## DCPI 736/2011

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO 736 OF 2011

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BETWEEN

CHENG KWING YEUNG（鄭炯揚） Plaintiff

and

HONG KONG HAM HOLDINGS LIMITED

（香港火腿廠控股有限公司） Defendant

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Before : HH Judge Chow in Court

Dates of Hearing : 5 to 7 March 2013 and 15 April 2013

Date of Judgment : 9 May 2013

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JUDGMENT

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1. This is the plaintiff’s claim against the defendant for damages in respect of personal injuries he sustained at an accident which occurred on 27.4.2008 when he was working as a night shift factory worker in the production department at the defendant’s factory premises.
2. In his witness statement, he described the incident which caused his injuries as follows:-

‘On 27 April 2008, at about 2:00 am, when I was at a place between a meat-mixing machine and an ice-making machine situated outside the “meat-soaking zone” …... using a water gun to clean 60 odd plastic lids scattered on the floor, I saw that assistant production gaffer Tang Kam Hung …… was pushing a wheeled steel container loaded with ice cubes with his right hand but at the same time he was pulling another wheeled steel container loaded with ice cubes with his left hand. Therefore, I intended to go up and assist him in pulling one of the wheeled steel containers next to the ice-making machine. Then, I put down the water gun, turned around and intended to get close to the wheeled steel container. At this juncture, my left foot was tripped by the hose of the water gun. Since the floor at that place was fully covered with water and greasy with bits of meat, it was extremely wet and slippery. I tried my best to keep my balance but since the surface on which I rested my foothold was too wet and slippery, it was unavoidable that I lost balance. My left buttock landed first, as a result of which my whole body landed on the floor.’

(Underlines provided)

1. According to this witness statement, the sequence of his fall is this: he put down the water gun, turned around, and his left foot was tripped by the hose of the water gun. He tried to keep his balance. But he failed to do so, because the surface on which he rested his foothold was too wet and slippery.
2. In the statement of claim, the plaintiff alleged that (1) the working place was a small, narrow (about 20 square feet in size), congested and slippery area; (2) the ice-making machine was in operation, with water dripping out from the machine; (3) oil spilled out from the food-mixing machine during the morning shift and the day shift had accumulated onto the floor of the relocated workplace; (4) the greasy water in the process of washing the lids of metal moulds, mixing with the water dripping out from the ice-making machine and the oil accumulated and left behind from the food-mixing machine had caused the floor of the relocated workplace to be wet, greasy and slippery at all material times.
3. Regarding (1), the evidence of the plaintiff shows that the working area was much bigger than what was pleaded in the statement of claim. In any event, it was never shown by the plaintiff how the size of the workplace contributed to his slip on the floor. He did not slip down in the 30 minutes when he was working there, and before the accident occurred. This shows that the area of the working place is not a contributing factor to his fall.
4. In his witness statement the plaintiff did not mention anything about (2) and (3). So there is nothing in his witness statement to support (2) and (3). Regarding (4), it was not pleaded in the statement of claim that the ham pieces from the lids of the container, and pork from the meat mixing machine, were greasy and contributed to the slipperiness of the floor.
5. Under cross-examination, the plaintiff said that the ham was oily, but not too oily. He said that there were lots of minced pork from the meat mixing machine left on the floor where they worked, and there was grease from this pork. His witness statement does not mention anything about grease from the meat-mixing machine. It also does not mention anything about lots of greasy minced pork from the meat-mixing machine all over the place. He only mentioned in paragraph 17 of his witness statement the following things:-

“…… each time when using a water gun to wash sixty odd Lids fully covered with grease and bits of meat being arranged one after another on the floor, the grease and bits of meat being washed away from the Lids would scatter all over the surrounding floor.”

In conclusion his allegations are largely not supported by evidence.

1. The plaintiff said that when he arrived at the work place on 27.4.2008, there were water and oil stains and bits of meat or ham on the floor. He did not clean the place with the high pressure water gun before commencing his work. Obviously he did not perceive that the conditions of the working place constituted a risk to him. In fact, in his witness statement, he did not mention anything about the conditions of his working place when he commenced working there. So the conditions of the working place, when he commenced working, even if true, did not constitute a contributing factor to his fall.
2. He complained that his boots were seriously worn out. He said that the boots shown by the photographs (PP183-185 of the Trial Bundle) were his. The sole and heel of the boots were only somewhat worn out. The grooves in front of the sole are quite deep. The serial number on the right boot can be seen. One side of the heel was worn, but not the other side. His allegation that the boots were seriously worn out is simply exaggeration.
3. For the first half an hour before the accident when he was working at that place, he did not slip. So the alleged slipperiness of the working place and seriously worn out boots did not affect his balance. After he had tripped on the water hose placed by him on the ground he lost his balance and fell. If there had been a large amounts of greasy minced pork on the floor and if his boots had lost its efficacy, he should have slipped on the greasy minced pork before he tripped on the water hose.
4. His evidence about his fall is that he put down the water hose. He intended to render assistance to Tang in pulling a trolley. But he did not actually render assistance. He tripped on the hose; he could not maintain his balance because of the slipperiness of the surface of the floor. Then he fell. In evidence in chief, the plaintiff’s counsel asked Tang Kam Hung (“Tang”), the plaintiff’s superior: “Did you ask him why he fell?” Tang told him that the plaintiff said that he stepped on the hose and fell. In the cross-examination of Tang, the case put to him shows a change in the plaintiff’s stance. The changed stance is that the plaintiff lost his balance; the floor was slippery; he tripped on the hose and fell. In this regard, it is the slipperiness of the floor that caused him to lose his balance. It was put to Tang that the plaintiff told him that he could not maintain his balance; it was slippery. He tripped on the hose and fell. Tang answered “No”. Tang’s answer was spontaneous and clear. There is simply no evidence to contradict Tang’s evidence in this respect. I am satisfied that he gave a truthful reply. The plaintiff’s fall had nothing to do with the alleged slipperiness of the floor.
5. It is clear that if the plaintiff had not stepped on the hose, he would not have fallen. If his fall had been due to the slipperiness of the floor, he should have told Tang about it in the conversation between the two of them. But he did not do so.
6. In my judgment, the plaintiff’s fall was due to his own carelessness by not watching the water hose. He stepped on it and fell. If he had been careful, he would not have stepped on the water hose he had put down on the floor a short moment ago. His fall was not caused by the defendant, but by himself. Due to the above reasons, I dismiss his claim.

*Costs*

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

( S. Chow )

District Judge

Miss Tsui Ka Wah, Jennifer, instructed by Cheng, Yeung & Co, Solicitors, assigned by DLA for the plaintiff

Mr A Sakhrani, instructed by Munros, Solicitors for the defendant