Management Corporation Strata Title Plan No 2668 *v* Rott George Hugo [2013] SGHC 114

Case Number : District Court Appeal No 23 of 2012/W

Decision Date : 27 May 2013

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Ramasamy Chettiar and Sarjeet Singh (ACIES Law Corporation) for the appellant; Boey Swee Siang (ATMD Bird & Bird LLP) for the respondent.

Parties : Management Corporation Strata Title Plan No 2668 — Rott George Hugo

Tort – Negligence – Breach of Duty

Tort – Negligence – Contributory Negligence

27 May 2013 Judgment reserved.

Lai Siu Chiu J:

Introduction

1 This is an appeal against the decision of the learned District Judge David Lim ("the DJ") in District Court Suit No 3597 of 2008/K ("the DC Suit"). It concerns a slip accident in which George Hugo Rott ("the Respondent") was injured. The accident occurred in 2007 at the car park of a condominium managed by the Management Corporation Strata Title Plan No. 2668 ("the Appellant"). The DJ found that the Appellant had breached its duty of care towards the Respondent, and held the Appellant 35% liable. The Appellant has now appealed against his decision.

2 The factual issues are relatively straightforward and pertain simply to whether the Appellant had been negligent in failing to ensure that the car park was free of oil patches and water puddles. Because of a recent landmark decision by the Court of Appeal on occupier's liability (see [20] below), an interesting point of law relating to the general tort of negligence *vis-a-vis* occupier's liability has arisen and needs to be addressed in this appeal, as it was an issue raised in the Appellant's submissions.

3 After considering the parties' arguments and further arguments, I am dismissing the appeal. However, I am also increasing the Respondent's share of contributory negligence from 65% to 75% and give my reasons below.

The Facts

4 The salient facts are not in dispute and are set out briefly below.

5 The Respondent was a subsidiary proprietor and resident of The Equatorial ("the Condominium") located along Stevens Road.

6 CBM Pte Ltd ("the second defendant") was a party to the DC Suit. It was the cleaning contractor engaged by the Appellant to carry out cleaning services within the Condominium's

premises.

7 On 19 June 2007, at about 7.15pm, the Respondent was walking in the basement car park of the Condominium when he slipped and fell after he stepped on what seemed like a normal puddle of water on the ground. The puddle was in fact some water thrown over a patch of oil ("the slippery patch"). It is not disputed that the Respondent saw the slippery patch and consciously stepped into it, as there were numerous other puddles around and he thought it would be inconvenient to avoid each and every puddle. The Respondent's wife on the other hand circumvented the slippery patch by walking around it. As a result of the fall, the Respondent sustained injuries to his knee and right shoulder. He then commenced an action against the first and second defendants for damages.

The Trial Judge's Decision

8 In the trial below, the Respondent's case against the Appellant proceeded on two fronts, *viz*, an action under occupier's liability and another under a general duty of care:

(a) under occupier's liability – for failure to prevent damage or injury to the Respondent, as an invitee, from any unusual danger in the basement car park which the Appellant knew or ought to know of and which the Respondent did not know about;

(b) under a general duty of care – for failure to use all reasonable care to prevent harm to the Respondent as a user of the basement car park through its failure to

(i) ensure that the terms of the cleaning services agreement were adequate for keeping the basement car park free of oil patches and water puddles at all times; and/or

(ii) put in place at the time of the accident an adequate inspection and cleaning system to ensure that the floor of the basement car park was regularly checked for and cleaned of oil patches and water puddles.

9 The Respondent's case against the second defendant was one under a general duty of care. The DJ eventually found the second defendant not liable. Hence, it is not a party to this appeal. As against the Appellant, the Respondent's action under occupier's liability failed as the DJ found that the Respondent could not prove the second and third elements of the test because:

(a) the slippery patch was **not** unusual to him, having regard to the nature of the premises and his knowledge; and

(b) the slippery patch was **not** unknown to him, and its significance was appreciated by him.

10 However, even though the DJ found that the action based on occupier's liability failed, he went on to find that the Appellant had breached its duty to the Respondent to use reasonable care to prevent harm to the latter when he was using the basement car park. The Respondent's claim under a general duty of care therefore succeeded. The findings of the DJ under this issue form the crux of this appeal and merit elaboration.

