

HONG KONG / JUDGMENT

CHEUNG MAN FU v. GREAT VANTAGE DEVELOPMENT LTD

COURT

District Court

DECIDED

7 March 2007

CASE / FILE NUMBER

DCPI1165/2005

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bjbj DCPI 1165 /2005 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION PERSONAL INJURIES ACTION NO. 1165 OF 2005

BETWEEN CHEUNG MAN FU Plaintiff and GREAT VANTAGE DEVELOPMENT Defendant LIMITED (trading as or in the name of GOLDEN ELEPHANT THAI RESTAURANT)

Coram : Deputy District Judge W. C. Li in Court Date of Trial : 23rd February 2007 Date of Handing Down Judgment : 7th March 2007 J U D G M E N T The Plaintiff claimed damages against the Defendant for breach of its common law duty of care under Section 3 of the Occupiers Liability Ordinance, Cap. 314, and/or for negligence on the part of the Defendant, or its servants or agents. The Defendant denied liability. On 3 August 2003, the Plaintiff and his family were dining at the Defendant s restaurant on Level 11 of the Food Forum, Times Square, in Matheson Street, Causeway Bay, Hong Kong. At about 1.00 p.m., the Plaintiff and his 6 year old son went to the washroom, and in leaving their table that was on an elevated platform, the Plaintiff following his son walked on a wooden board between the elevated platform and the floor which was about 8 inches lower than the elevated platform. The wooden board was about 2.5 feet wide and 3 feet long and was triangular shaped when looking at it sideward at its cross section. 2 photographs of the wooden board (Bundle D, page 18) and the place where it was positioned and used were shown to the court. The Plaintiff also drew a sketch of the wooden board, exhibited as in the trial. The Plaintiff fell down when he walked on the board and fell off the board onto the floor. He suffered a sprained left ankle with swelling, bruising and localized tenderness. There was no fracture and the diagnosis was soft tissue injury at his left ankle. There were no witnesses to the accident save for the evidence of the Plaintiff himself. The Plaintiff s case appeared to be that when he stepped onto the board, the board slipped away resulting in the Plaintiff tripping and falling over. In his witness statement which he adopted as his evidence in the trial, the Plaintiff had this to say (in paragraph (3) therein): When I stepped on the wooden board I felt movement

of the same. As a consequence, I tripped on the wooden board and fell onto the floor. After the accident, I saw that the wooden board was separated from the edge of the raised platform. At the material time there was no warning or notice, whether on the surface of the wooden board or elsewhere, that the wooden board was slippery or may move when a customer stepped or walked on the same. The Plaintiff in his oral testimony in the trial appeared to give a different description of the accident. He described that he was standing on the wooden board when the accident occurred, with his right foot on the middle part of the wooden board a little towards the left side and his left foot near the edge of the wooden board and he was walking down the wooden board. He was asked if his left foot was wholly on the wooden board. He further said when he stepped near the edge, he felt the wooden board moved when he stepped on it, and that is why he twisted his left foot. The wooden board as seen in the pictures was quite a large one measuring 2.5 feet wide and about 3 feet long, and it was placed flatly on the floor with its surface sloping down towards the floor. My view is that this is quite a steady and stable stepping board that would not move about freely. No evidence was before the court as to the weight and steadiness of the wooden board. The Plaintiff was described in Dr. Jack Wong's report to be 5 foot 8 inches tall and weighed 186 lbs. Presumably when the Plaintiff walked on it, his weight on the wooden board would also rest the wooden board more firmly in its position on the floor. In Dr. Jack Wong's report, I also noted that he had recorded this: Mr. Cheung was a restaurant patron on 3 August 2003. He missed a step and twisted his left ankle while in the restaurant. From the medical report of Dr. Lai Tat Chau from Chai Wan Families Clinic dated 20 April 2005, it was also disclosed that the Plaintiff had a past history of left ankle sprain injury on two previous occasions with good recovery. No issue was taken that the wooden board was not fastened to the raised platform at the time. The evidence was that after the fall of the Plaintiff, the wooden board was separated from the edge of the raised platform. I also noted that it was not the Plaintiff's case that the floor or the wooden board was wet and slippery. Indeed the Plaintiff had not found this to be the case after the fall. From the evidence of the Plaintiff in this case, I do have doubt on the credibility of the Plaintiff's evidence that the wooden board had come away from the raised platform when the Plaintiff was walking on it and resulted in the Plaintiff twisting his left ankle and falling off the wooden board. The evidence appeared to show otherwise that the Plaintiff had stepped onto somewhere outside the wooden board, hence his description of stepping onto something not solid or concrete, and he then twisted his ankle and fell off the wooden board. The Plaintiff's fall could have caused the wooden board to move away from its original position, hence the Plaintiff saw the wooden board had moved and was separated from the raised platform after the fall. In the Plaintiff's evidence, he did not say that he had actually seen the wooden board moved away from the platform. All along his evidence was he felt it moved and the moment he felt it moved was when he felt his left foot was not stepping onto solid ground. The movement felt could well be that the Plaintiff stepped out of the wooden board by overstepping the edge, hence he felt the board moved as he tripped. The Plaintiff's case at first was that when he first stepped onto the wooden board, it moved away from the raised platform causing him to trip and fall. Hence the Defendant was liable for breach of a duty of care in using an unsafe board that was liable to move away from the raised platform as a means of getting down from the raised platform. However, the Plaintiff's testimony in court drew a different picture as to how and why the fall occurred. He

