## DCPI 987/2012

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 987 OF 2012

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##### BETWEEN

LEE WAI MING Plaintiff

### and

HONG KONG GUARDS LIMITED

(香港警衛有限公司) 1st Defendant

HONG KONG HOUSING SOCIETY

(香港房屋恊會) 2nd Defendant

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Before : Deputy District Judge Anthony Chow in Court

Dates of Hearing : 22to 23 and 28April 2014

Date of Judgment : 13 May 2014

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JUDGMENT

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*Background*

1. This is a personal injury claim by the plaintiff against her employer, the 1st defendant (the “D1”) and the 2nd defendant (the “D2”), manager of the housing estate known as Cornin Garden (the “Property”).
2. On or about 1 December 2007, the plaintiff commenced her employment with D1 as a security guard and on or about June 2008, the plaintiff was assigned by D1 to the Property.
3. The Property consists of 7 residential blocks, with two car parks.
4. The lobby entrance door of each residential block has two aluminum framed glass flaps. Each flap is equipped with self-closing hinges that regulates the door flaps’ closing speed. The hinges also have a self-locking device that holds the flaps open at a 90 degree angle.
5. Basically the hinges operate as follows: If the door flaps are opened to less than 90 degrees, the flaps would close automatically at a safe speed. If the door flaps are opened at 90 degrees, the flaps would not close automatically but held at 90 degrees by a mechanical device build within the hinges.
6. If the flaps is pushed to beyond 90 degrees or pulled to less than 90 degrees, the self-locking device will be unlocked and the automatic close function would resume.
7. It is not disputed that a majority of public passageways and entrance doors in Hong Kong, including those in the District Court Building, are equipped with hinges with identical or similar functions.
8. The entrance doors in the Property only swing inward and usually only the right flap is open to allow ingress and egress from the building, with the left flap locked by a bolt on the top of the aluminum door.
9. Whenever large objects, like a rubbish trolley, need to ingress or egress the entrance door, the duty security guard is required to open the right flap and unlock the left flap to allow the object to past.
10. Terms of the security contract between D1 and D2 requires D1 to report any malfunctioning common facilities, including the entrance doors, to D2.
11. D1 instructed all of its security guards, including the plaintiff, to report any defects found in the common facilities to D1’s control room at the Property, where the duty officer would enter the defect in a Repair Job Records. D2’s team of maintenance staffs would then follow up with the required repair work. The dates of the defect, the required repair and the completion date of the repair work are all noted on the Repair Job Records as well.
12. The entrance doors are also subjected to a bi-monthly inspection by D2’s maintenance staffs. At the relevant time, the inspections were undertaken by黃克強, a fitter employed by the D2. After the bi-monthly inspections,黃克強would enter any defects in a Front Door Inspection Record. The required repair and completion date of the repair works are also recorded in the same Front Door Inspection Record.
13. After each bi-monthly inspection陳志偉, the maintenance supervisor for D2, would randomly check a few of these entrance doors to ensure the inspections were completed and any problems correctly noted.

*The accident*

1. Since she commenced working at the Property, the plaintiff has been assigned lobby security guard duties and had performed the task of opening both flaps of entrance doors to allow the rubbish trolley to egress the entrance doors on numerous occasions.
2. On 29 June 2009, the plaintiff was again assigned to the lobby of Block 7 of the Property and as usual to allow the rubbish trolley to egress the front door, she opened the right flap to 90 degrees, observed that the self-locking device was engaged and the right flip was stationary, then she turned to unlatch the left door. As she did so, the right flap swung close and hit the plaintiff on the back of her head.
3. The plaintiff suffered injury as a result of the impact and filed this action against the defendants.

*The claim*

1. The plaintiff claims that her injuries were caused by the negligence of both defendants and breach of their common law duties and those under section 3 of the Occupiers’ Liability Ordinance, Cap 314. Additionally against D1, as the plaintiff’s employer, breach of contract of employment and breach of sections 6(1) and 6(2)(a) of the Occupational Safety and Health Ordinance, Cap 509.
2. The plaintiff also relied on the doctrine of res ipsa loquitur .