11 In coming to his decision, the learned DJ relied on two main points.

12 First, he found that the cleaning services agreement and the security guard agreement which the Appellant used in engaging the cleaners and security guards respectively did not provide for any services to address the presence of oil patches and water puddles. The only related service provided

for was for "Sweeping", and this would not include the removal of oil patches. Since it was foreseeable that cars parked in the car park can and do sometimes leak oil and water on the floor, by not including a clear provision in the agreements, those agreements were thus inadequate to ensure the safety of users of the car park.

13 Second, following the first point, the DJ found that there was no system to address the presence of oil patches and water puddles in the car park. The only system in place in relation to the cleaning of the car park was two sessions of sweeping at 8.30am and 3pm by the cleaners, a visual inspection at 4.45pm, and *ad hoc* inspections by the security guards after the work shift of the cleaners had ended. However, this was inadequate because:

(a) after the cleaners' work shift hours each day (5pm on normal days and 2pm on weekends and public holidays), there were no cleaners available to clean up any oil patches or water puddles; and

(b) the security guards were not told nor did they conduct regular inspections of the basement car park for oil patches and water puddles after the cleaners had left. Neither were there any precautionary measures to ensure that any oil patches or water puddles that they found did not pose a danger to users of the car park.

14 Following from the above two observations, the DJ found that the Appellant had failed to engage proper services and to establish a reasonable system for the basement car park to be inspected and cleaned at regular intervals. This could result in oil patches or water puddles which would be a danger to users. Therefore, he found that the Appellant had failed to use reasonable care to prevent harm to the Respondent as a user of the car park.

15 The DJ went on to find that causation was established (which will be elaborated on below). In summary, he found that if a proper system was established, there was a "slightly better than 50% chance of the slippery patch" being discovered and thus properly dealt with, preventing the slip accident from occurring. Therefore, the breach of duty of reasonable care in failing to establish a proper system "caused" the Respondent to suffer damage. However, because the Respondent had consciously stepped into the slippery patch, he apportioned 65% liability to the Respondent.

The issues in this appeal

16 When the appeal first came before this court, the Appellant's appeal pertained solely to the DJ's findings under a general duty of care. Under the general duty of care, the Appellant argued that:

(a) the DJ had erred in law by holding that the service agreements and the "system" in place was inadequate ("the maintenance system"), thus finding that the Appellant had not taken reasonable care to prevent harm to the Respondent; and

(b) the DJ had erred in law by finding that the inadequate maintenance system had caused the injury to the Respondent.

17 Both parties initially did not raise any issues with regard to the DJ's findings on occupier's liability, and understandably so, since the Appellant was not liable under occupier's liability, and the Respondent was successful in his action under a general duty of care. The parties proceeded on the assumption that an action under occupier's liability and one under a general duty of care were distinct and separate actions. However, in the midst of the appeal, the issue of whether there could be concurrent liabilities under both occupier's liability and a general duty of care was raised, and parties

were invited to submit further arguments to address the court on this issue.

18 After considering the issue, the Appellant included a further argument in its appeal, taking the position that it was not possible to have concurrent liabilities, and since the action under occupier's liability had failed, the Respondent should not have been allowed to take a second bite at the cherry through an action under a general duty of care. Not surprisingly, the Respondent argued that it was possible to have concurrent liabilities, and even if that was not possible, the cases establishing that there should not be concurrent liabilities were distinguishable from the facts in the present case.

19 There are therefore three broad issues before this court:

(a) how should the DJ's findings be viewed in the light of recent developments in the law regarding concurrent liabilities under occupier's liability and a general duty of care?

(b) did the Appellant fail to take reasonable care in preventing harm to the Respondent by failing to establish an adequate system to address oil patches and water puddles, thereby causing him to sustain the injuries?

(c) did the Respondent's actions affect the apportionment, if any, of liability on the part of the Appellant?

How does *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd and others* [2013] SGCA 29 ("*See Toh (CA)*") affect this Appeal (if at all)?

20 In the High Court case of *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd and others* [2012] 3 SLR 227, the plaintiff, See Toh Siew Kee, claimed damages against Ho Ah Lam Ferrocement (Private Limited), Lal Offshore Marine Pte Ltd, and Asian Lift Pte Ltd, under occupier's liability and the tort of negligence for injuries he had sustained. The other facts of the case are not important, and the relevant issue was whether the defendants had concurrent duties under occupier's liability and negligence. After examining the jurisprudence on the issue, Woo Bih Li J at [109] held:

> I see no reason why an occupier should have concurrent liabilities when others have only one. I conclude that an occupier does not have concurrent liabilities and his liability is part of the law of negligence.

