duty of care owed to the plaintiff in:-

1. failing to take reasonable care to check and ensure the hood it imported and distributed was safe for normal usage by the ultimate user;
2. failing to ensure that the hood was safe for normal usage by the ultimate user in that D2 has failed to:-
   1. give any sufficient or effective warning to the ultimate consumer of the possible defect of the glass panel of the hood in the instruction guide known as “Owner’s Manual”;
   2. give any sufficient or effective warning to the user of the safety precautions in the use of the glass panel of the hood;
   3. warn the user of the likelihood of the glass panel falling off in the course of its cleaning unless the glass panel was handled in a specific manner;
   4. advise the user of the method of the cleaning of the glass;
   5. warn the user of any danger which is known or which the manufacturer could not reasonably have expected the recipient to know;
   6. contemplate the falling of the piece of glass from the hood posing a risk of serious injuries to the users of the hood;
   7. include in the “Owner’s Manual” the instructions about the mechanism of the glass or any warning against the risk of the glass falling when being handled improperly.

***The 2nd Defendant’s Case***

12. D2 did not accept the plaintiff version of how the glass panel fell to hurt her foot and put the plaintiff to strict proof of the events of her foot injury.

13. In D2’s contention, the plaintiff’s injury was caused mainly by the negligence of the plaintiff in :-

1. cleaning the hood without using the method of cleaning set out in the “Owner’s Manual”,
2. removing and repositioning the body of the hood when the plaintiff knew or ought to have known that it was unsafe to do so; and
3. failing to flip over the front glass from its upright position to its horizontal position to enable the glass to rest properly underneath the top cover of the hood.

14. It is also D2’s suggestion that the glass panel could have been shattered by glass bottles falling from the cabinet above the hood as a result of the vibration of the exhaust pipe of the cooking hood which was installed inside the cabinet above the cooking hood. Alternatively the plaintiff could have accidentally knocked onto the glass panel in the course of her cooking causing the glass panel to shatter and fall.

15. It was D2’s evidence that over 50 of the same model of cooking hoods had been sold to other consumers and there was not a single report of injury caused by the falling of the glass panel from other users. The plaintiff was the only user who suffered injuries as a result of the glass panel falling. D2 has exercised its statutory duty of care by procuring a product certificate to show that the product was safe for use.

16. In D2’s contention, the cooking hood is safe for use in that :-

1. the strip of glass is suitable for heavy duty usage and is capable of withstanding heat in normal usage;
2. the strip of glass is securely fastened to the the two sides of the body of the hood which cannot be removed without dismantling the body of the hood;
3. the hood was so designed that the glass panel can easily be positioned in its horizontal resting position;
4. the cleaning of the ventilator does not require the removal of the glass panel from the hood;
5. the cleaning of the glass panel was a simple mechanical operation which requires no specific instructions;
6. the cleaning of the glass panel would not have disengaged the panel to cause it to fall; and
7. a product certificate has been issued by the Hong Kong Safety Institute Limited to confirm the safety of the cooking hood.

17. As to the contribution between D1 and D2, it was D2’s contention that 2 screws were missing from the 2 triangular pieces underneath the rectangular supporting beams of the glass panel. The 2 missing screws suggest D1 has failed to properly install the hood, resulting in instability of the cooking hood, giving rise to vibration motion causing the glass bottles from the cabinet above to fall out.

***The 1st Defendant’s Case***

18. It is D1’s case that they deny the glass panel fell off in the manner described by the plaintiff. According to the testimony of Mr. Chan, the technician of D1, he came across the plaintiff about a month after the incident when he was delivering a television set to the plaintiff. During this encounter the plaintiff told him that the glass panel fell off when the plaintiff was dismantling the parts of the hood for cleaning.

19. Alternatively D1 contended that the glass fell through the sole negligence of the plaintiff, as particularized below:-

1. the plaintiff improperly cleaned the hood causing the glass panel to fall;
2. the plaintiff improperly dismantled parts of the hood for the purpose of cleaning the hood, causing the glass panel to fall.

20. D1 denies failure to properly install the triangular piece. In D1’s contention the 2 missing screws from the triangular pieces suggested that the plaintiff could have dismantled the triangular pieces or the rectangular supporting beams for cleaning.

21. Regarding the issue of contribution between D1 and D2, it was D1’s contention that D2 is liable to D1 for breach of an implied condition of merchantability under the Sale of Goods Ordinance Cap 26.

***The Configuration of the Glass Panel***

22. The glass panel in question measured 27.25 inches in length, 2.75 inches in width and 1.25cm in thickness, and is a rather weighty piece. At each end of this glass panel is a plastic bracket with a plastic stud sticking out. The plastic studs, each measured 0.5cm (roughly 0.2 inches) in diameter and 0.6cm (0.24 inches) in length, serve as a hinge for the purpose of being fitted onto 2 grooves to enable movement of the glass panel. Two rectangular plastic supporting beams are screwed onto the two sides of the body framework of the cooking hook. On each of these 2 rectangular plastic supporting beams was a groove. The plastic studs at the ends of the glass panel are fitted onto the grooves of these 2 rectangular plastic supporting beams to enable the glass panel to be shifted from a horizontal position to an upright position. Below each of the 2 rectangular plastic supporting beams is a triangular plastic piece which is fitted onto the rectangular beam by 2 screws. The triangular plastic pieces covered the rectangular supporting beams but have no supporting function for the glass panel.