*The defence*

1. Both defendants stated they were not negligent and there was no breach of common law or statutory duties. In the alternative, the plaintiff was contributory negligent in causing her own injuries.
2. The defendants also denied that the doctrine of res ipsa loquitur applies.

*Preliminary disputes*

1. Before I discuss the issues in this matter, it is necessary to put aside two preliminary disputes:-
   1. What was the cause of the entrance door malfunction? and
   2. Is the doctrine of res ipsa loquitur applicable?

*Cause of the accident*

1. First, although in his witness statement dated 14 November 2012, Mr Chen Jian Xin, D1’s duty officer on the date of the accident, stated immediate after the plaintiff reported the accident on 29 June 2009, he tested the entrance doors and found no malfunction. Due to his illness, Mr Chen Jian Xin was unable to testify at trial. Mr Wong, counsel for the plaintiff, argued that because in his contemporary reports in 2009, he failed to write down he tested the entrance doors, his witness statement should not be believed.
2. However, it is undisputed that prior to the accident, the self-locking device of the entrance door to Block 7 have never malfunctioned, no repair work was done on the entrance doors after the accident and it has not malfunctioned again. Accordingly, whether Mr Chen Jian Xin tested the entrance doors immediately after the accident or not is not really relevant.
3. Second, the reason for the malfunction, if any, has never been discovered. The plaintiff’s evidence was that the self-locking device was engaged before she turned to open the left door flap and she never touched the right door flap before it hit her.
4. The Labour Department’s observation that the swing back of the right flip might be due to “the transient malfunctioning of the self-locking device” must be discounted by the fact that the Labour Department had never inspected the entrance door or the device, but based their “observation” solely on the plaintiff’s written report.

1. For reasons that will be clear, it is not necessary for me to come to a conclusion on the precise reason the right door flap swung back on 29 June 2009, after it was locked at 90 degree by the self-locking device.

*Is the doctrine of res ipsa loquitur applicable*

1. In *Sanfield Building Contractors Ltd v Li Kai Cheong* (2003) 6 HKCFAR 207, Bokhary PJ explained the doctrine as follows:-

“The res ipsa loquitur mode of inferential reasoning comes into play where an accident of unknown cause is one that would not normally happen without negligence on the part of the defendant in control of the object or activity which injured the plaintiff or damaged his property. In such a situation the court is able to infer negligence on the defendant’s part unless he offers an acceptable explanation consistent with his having taken reasonable care.”

1. In *Yu Yu Kai v Chan Chi Keung* (2009) 12 HKCFAR 705 Ribero PJ further explain the doctrine as follows:-

“Whether one uses the label “res ipsa loquitur” or one speaks (as Hobhouse LJ would have preferred) of establishing a prima facie case, one is concerned with a rule regarding the proper approach to the evidence. It is an approach whereby, in cases where the plaintiff is unable to say exactly how his injury was caused but, consonant with his duty of care, one may expect the defendant to know, one asks whether the evidence has raised a prima facie case against the defendant and if it has, whether the defendant has, at the end of the day, dispelled that prima facie case by providing a plausible explanation for the plaintiff’s injury which is consistent with the absence of negligence on his part.”

1. Mr Lee Tung Ming, counsel for D2, argued that res ipsa loquituris not applicable here, because the accident may have occurred as a result of the plaintiff’s failure to open the door at 90 degrees and properly engaging the self-locking device; or the plaintiff could have pushed or pulled the door flap off the 90 degrees, thus disengaging the self-locking device.
2. In view of the fact that the plaintiff was the one who was in actual control of the door flaps at the time of the accident, I agree with Mr Lee’s argument. This accident is clearly not one that “would not normally happen without negligence on the part of the defendant in control of the object or activity which injured the plaintiff”.
3. Accordingly, the doctrine of res ipsa loquiturdoes not apply and the usual burden of proving: duty, breach and foreseeable damages, remains with the plaintiff.
4. However, for completeness, I will analysis the plaintiff’s case as if the doctrine of res ipsa loquitur applies.