Woo Bih Li J went on to dismiss the plaintiff's claim against all defendants. See Toh Siew Kee then appealed against his decision.

21 The similar issue of concurrent duties was raised again in the Court of Appeal. After examining the historical origins of occupier's liability and referring to the evolutionary paths of occupier's liability in numerous jurisdictions (see *See Toh (CA)* from [20] to [75]), the Court at Appeal held that the principles governing occupiers' liability were a proper subset of the general principles of the law of negligence. At [113], V K Rajah JA concluded unequivocally that:

> The traditional common law rules on occupiers' liability have long been and currently still remain riddled with archaic and confusing distinctions at both the initial level of the static-dynamic dichotomy and the subsequent level of the invitee-licensee-trespasser trichotomy (see [26]–[48] above). Unfortunately, for close to two centuries, this classificatory quagmire has been unquestioningly adopted as part of Singapore law. The roots of this approach can be traced to the Second Charter of Justice of 1826, which mandated the reception of English law in the Straits Settlements. For the reasons given above (at [49]–[76]), the dead hand of the traditional

common law rules on occupiers' liability should now be buried. The time has come to unambiguously hold that **the law on occupiers' liability in Singapore is a mere subset of the general law of negligence, and I so determine**. (emphasis added)

22 As a result of *See Toh (CA)*, it is clear that all claims under occupier's liability should now be analysed under the general law of negligence. Therefore, although the DJ dealt with both the law of occupier's liability and negligence, applying *See Toh (CA)*, this appeal should only be considered under the general law of negligence.

Did the Appellant fail to take reasonable care in preventing harm to the Respondent by failing to establish an adequate system to address oil patches and water puddles, thereby causing him to sustain the injuries?

The Applicable Law

23 It is trite law that in order to succeed in an action in negligence, the plaintiff must show

(a) the existence of a duty of care owed by the defendant to the plaintiff;

(b) the defendant must have breached this duty of care to the plaintiff; and

(c) the defendant's breach must have caused the damage suffered by the plaintiff; in addition, the resulting damage should not be too remote, and must be capable of being adequately proved and quantified'

(See *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR 100 at [21]) ("*Spandeck*"). I should add that in the Appellant's further submissions, it was conceded that under the *Spandeck* test, the Appellant owed a duty of care to the Respondent (assuming *See Toh (CA)* applied retrospectively which I am of the view it does).

Did the Appellant owe the Respondent a duty of care?

24 Following the decision in *See Toh (CA)*, it cannot be disputed that as occupiers having control over the car park, the Appellant owed a duty of care to the Respondent to exercise reasonable care. As observed by the Court of Appeal in *See Toh (CA)* at [80]:

In so far as cases of *lawful* entrants are concerned (*ie*, entrants whose circumstances of entry to an occupier's property can be definitively said, on a balance of probabilities, to be lawful), circumstantial proximity is tautologically present in the occupier-lawful entrant relationship. To elaborate, the hallmark of a lawful entrant's presence on an occupier's premises is consent to his presence on the part of the occupier; it is this consent, which grounds the occupier-lawful entrant relationship and justifies a legal finding that there is proximity between the occupier and the lawful entrant. **I thus hold that under the first limb of the *Spandeck* approach, the *vast majority* of occupiers having control of the property which they occupy and/or the activities carried out there *de jure* owe a *prima facie* duty of care to lawful entrants. ...**[emphasis in original]

25 It should be noted that the Court of Appeal in *See Toh (CA)* was split as to whether occupiers owe a *prima facie* duty of care towards lawful entrants. However, even if I were to adopt Sundaresh Menon CJ's view that whether a duty of care was owed should be decided on a case-by-case basis, I see no reason why such a duty should not be imposed on the Appellant. The Appellant sought to

argue that the Respondent was akin to a "reckless thrill-seeker", similar to the plaintiff in *State of South Australia v Wilmot* (1993) 62 SASR 562 ("*Wilmot*"), and therefore, a duty of care should not be imposed on the Appellant. In my view, the facts in *Wilmot* are clearly distinguishable and have no application to this case. As the Court of Appeal in *See Toh (CA)* at [85] observed:

