## DCPI 1648/2007

IN THE DISTRICT COURT OF THE

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1648 OF 2007

\_\_\_\_\_\_\_\_\_\_\_\_

BETWEEN

LAI MEI LING Plaintiff

and

HONG KONG CABLE TELEVISION LIMITED Defendant

\_\_\_\_\_\_\_\_\_\_\_\_

Coram: Deputy District Judge Eddie Yip in Court

Date of Hearing: 4, 5 May 2009

Date of Handing Down of Judgment: 19 May 2009

**Judgment**

*Plaintiff’s case in short*

1. The Plaintiff was employed by the Defendant as a sales representative. She would be assigned to locations such as individual households in public housing estates to invite subscription to the Defendant’s cable television services. On the material date she was so assigned to work in a public housing estate. She stepped on some oil stain and slipped. She fell down and sustained injuries. She sought to hold the Defendant liable for its failure to provide a safe system of work or a safe working place. She sued the Defendant for loss and damages due to her injuries.

*Defendant’s case in short*

2. After the accident, the Plaintiff had submitted an undated “Incident Report for Employee – Application for Employee Compensation Claims” (“Incident Report”) to the Defendant. She admitted that she slipped and fell because her left foot stepped on her right foot carelessly. There was no mention of the oil stain. Further, the Defendant says that it had not failed to provide a safe system of work or a safe working place.

*Issues for this court*

3. I have to determine the following issues:

1. What actually happened in the accident?
2. Whether the Defendant should be held liable?
3. If liable, what should be the quantum of damages?

*Evidence from Plaintiff*

4. The Plaintiff gives evidence. She calls no witnesses. Her witness statement in Chinese dated 2nd February 2009 at pages 58 to 64 [“58 – 64”], English translation at pages 66 – 71 {“66 – 71”} is confirmed to be truthful and accurate. It is admitted into evidence.

5. She was born in Hong Kong in 1971. She was 33 when the accident happened on 10 August 2004. She received education up to F. 5. She had worked as a cashier and an attendant in a beauty parlour before joining the Defendant on 28 July 2003 as a sales representative.

6. She would be assigned to locations such as individual households in public housing estates to invite subscription to the Defendant’s cable television services. She worked about 26 days per month. The working hours were from 2 a.m. to 11 p.m. Her monthly salary was $8,000 plus commission and other perquisites.

7. In the afternoon of 10 August 2004, she was assigned to work on 8th Floor to 13th Floor of Wu Tsui House, Wu King Estate, Tuen Mun. At around 9:30 p.m., she was walking from 10th Floor to 9th Floor by the stairs. She stepped on some oil stain on the staircase and slipped. She immediately felt a sharp pain in her low back and left hand. She could not get up due to the pain. She phoned her supervisor, Edmond Yau, who was nearby. He arrived at the scene after 15 minutes later. He held her up and took a taxi with her to Tuen Mun Hospital for treatment.

8. She received medical treatment for substantial periods. The Defendant granted her sick leave from time to time. Because of the persistent paid and weakness, she was unable to return to her job with the Defendant. Because of the same reason, she could not hold her jobs for long. She claimed general and special damages due against the Defendant on the ground that she was injured due to the Defendant’s failing to provide a safe system of work or a safe working place to her.

9. There was a short statement dated 16 November 2005 signed by Edmond Yau [89] {90}. He stated therein that when he arrived at the scene, the Plaintiff told him that the floor was not clean and was covered with oil stain.

*Evidence from Defendant*

10. The Defendant does not call any witnesses but, on the issue of “what actually happened in the accident”, seeks to challenge the Plaintiff’s case by relying on the Incident Report [100.1 – 100.2] {100.3 – 100.4}. She stated therein that as she was descending the stairs she “slipped and fell because her left foot stepped on her right foot carelessly”. There was no mention of the oil stain.

*This court’s findings*

*What actually happened in the accident?*

11. There are 2 mutually exclusive versions:

1. The version in the Incident Report;
2. The version in Edmond Yau’s short statement, her witness statement, and her oral evidence in court.

12. She cannot recall the date she wrote the Incident Report. When cross-examined as to why she stated therein that as she was descending the stairs she “slipped and fell because her left foot stepped on her right foot carelessly” and why there was no mention of the oil stain. She explains that she just put down things randomly according to advice by a sales representative colleague, Mable Wong, who had experience claiming against the Defendant, that she could put down things randomly.

13. As pointed out by defence counsel, she had made a number of modifications to the contents of the Incident Report. This was done apparently to give a most accurate description of what happened. She took pains, as for example, to correct the wording from “*16th Floor to 17th Floor*” to “*17th Floor to 16th Floor*” to reflect the fact of her descending and not ascending. That mannerism contradicts her notion of putting things down randomly. Besides, I see no reason for her to put things down randomly in this document, which was an application for sick leave made to the Defendant. I find her explanation (that she had put things down randomly as advised by Mable Wong) totally incredible.

14. Edmond Yau’s short statement was signed on 16 November 2005. In the absence of explanation for the lapse of time between 4 August 2004 and 16 November 2005, I am not satisfied on the balance of probabilities that it was an accurate account of what he had been told 1 year and 3 months ago. I do not find such short statement reliable.

15. We are left with the Plaintiff’s own witness statement and oral evidence. These are self-serving materials which cannot have any independent claim of credibility or reliability.

16. In my judgment the Plaintiff’s evidence is not credible. I reject her evidence on all facts in dispute. On this issue of “what actually happened in the accident”, the Plaintiff has failed to prove on the balance of probabilities that the accident happened because she stepped on the oil stain, then slipped and fell.

*Whether the Defendant should be held liable?*

17. As the cause of the accident was not proved, the Defendant should not be held liable.

*If so, what should be the quantum of damages?*

18. It follows from the above that no damages should be awarded.

*Costs*

19. Unless there are circumstances otherwise, the present case shall follow the usual order of costs to follow event. The Defendant shall have costs *nisi* for the action, with certificate for counsel. This order shall become absolute 28 days from today. As the Plaintiff is legally aided, her own costs shall be assessed according to Legal Aid Regulations.

( Eddie Yip )

Deputy District Judge

Representation:

Mr. Ashok Sakhrani, instructed by Messrs. Rita Law & Co., assigned by D.L.A. for the Plaintiff.

Mr. Paul Lam, instructed by Messrs. Winnie Leung & Co., for the Defendant.