*The issues*

1. As I see it there are three issues in this matter:-
   1. Was D1 negligent as the plaintiff’s employer?
   2. Were the D1 and/or D2 negligent as occupier of the Property? and
   3. If answer to (1) or (2) is yes, what is the plaintiff’s damage?

*Issue (1): Was D1 negligent as the plaintiff’s employer?*

1. As usual with all negligent claims, the burden is on the plaintiff to prove that D1 owes her a duty of care; that the D1 was in breach of that duty of care; and as result of that breach, the plaintiff suffered damages that are foreseeable.

*What duty of care did D1 owe the plaintiff as her employer?*

1. An employer’s duty of care is nothing more than to take reasonable care of its employee under the circumstance of their employment. In *Cathay Pacific Airways Limited v Wong Sau Lai* [2006] 2 HKLRD 587, Bokhary PJ, gave the following guidance:-

“Of course the duty of care owed by employers to employees at common law is a single duty to take reasonable care for his employees’ safety. This is so even though it is convenient to think of the duty as involving the provision of safe co-workers, a safe place of work, safe equipment, a safe system of work, proper instructions and supervision and (where called for) adequate training. As Lord Keith put it in *Cavanagh v Ulsyer Weaving Co Ltd* [1960] AC 145 at p 165, ‘[t]he ruling principle is that an employer is bound to take reasonable care for the safety of his [employees], and all other rules or formulas must be taken subject to this principle’.”

1. In addition to relying on the common law duty of care, the plaintiff also relied on section 6 of the Occupational Safety and Health Ordinance. Section 6, however, is nothing more than a reiteration of the common law duty of care. Section 6 states as follows:-

“(1) Every employer must, so far as reasonably practicable, ensure the safety and health at work of all the employer's employees.

(2) The cases in which an employer fails to comply with subsection (1) include (but are not limited to) the following:-

1. a failure to provide or maintain plant and systems of work that are, so far as reasonably practicable, safe and without risks to health;
2. a failure to make arrangements for ensuring, so far as reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage or transport of plant or substances;
3. a failure to provide such information, instruction, training and supervision as may be necessary to ensure, so far as reasonably practicable, the safety and health at work of the employer's employees;
4. as regards any workplace under the employer's control:-
5. a failure to maintain the workplace in a condition that is, so far as reasonably practicable, safe and without risks to health; or
6. a failure to provide or maintain means of access to and egress from the workplace that are, so far as reasonably practicable, safe and without any such risks.
7. a failure to provide or maintain a working environment for the employer's employees that is, so far as reasonably practicable, safe and without risks to health.”

*Was D1 in breach of its duty as an employer?*

1. The plaintiff’s case relies on 2 allegations:-
2. failure to provide a safe system of work; and
3. failure to provide safety equipment.

*Failure to provide a safe system of work*

1. An employer is not required to provide a system of work for every incident. In *Chung Suk Wai v AG* [1996] 4 HKC 288, Mr Justice Leung (as he then was) quoted and adopted Lord Oaksey’s statement in *Winter v Cardiff Rurl District Council* [1950] 1 All ER 819 and stated:-

“In my opinion, the common law duty of an employer of labour is to act reasonably in all circumstances. One of those circumstances is of those circumstances is that he is an employer of labour, and it is, therefore, reasonable that he should employ competent servants, should supply them with adequate plant, and should give adequate directions as to the system of work or mode of operation, but this does not mean that an employer must decide on every detail of the system of work or mode of operation. There is a sphere in which the employer must exercise his discretion and there are other spheres in which foremen and workmen must exercise theirs… **where the system or mode of operation is complicated or highly dangerous or prolonged or involves a number of men performing different functions, it is naturally a matter for the employer to take the responsibility of deciding what system shall be adopted. On the other hand, where the operation is simple and the decision how it shall be done has to be taken frequently, it is naturally and reasonably that it should be left to the foremen or workmen on the spot**.” (Emphasis added)