23. The glass panel is a retractable piece which is installed at the front of the cooking hood to serve the function of a protective shield. The glass panel prevents the water vapour and the hot oil droplets from escaping or getting onto the cook.

24. The glass panel can be moved from its resting position to its upright position by shifting the glass panel along the groove of the 2 rectangular plastic supporting beams. The 2 plastic studs at the end of the glass panel serves as hinges to enable motion along the grooves. As demonstrated by the technician of D1 in court, the movement of the glass panel along the grooves is not a smooth one; a user is required to use some force to mobilize the glass panel.

25. The glass panel can be positioned either in an upright position or in a horizontal position. A horizontal resting position of the glass panel means the panel is right underneath the body of the hood when the glass panel is not in use. The glass panel in its upright vertical position serves as a protective shield for the eyes of the cook.

***Factual Causation of the fall of the Glass Panel***

26. Factually there was no dispute that the hood has been installed and used by the plaintiff for 4 months before the accident happened.

27. More than a year after the accident, the technicians of D1 and D2 carried out a joint inspection of the cooking hood on 25/9/02 and found 2 screws missing from the 2 triangular pieces underneath the rectangular supporting beams, and a broken stud was found in the groove of the right hand rectangular support beam of the hood.

28. I accept the glass panel was intact when the cooking hood was delivered to the plaintiff’s house on 22/1/01. The hood was installed and has been put to regular use for 4 months by the plaintiff.

29. As to whether 2 screws had been properly installed in the triangular pieces or whether the plaintiff has, in an attempt to clean the interior of the cooking hood, removed the triangular pieces is a red herring, since the 2 triangular pieces have no supporting function for the glass panel. To speculate and suggest that the 2 missing screws from the triangular pieces would have a casual link with the falling glass panel is far-fetched.

30. I accept the plaintiff’s evidence that she does not have sufficient knowledge to handle the mechanical aspect of the screwing or unscrewing of the screws from the hood. On the other hand it is totally inconceivable for one to accept her evidence that she would throw away a 4 months old stool simply because a screw has fallen out. It is probable that the plaintiff, her friends or other immediate members of her family have helped her in fixing the mechanical shortcoming of an instrument, equipment or appliance within her household.

31. Nevertheless whether the plaintiff had occasions of dismantling the hood for the purpose of cleaning the interior of the hood is not material. This is because, at the time of the joint inspection of the hood on 25/9/02 by both technicians of D1 and D2, neither technician detected any screw of the rectangular plastic supporting beams to be missing or loosened. The rectangular supporting beams were intact and firmly attached as at the date of the inspection as well as at the date of the trial when the cooking hood was exhibited in court. According to the defence witnesses the glass panel could not fall out of its own accord from 2 securely fastened supporting beams.

32. Both defendants suggested that the glass panel could have fallen out because the plaintiff or her family members have failed to fit the glass panel properly back into its grooves after dismantling the rectangular supporting beams for the purpose of cleaning. If the glass panel fell on account of the improper reinstatement of the panel onto the grooves, it is reasonable to expect the glass panel to fall en semble together with its brackets and the 2 plastic hinges intact. It would therefore be unlikely for a broken plastic stud to have been left in one of the grooves of the supporting beams.

33. I accept the plaintiff was injured by the falling glass panel which disengaged and fell when the plaintiff was in the course of cleaning it. Mr. Chan’s recollection that he was told by the plaintiff that the glass fell in the course of her dismantling the panel for cleaning was incorrect. I accept the cleaning of the panel with a piece of cloth is a reasonable method for cleaning. I accept there is no abuse of use of the hood by the plaintiff. The glass panel fell because the right side plastic hinge on the bracket, which enables the glass panel to move along the groove, broke. As to how and why the plastic hinge broke, there is no factual explanation.

34. The technician of D2 surmised the plastic stud broke when the glass panel fell of its own weight because the rectangular supporting beams were not properly reinstated after the plaintiff dismantled the supporting beams for cleaning. Not only is there no evidence to support the contention that the plaintiff had dismantled the rectangular supporting beams, the finding of the rectangular supporting beams being securely fastened is also contrary to the proposition that the rectangular beams were improperly reinstated. When the rectangular supporting beams are properly fixed there is no cause for the glass panel to fall of its own weight. The only probable cause for the fall of the glass panel is the breaking of the right hand plastic stud, leaving the glass panel with no support on its right.