> The key distinguishing feature between *Stone* and *Wilmot* seems to be that of culpability on the part of the respective entrants. In *Stone*, the then 11-year-old plaintiff did not know better and was allured by a particular rock face in the disused quarry. In *Wilmot*, the respondent trial bike rider rode on the disused land *precisely* because she knew it was dangerous: it was the peril that made it exciting to ride there. In a *Wilmot*-type situation, the law would be loathe to reward a reckless thrill-seeker (for completeness, this would also be relevant to the defence of *volenti non fit injuria*). …[emphasis in *italics* original]

I accept the Appellant's submission that the Respondent should be faulted for consciously stepping into the slippery patch. However, this does not mean he is akin to a "reckless thrill-seeker". There was no "thrill" that the Respondent was seeking, and furthermore, even if there was an assumption of risk, the Respondent had no inkling that the water puddle was in fact an oil patch. Therefore, I am of the view that the Respondent's conduct would be more relevant on the issue of contributory negligence, than in establishing a duty of care. This aspect will be considered later.

Did the Appellant breach this duty of care?

26 The Appellant's central argument was that the maintenance system put in place was **not** inadequate in ensuring that the car park was generally safe for users, and therefore, the Appellant could not have been said to have failed to take reasonable care to prevent harm to the Respondent. In essence, the legal question that must be answered is "*what is the appropriate standard of care to which the Appellant should be held?"* While it is not disputed that the guiding principle in assessing the standard of care is the standard of a reasonable person (see *Chandran a/l Subbiah v Dockers Marine Pte Ltd* [2010] 1 SLR 786 at [21], citing with approval Alderson B in *Blyth v The Company of Proprietors of the Birmingham Waterworks* (1856) 11 Ex 781), there is no doubt that this depends primarily on the factual matrix, and that a certain amount of judicial discretion is required to decide what standard of care is to be imposed.

27 In determining the appropriate standard of care in this case, I considered the following factors as suggested by Gary Chan Kok Yew & Lee Pey Woan in *The Law of Torts in Singapore* (Academy Publishing, 2011) ("*Gary Chan*") at Chapter 5:

(a) the likelihood and risks of harm;

(b) the extent of harm;

(c) the costs of avoiding harm; and

(d) the industry standards and common practice.

28 Given that the Respondent's fall took place in a car park, it was foreseeable that the parked cars would sometimes leak oil and water on the floor. Further, it was not disputed that residents at the Condominium would often wash their cars in the car park, often resulting in water puddles on the floor. The risk of residents walking and slipping as a result of such water puddles and oil patches was thus a very real risk which the Appellant should have reasonably contemplated. On the other hand, I accepted the Appellant's point that it would be unreasonable to expect the Appellant to have a

"24/7" lookout for oil patches. The occasional presence of water puddles and oil patches in car parks was to be expected, and users were similarly expected to take a certain amount of precaution when using the car park.

29 After reviewing the findings of the DJ, I am of the view that the maintenance system put in place was indeed inadequate, and thus the Appellant fell below its expected standard of care. My reasons are as follows:

(a) as I have observed earlier, the presence of oil patches and water puddles in the car park was a very likely occurrence of which the Appellant would have cognizance. While users were expected to take precautions, the Appellant as the party having greater control over the premises should bear greater responsibility in ensuring that the car park was safe for users. While a "24/7" maintenance system was not feasible, the system put in place should be sufficiently comprehensive to ensure that the presence of water puddles and oil patches was addressed; and

(b) I agree with the DJ that the first shortcoming of the Appellant was that the cleaning or security guard services engaged did not *specifically* provide for the cleaning of such oil patches and water puddles. At the very least, there was a responsibility on the Appellant to ensure that basic services ensuring the safe use of the car park were provided. If the presence of oil patches and water puddles in the car park was prevalent, there should be no excuse for not engaging services to address the problem. As observed by Rajah JA in *See Toh (CA)* at [96], an occupier is the least-cost avoider, and thus, the responsibility in this case largely fell on the Appellant to ensure that such basic services were provided.

30 The Appellant had raised two contentions with regard to this finding, which I now address.

31 First, the Appellant argued that the agreements used were "of the standard type and used in other condominiums", implying that if this was the industry practice, it should not be found liable if it had merely followed what everyone else was doing. While industry standards or practices may be useful in determining the standard of care (see for example, *The Emma Maersk* [2006] SGHC 180), as *Gary Chan* at para 05.033 observes:

> [A]dhering to common practice may not guarantee that the defendant would be absolved of liability where the practice is undesirable.