1. Similarly, in *Cathay Pacific Airways Limited,* the plaintiff, a flight purser, was required to serve drinks from an aluminum bar chart with drawers in the cabin, which were loaded with bottles of drinks. While the plaintiff was pulling out one of these drawers loaded with 13 bottles and weighting around 30 pounds, the drawer fell out and injured the plaintiff. The court found a system of work necessary because the work in question was inherently dangerous and the plaintiff was under time pressure to complete her task.
2. Bokhary PJ, wrote:“A safe system of work was plainly necessary in the present case. This is because the drawer in question could fall out while being opened and was a heavy one liable to cause injury if it fell onto the person opening it or someone else.”
3. Let’s look again at the mode of operation which resulted in the plaintiff’s injury. The plaintiff was required to:-
4. Open the right door flap to 90 degrees;
5. Observe that the self-locking device was engaged and the right door flap was locked at 90 degrees; then
6. Unlatch the left door flap.
7. This is hardly “complicated or dangerous or prolonged or involves a number of men performing different functions”, nor is the mode of operation inherently dangerous.
8. Furthermore, unlike the plaintiff in *Cathay Pacific Airways Limited,* the plaintiff here was not under any time pressure to complete her task.
9. In the circumstance of this case, I see no requirement for a safe system of work; however, even if a system is required, one was in fact provided.
10. It was the plaintiff’s own evidence that on her first day of work at the Property, a senior colleague Madam Lo, demonstrated three points on the operation of the door flaps to her:-
    1. how to open the right flip to 90 degrees and make sure the self-locking device is engaged and the flap is locked at 90 degrees;
    2. how to unbolt the left door flap to allow the left flap to be opened; and after the rubbish trolley has exited the front door; and
    3. close the right flip by pushing it beyond 90 degrees towards the wall to disengage the self locking device, so the flap will close automatically.
11. This was in fact a safe system of work, albeit one that may not be devised by senior management of D1, but by Madam Lo, a colleague of the plaintiff.
12. Mr Wong argued that the plaintiff should have been told not to touch the door flap when it was locked at 90 degrees by the self-locking device. With respect, the plaintiff herself testified that Madam Lo told her if the door flap was pushed to beyond 90 degrees, the door will close automatically. The only part Madam Lo did not tell the plaintiff was if the door flap was pulled, the door will also close automatically.
13. But any reasonable person would understand, if you pull on a door with an automatic closing function, it will close. That last bit of information is so painfully obvious that no explanation is required for any person beyond the age of 10.
14. Even the plaintiff herself testified that she knows how the door flaps operate and on the relevant day, the right door flap was locked at 90 degrees and she never touched the right door flip after the self-locking devise was engaged.

*Failure to provide safety equipment*

1. Plaintiff relies on the Labour Department’s Accident Report and letter dated 31 August 2009 to argue that the D1 had a duty to provide a wedge as safety equipment.
2. There is however, no evidence that a wedge would have prevented the incident. In fact, 陳志偉testified that the door flaps are very close to the floor, a wedge would not fit and if forced under the door flap, it would damage the hinge device.
3. Even the Labour Department admitted, in a letter dated 31 August 2012, that their recommendation to use a wedge was based solely on the plaintiff’s statement and not on actual observation or testing.
4. Given the fact that there is no evidence any safety equipment should be provided and there is evidence that a wedge does not work and will damage the hinges. I find there is no duty for D1 to provide a wedge as safety equipment.