35. There is no evidence before me that the glass panel broke because of impact with falling bottles from the overhead cabinet. If the vibration force of the exhaust pipe were so strong as to cause the bottles in the overhead cabinet to shift and fall, it would be unlikely for a consumer to accept such installation. Further if the vibration was strong, it was unlikely that the plaintiff would be able to use the cooking hood for 4 months without events. Also the medical report from the United Christian Hospital of 12/3/02 confirmed there was no foreign body found in the plaintiff’s wound. This is indicative of the fact that there was no glass fragment impregnation nor impregnation of foreign article in her wound.

36. There is no evidence before me that the plaintiff has injured her head on the day of the accident. If the plaintiff had accidentally banged onto the glass panel with such force to cause the glass panel to break and fall, it seems unlikely that there would be no corresponding injury on the plaintiff’s forehead. Such hypothesis is again without basis.

37. If the plastic stud broke of its own accord as a result of “material fatigue” or otherwise, the responsibility of providing a safe plastic hinge of the glass panel rests with the manufacturer and the seller of the product in question, unless such breakage could not reasonably be anticipated. No evidence was placed before me of testing done on the durability and suitability of the use of 2 relatively small pieces of plastic studs at each end of the glass panel as a hinge and support for a rather weighty piece of glass panel. D2 as the importer and D1 as the ultimate seller, have failed to satisfy this court, on balance, that the plastic studs were suitable for use as a hinge for the purpose of shifting the weighty piece of glass panel along the grooves of the supporting beams.

38. D2’s suggestion that the plaintiff has failed to shift the glass panel to its resting position is neither here nor there, for there is no evidence to suggest the shifting of the glass panel to its resting position would reduce the chance of the breaking of the plastic stud. If the placing of the glass panel at its resting position would reduce the chance of breaking of the plastic stud, such warning should have been included in the user manual.

39. There is no evidence before me that the hood was improperly installed. If the plastic stud were damaged in the cause of transport, it would be unlikely for the plaintiff to be able to use the hood for 4 months before the stud gave way. If the fall were caused by the improper installation, it would be incredible that the plaintiff would be able to use the hood without events for 4 months. The missing of the 2 screws from the triangular piece was not casual to the falling of the glass panel.

40. D2 has produced a product safety certificate issued by the Hong Kong Safety Institute Limited on 30/6/01. It could be seen from the certificate the applicable standards of safety being tested upon were those of electrical safety standards. There was no testing of the glass panel nor the durability of the plastic hinge holding the glass panel.

41. It was D2’s suggestion that the cooking hood was not under its control and management after the delivery of the cooking hood; hence the evidential rule of res ispa loquitur has no application here. I accept there was no abuse nor mis-use by the plaintiff of the cooking hood nor mismanagement of the supporting beams of the glass panel. *Evans v Triplex Glass [1938] 1 ALL ER 283* has no application and res ispa does apply.

42. There is no evidence before me to show the plaintiff has abused or improperly used the hood. The secured fastening of the rectangular supporting beam on the cooking hood supports the belief that the plaintiff has not mismanaged the support of the glass panel. I accept the glass panel fell through no fault of the plaintiff.

### Ruling on Liability

43. D1 and D2 should bear 100% liability in respect of the injuries sustained by the plaintiff. D2 is liable in its capacity as the importer of the cooking hood in that D2 has failed to : -

1. ensure the design or construction of the hinge of the glass panel of cooking hood is of merchantable quality, namely that it is durable, safe and free from defect within section 16 of the Sale of Goods Ordinance Cap 26; or
2. confirm the durability or suitability of the plastic studs for use as a hinge for a weighty glass panel; and
3. issue proper instruction on the inherent risk of the falling of the glass panel; and/or
4. install a safety device to prevent the fall of the glass panel.

44. D1 and D2 are jointly liable to the plaintiff for their failure to ensure the hood meets a merchantability quality within section 16 of the Sale of Goods ordinance, Cap 26 ( *Morelli v Tich [1928] 2 KB 636* ). Judgment is entered in favour of the plaintiff against the D1 and D2 on 100% liability in the sum of HK$200,000.

45. There is no evidence to suggest D1 was aware of the inherent risk of the falling glass panel, D2 is liable to indemnify D1 in respect of D1’s share of damages paid to the plaintiff, since there was no casual defect in the installation of the hood. The 2 missing screws did not contribute to the falling of the glass panel.

### Costs Order

46. Costs Order nisi is made in favour of the plaintiff against both D1 and D2, jointly and severally. As D1 has a choice to accept liability in respect of the plaintiff’s claim and simply to proceed on the aspect of contribution, I do not see the need or justification to order D2 to indemnify D1 in respect of the plaintiff’s costs in prosecuting her claim against D1 or D1’s costs in defending the plaintiff’s claim in the present action. Plaintiff’s own costs to be taxed in accordance with the Legal Aid regulations.

(M. YUEN)

District Judge

Mr. George C. L. Sit of Messrs Boase, Cohen & Collins for Plaintiff

Mr. Tsang Chung Yu of Messrs Y.T. Chan & Co. for 1st Defendant

Mr. Tak Wong of Messrs. Wong, Shum & Co. for 2nd Defendant