If this was indeed an industry standard agreement that was used, without laying down a general rule, I am inclined to find that such an agreement would generally be found to be inadequate in dealing with oil patches and water puddles. Ignoring the possibility that "actual practices" (the second argument the Appellant raised which I will deal with subsequently) could adequately deal with such hazards, based on the agreements alone, the simple provision of "sweeping" services clearly did not address the problem of oil patches and water puddles.

32 Second, the Appellant argued that a poorly drafted agreement *per se* cannot amount to an inadequate system. Following on from this point, the Appellant argued that the *actual practice* was that the cleaners did remove oil patches with chemicals.

33 I agree with the Appellant that a poorly drafted agreement *per se* should not amount to an inadequate system. A "maintenance system" effectively comprises what services were formally engaged and how such services were actually carried out. Ideally, there should be a responsibility on management corporations to ensure that their condominiums' premises are well maintained on both counts – proper services should be formally engaged, and those services should be properly carried

out. However, it is understandable that it may be practically impossible to exhaustively provide for every single cleaning duty formally. In this situation, it must be shown that "actual practices", manifested in a *proper and accountable system*, are in place to address varying situations when the need arises. If so, then a poorly drafted agreement *per se* will not amount to an "inadequate system".

34 In this case however, the fault on the part of the Appellant was not so much having imperfectly worded service agreements, but the fact that the actual practice was inadequate in dealing with water puddles and oil patches. This was the second shortcoming of the Appellant. After considering the evidence before him, the DJ's finding on the "actual practices" which occurred may be summarized as follows:

(a) cleaners would sweep the car park twice daily, once at 8.30am and again at 3pm. There was no evidence as to whether regular inspections for oil patches and water puddles were carried out in the interval between those two timings;

(b) a visual inspection for oil patches and water puddles was conducted at 4.45pm every day before the cleaners ended their work shift for the day;

(c) there was no proper system in place whereby the security guards would, after the work shift of the cleaners ended, be the ones to conduct regular inspections of the car park for oil patches and water puddles; and

(d) there was no proper system in place whereby the security guards, if they had discovered any oil patches or water puddles, would take precautionary measures (such as the putting up of warning signs or placing newspapers over them) to ensure that car park users were alerted.

35 I do not disagree with the factual findings of the DJ. In my view such a system was inadequate to deal with the presence of oil patches and water puddles in the car park. There were only two timings allocated for cleaning throughout the whole day. In the interval between those timings, given the lack of evidence proving otherwise and since nothing else was stated in the service agreements, I would assume that any further inspections or cleaning were at best done on an *ad hoc* basis. There was also no proper system put in place for security guards to deal with such hazards. If a proper schedule or protocol had been put in place, there would be no difficulty in producing documentary proof of the same. In fact, as observed by the DJ, it was telling that a system was quickly implemented after the Respondent's accident, where cleaners and security guards were put on duty on a regular schedule and to check for oil spills respectively.

36 Therefore, on the whole, I find that the maintenance system in place at the material time was inadequate to deal with oil spills and water puddles in the car park. Consequently, the Appellant had fallen short of the standard of duty required to take reasonable care to prevent harm to the Respondent.

Did the Appellant's failure to take reasonable care cause the Respondent to sustain damage?

37 The DJ found that causation was established because if there had been a proper system in place, there was a "slightly better than 50% chance of the slippery patch" being discovered and thus properly dealt with, preventing the slip accident from occurring. While I may not agree with a "percentage" method of assessing the adequacy of a maintenance system, I am of the view that causation had been established.

38 As opined by the Court of Appeal in *The Cherry and others* [2003] 1 SLR(R) 471 at [68],

establishing causation is a matter of "common sense". A simple application of the "but for" test shows that the Appellant, in failing to establish an adequate system to deal with oil patches and water puddles, was one possible cause of the Respondent's injuries. However, the legal inquiry at the end of the day is to find out "the effective cause of the damage in order to pin down legal liability or responsibility." (see *Gary Chan* at para 06.023)

39 As a matter of causation, the main plank of the Appellant's argument was that even if it was to be found negligent, the effective cause of the damage would be the Respondent's act of knowingly stepping into the slippery patch. Therefore, the negligence of the Appellant was not one of the causes or rather, it was not the dominant or effective cause of his fall. The Appellant was invoking the doctrine of *novus actus interveniens*, where the Respondent's conduct was so unreasonable that it could be said to break the chain of causation.