*Conclusion*

1. Having considered all of the evidence, I found D1 did not breach its duty to the plaintiff as her employer.

*Issue (2): Were the D1 and/or D2 negligent as occupier of the property?*

*Were D1 and D2 occupiers?*

1. Mr Lee did not dispute the fact that D2 was an occupier.
2. Mr Alfred CP Cheng, counsel for D1, however argued that D1 was not an occupier of the door, because it did not have actual knowledge of the hinge device, it received no information as to its operation and therefore, lacks sufficient control to be an occupier.
3. With respect, the issue is whether D1 had sufficient control of the premises where the door flaps are located, ie the entrance to Block 7, and not control of the doors.
4. In *Chan* *Yan Nam v Hui Ka Ming Trading As Kar Lee Engineering and Others*,  [HCPI 1169/2000](javascript:judpop1('search_result_detail_frame.jsp?'+temp35565);), Deputy High Court Judge Muttrie (as he then was), held:-

““Occupier” is not defined in the Ordinance. A useful explanation of its meaning was given by Lord Denning in *Wheat v Lacon* 1966 AC 552 at 577 and 558:-

“In the Occupier’s Liability Act, 1957, the word ‘occupier’ is used in the same sense as it was used in the common law cases on occupiers; liability for dangerous premises. It was simply a convenient word to denote a person who had a sufficient degree of control over premises to put him under a duty of care towards those who came lawfully on to the premises...

Translating this general principle into its particular application to dangerous premises, it becomes simply this: wherever a person has a sufficient degree of control over premises that he ought to realise that any failure on his part to use care may result in injury to a person coming lawfully there, then he is an ‘occupier’ and the person coming lawfully there is his ‘visitor’; and the ‘occupier’ is under a duty to his ‘visitor’ to use reasonable care. In order to be an ‘occupier’ it is not necessary for a person to have entire control over the premises. He need not have exclusive occupation. Suffice it that he has some degree of control. He may share the control with others. Two or more may be ‘occupiers’. And whenever this happens, each is under a duty to use care towards persons coming lawfully on to the premises, dependent on his degree of control. If each fails in his duty, each is liable to a visitor who is injured in consequence of his failure, but each may have a claim to contribution from the other.

In *SALMOND on TORTS* (14th Edn, 1965) p 372, it is said that an ‘occupier’ is ‘he who has the immediate supervision and control and the power of permitting or prohibiting the entry of other persons’. This definition was adopted by Roxburgh, J, in *Hartwell v Grayson Rollo and Clover Docks, Ltd*, and by Diplock, LJ, in the present case. There is no doubt that a person who fulfils that test is an ‘occupier’. He is the person who says ‘come in’; but I think that that test is too narrow by far. There are other people who are ‘occupiers’, even though they do not say ‘come in’. If a person has any degree of control over the state of the premises it is enough.””

1. Looking at it that way, as a company contracted to provide security services for the Property, including Block 7, D1 clearly had sufficient control to be a concurrent occupier of the entrance to Block 7.
2. The plaintiff has failed to advance any clear and definite duty of care that the defendants, as co-occupiers, owed to the plaintiff and because the doctrine of res ipsa loquiturdoes not apply, the plaintiff could not satisfy her burden of proving the defendants were in breach of that duty of care and the plaintiff had suffered a foreseeable damages.
3. That should be the end of the plaintiff’s case on occupiers’ liability; however, again for completeness, I will continue to analysis the plaintiff’s case as if the doctrine of res ipsa loquitur applies.

*What duty of care did the defendants owe to the plaintiff as co-occupiers?*

1. The plaintiff relied on both the common law duty of care and section 3 of the Occupiers’ Liability Ordinance.
2. Section 3 of the Occupiers’ Liability Ordinance states:-

“(1) An occupier of premises owes the same duty, the "common duty of care", to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise.

(2) The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

(3) The circumstances relevant for the present purpose include the degree of care, and of want of care, which would ordinarily be looked for in such a visitor, so that (for example) in proper cases:-

1. an occupier must be prepared for children to be less careful than adults; and
2. an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.