described that he was walking down the wooden board when he had his right foot on the middle part of the wooden board and his left foot wholly on and near the left edge of the wooden board, and he felt his left foot did not step onto something concrete or solid, he then twisted his left ankle and that caused him to fall over. He also attributed his twisting of his left ankle to the fact that the wooden board had moved when he put his left foot down. I did not find the Plaintiff evidence convincing that he had twisted his left ankle and fell down because the wooden board moved under him. He also had a history of a sprained left ankle on two previous occasions. It was likely that he had a weak left ankle liable to sprain due to previous injuries. It also appeared from his medical report that he had told Dr. Jack Wong that he had missed a step and twisted his left ankle. As to the Plaintiff contention that there were no warning sign or notice to warn him of slippery and moving wooden board, I did not think this would help the Plaintiff's case as the floor or wooden board was neither wet nor slippery, and when he had twisted his left ankle due to his own inadvertence, and not because the wooden board was unsteady and had moved away when he walked on it. I also do not think the platform would freely move about when it was squarely placed on the floor and when people were walking on it. The Plaintiff was quite a heavy man and he was descending the wooden board at the time. I would find on the evidence against the Plaintiff that it was the Plaintiff himself who had suddenly missed a step and twisted his left ankle as he walked down the wooden board. I took the view that the wooden board was a safe board or a safe walkway from the elevated platform to the floor. It was not wet or slippery at the time, and it had not moved away as the Plaintiff claimed when the Plaintiff walked and tripped on it. Based on my finding on the evidence, the Plaintiff's claim against the Defendant for breach of its common law duty of care under Section 3 of the Occupiers Liability Ordinance, Cap. 314, and for negligence would therefore fail. The Plaintiff's claim on quantum was for Pain & Suffering and Loss of Amenities (PSLA), medical expenses and for Loss of Earning Capacity only. On PSLA, he claimed HK\$150,000.00. For medical expenses, he claimed HK\$16,443.50, and for Loss of Earning Capacity, his claim was for HK\$96,000.00 or the equivalent of 3 months salary. Had the Plaintiff's claim been successful, I do not think his injury, being soft tissue sprain injury with no fracture, was anywhere near serious injury category. He suffered a sprained ankle and was given 11 days sick leave. He suffered swelling, bruise, and localized tenderness and had to walk assisted by a stick after the accident. He could return to work as an engineer after his sick leave. Dr. Jack Wong found that the Plaintiff still suffered left ankle pain especially during quick walk, there was a sense of disengagement, and tiredness and numbness was noted in the lower leg region. He opined that injury of this nature usually took 3 weeks to recover. Physiotherapy, steroid injection and muscle strengthening exercise were recommended to improve the Plaintiff's condition. Dr. Jack Wong assessed 2% permanent impairment of the whole person. In his work, the Plaintiff worked mainly in construction sites having to walk, stand and walk on stairs, albeit no manual work, and he did not have to run or jump. The case authority cited was *Liu Zhihui v Hsin Chong Construction (Asia) Ltd* (No. A3340 of 1994) where in 1998, HK\$58,564.00 was awarded for PSLA for a sprained left ankle with soft tissue injury. For the injury suffered by the Plaintiff, I would have awarded HK\$80,000.00 for PSLA. The medical expenses of \$16,443.50 would be given in full as these were supported by receipts and reasonably incurred. As for the Loss of Earning Capacity, although the Plaintiff could resume his work in almost full capacity, compensation under this

head refers to the Plaintiff s handicap as an existing disability by reference to what may happen in the future. It is speculative in nature and it is necessarily a consideration of the risk and chances in the circumstances of the case. I would have awarded an amount of \$50,000.00 under this head. Interest for special damages and general damages would have also been awarded together with costs. As the Plaintiff has not established liability, his claims against the Defendant are therefore dismissed. As for costs, Counsel for the Plaintiff asked for no order as to costs in the event that the Plaintiff s claims were dismissed. The Defendant had not appeared for the trial. I therefore make no order as to costs. (W.C. Li) Deputy District Judge Representation Mr. Ng Pak Kin instructed by Messrs Wong & Co. for the Plaintiff The Defendant, in person, being absent. PAGE - PAGE A B 1udk 1udk (#p# (#p# (#p# (#p# &`#\$ >\*6D P{ \$ :i#z \*\mT zo/< `0,: xC&1 ({m8 =J+> P0} W~7gb ^CuNy\$O W~7g xC&1 ({m8 =J+> .&`z n*\U & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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