40 What then, is the extent of unreasonable conduct sufficient to break the chain of causation? In *PlanAssure PAC v Gaelic Inns Pte Ltd* [2007] 4 SLR(R) 513, the Court of Appeal at [100] opined that only when the plaintiff's conduct was so "reckless" or "deliberate", amounting to a "high degree of culpability" would the chain of causation be broken. Likewise, the Court of Appeal in *TV Media Pte Ltd v De Cruz Andrea Heidi* [2004] 3 SLR(R) 543 at [76] found that only when the plaintiff's conduct was so "wholly unreasonable" would it then constitute a *novus actus interveniens*. It is only where the act or omission of a party is of such a nature as to constitute a wholly independent cause of the damage that the intervening conduct may be termed a *novus actus interveniens* (*Muirhead v Industrial Tank Specialities Ltd* [1986] QB 507).

41 Applying the foregoing principles, I find that the Respondent's conduct, while clearly foolish and unwise, did not amount to conduct so reckless or wholly unreasonable such that it broke the chain of causation. However, his conduct would be relevant in the apportionment of liability which I now turn to consider.

Did the Respondent's actions affect the apportionment, if any, of liability on the part of the Appellant?

42 The apportionment of liability under the defence of contributory negligence requires the court to take into consideration the relative "blameworthiness" of the parties (see *Parno v SC Marine Pte Ltd* [1999] 3 SLR(R) 377 at [61] ("*Parno*")). The following considerations of the Appellant and the Respondent were relevant to the apportionment of liability:

(a) on the part of the Appellant, as management with control over the premises, there was a greater responsibility to ensure the safety of the residents. In *Parno*, the Court of Appeal at [66] opined that "the whole object of the law imposing a duty on employers to provide a safe system of work [was] precisely to protect an employee from his own inadvertence or carelessness." Drawing an analogy with employers and their employees, a parallel degree of responsibility should also be placed on the Appellant. The Appellant had been entrusted with the power and responsibility to manage the Condominium, and should be cognizant of any dangers or risks posed to residents. As discussed above, I find that the maintenance system put in place was far from satisfactory in addressing the problem of water puddles and oil patches, and more could have been done to better address the safety of residents; and

(b) on the part of the Respondent, I agree with the DJ's findings and repeat some of the points made earlier. It was common sense to appreciate the fact that puddles of water can make the floor slippery. One who knowingly steps into a puddle of water must realise the risk of slipping and falling. Further, given the prevalent practice of car washing in car parks including the car

park in the Condominium, water puddles should be expected. The Respondent was well aware of this fact, and was also aware of the presence of oil patches in the car park. In the trial below, the Respondent sought to argue that the puddle was so large and that there were so many water puddles around that it would be impossible to avoid stepping into one. I agree with the DJ that this was an exaggeration, and that if the Respondent had been more mindful, it would have been reasonable to expect him to at least attempt to avoid the slippery patch (as his wife did) instead of stepping straight into it.

43 Therefore, in considering the relative blameworthiness, on the one hand, the Appellant was to be faulted for not having a proper system to address the hazards in the car park. On the other hand, the Respondent was blameworthy in knowingly stepping into the slippery patch with full knowledge of the risks that it entailed.

44 Given those considerations, I find that a greater degree of blameworthiness should be attributed to the Respondent than the 65% liability the DJ had apportioned to him. I therefore hold that the Respondent should bear 75% liability for the slip accident and the Appellant's liability is correspondingly reduced to 25%.

Conclusion

45 This was a case where both parties were at fault. Management committees of condominiums should take heed that the safety of residents is important in the discharge of their responsibilities. The proper engagement of services and the proper implementation of systems to discharge their responsibilities should be a matter of priority. At the same time, residents have a responsibility to act reasonably for their own safety.

46 Notwithstanding that this appeal is dismissed, in view of the adjustment in the apportionment of liability, the Appellant shall have ¼ of the costs of this appeal (including disbursements) which are to be taxed unless otherwise agreed. The security for costs shall be refunded to the Appellant's solicitors.