(4) In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances, so that (for example):-

1. where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe; and
2. where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance or repair by an independent contractor employed by the occupier, the occupier is not to be treated without more as answerable for the danger if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (if any) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done.

(5) The common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor (the question whether a risk was so accepted to be decided on the same principles as in other cases in which one person owes a duty of care to another).

(6) For the purposes of this section, persons who enter premises for any purpose in the exercise of a right conferred by law are to be treated as permitted by the occupier to be there for that purpose, whether they in fact have his permission or not.”

1. As to the common law duty of care of an occupier, it is nothing more than the usual duty of what is reasonable under the circumstance. In *Bhana, Angela Mary v Ocean Apex Trading Ltd*, DCPI 1732/2009, Her Honour Judge Mimmie Chan held:-

“It cannot be disputed that the duty of care to visitors is not an absolute duty. The law is succinctly summarized in the Judgment of Megaw LJ in *Ward v Tesco Stores Ltd* [1976] 1 WLR 810 at page 815, which passage was quoted by Mayo VP in *Cheung Wai Mei v The Excelsior Hotel (Hong Kong) Ltd* CACV 38/2000, 22 November 2000:-

‘It is for the plaintiff to show that there has occurred an event which is unusual and which, in the absence of explanation, is more consistent with fault on the part of the defendants than the absence of fault … When the plaintiff has established that, the defendants can still escape from liability. They could escape from liability if they could show that the accident must have happened, or even on balance of probability would have been likely to have happened, even if there had been in existence a proper and adequate system in relation to the circumstances, to provide for the safety of customers. But if the defendants wish to put forward such a case, it is for them to show that, on balance of probability, either by evidence or by inference from the evidence that is given or is not given, this accident would have been at least equally likely to have happened despite a proper system designed to give reasonable protection for customers.’”

1. Judge Chan further held section 3 of the Occupiers’ Liability Ordinance merely reiterates the common law position. Her Honour wrote further:-

“There is therefore no question of a guarantee of safety for visitors. What is required is for an occupier to have in place a proper and adequate system to provide for the safety of its visitors. Section 3 of the Ordinance provides that an occupier of the premises owes a common duty of care, to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.”

1. As I see it, in the circumstance of this case, both defendants’ duty of care to the plaintiff is to institute a reasonable system of checks and inspections to ensure the lobby entrance doors to all residential blocks in general, and the lobby entrance doors to Block 7 in particular, is functioning properly, and if malfunction is noticed, complete the necessary repair work within a reasonable time.

*D1’s duty of care as co-occupier*

1. It is undisputed that D1 is not under a duty to do any repair and maintenance on the entrance doors. Mr Chan Ka Wah, Chief Operations Manager for D1, testified that the security contract between D1 and D2 only requires D1 to provide security guards for the Property. In the event a security guard noticed any malfunction of common facilities, D1 should have a system of reporting the malfunctions to D2. D2 then arranges any repair or maintenance work as it deems necessary.
2. Accordingly and in view of the degree of control D1 has on the front entrance, the only reasonable duty of care under both common law and section 3 of the Occupiers’ Liability Ordinance is to establish a reasonable system of reporting any malfunction observed by its security guards.
3. It is undisputed that all security guards working in the Property, including the plaintiff, were instructed to report any malfunctions to the duty officer in charge and he or she would enter the malfunction on D2’s Maintenance Work Record Book.
4. The plaintiff agreed she was aware of the reporting system and took no issue on compliance with this system.
5. Having considered all of the circumstances of this case, I find D1’s system of reporting reasonable.

*D2’s duty of care as co-occupier*

1. It is undisputed that the D2 had a system of inspection of the lobby entrance doors of all of the residential blocks, as follows:-
   1. Any malfunctions of common facilities, including the entrance doors, noticed by security guards employed by D1 or staffs of D2 are entered into the Maintenance Work Record Book and repairs are then completed by D2’s staffs;
   2. Specific bi-monthly inspections of the entrance doors by D2’s employees; and
   3. Ad hoc inspections by D2’s maintenance staffs when they enter their storage unit located on Block 7’s podium.
2. 黃克強testified that it is a custom of all maintenance staffs to look at the Maintenance Work Record Book every morning and to complete any repair work noted on the record book on the previous day. When the repair work is completed, it will also be noted on the Maintenance Work Record Book.
3. 黃克強also testified that at the relevant time, he was responsible for testing entrance doors to all residential blocks. The testing procedure was to open the doors to 90 degrees three times and observe, for a few seconds, if the self-locking device locks the door flaps at 90 degrees. Then the door flap is pushed or pulled to test if it will close automatically. The rate of closing would also be noted in case adjustment of the closing rate is required.
4. If any malfunction is noticed, it will be noted on the Residential Block Entrance Door Inspection Record and any follow up repair work needed would also be noted on the same record. The Residential Block Entrance Door Inspection Records from 9 April 2009 to 30 December 2009 were exhibited by D2 and there were no malfunction noted for the Block 7 entrance doors.
5. 黃克強also testified that because the D2 stores some maintenance parts in a storage unit located on Block 7’s podium, maintenance staffs, including himself, needed to use the front entrance doors to Block 7 on a daily basis. If there is any malfunction to the Block 7 entrance doors, it will be noticed immediately. There had been no malfunction noticed.
6. In addition to 黃克強’s bi-monthly inspections, 陳志偉also testified that after黃克強’s bi-monthly inspections he would randomly re-check the residential entrance doors for problems. In these re-checks, 陳志偉would test the self-locking device in a manner similar to黃克強’s, but陳志偉test is only on a few random entrance doors. In his re-checks, 陳志偉has never noticed any problem with the Block 7 entrance doors.
7. In his submissions, Mr Wong criticized D2’s system of inspections on two grounds:-
   1. 黃克強did not have any specific training for the maintenance of the hinge systems; and
   2. 黃克強did not open up the face plate and conduct a visual inspection during his bi-month inspections.
8. First, there is no evidence that inspection of this type of hinge system requires any specified trainings. In addition, 黃克強 testified that he read the user manual for all common facilities, including the hinge system and if there are English terms he did not understand, he would consult 陳志偉for help. In any event, we are not talking about anything involving complicated functions. Testing the hinge system only requires opening the door flips to 90 degrees and see if it stays locked at 90 degrees. No specific training is required for that.
9. Second, this type of hinge system consists of a number of springs that counter balances each other and a self-cancelling lever and spring system for the self-locking device. There is no evidence that a visual inspection by lifting the face plate will disclose any malfunction of the self-locking device.
10. Having carefully considered all of the circumstance of this case, I find D2’s system of inspection to the residential blocks’ entrance doors reasonable.

*Conclusion*

1. Accordingly, even if the doctrine of res ipsa loquitur applies (which is not my finding), I would find both D1 and D2 had a reasonable system of inspection and maintenance in place to provide for the safety of its visitors, including the plaintiff, and there was no breach of their respective duty of care.
2. As I have already decided the defendants are not liable to the plaintiff’s injury, there is no need for me to discuss the issue of damages.

*Orders*

1. (1) Claims against both defendants are dismissed.

(2) Costs to the defendants, to be taxed on a party/party basis, if not agreed.

(3) Certificate for counsels be issued.

(4) The plaintiff’s own costs to be taxed in accordance with the Legal Aid Regulations.

( Anthony Chow )

Deputy District Judge

Mr Wong Chi Kwong, Szwina, Pang, Edward Li & Co, for the plaintiff

Mr Alfred CP Cheng, instructed by Cheng, Yeung & Co, for the 1st defendant

Mr Lee Tung Ming, instructed by Li, Kwok & Law, for the 2nd defendant