

HONG KONG / JUDGMENT

LI CHING v. GUARD ABLE LTD

COURT

District Court

DECIDED

12 November 2007

CASE / FILE NUMBER

DCPI2416/2006

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bjbj DCPI 2416/2006 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION PERSON INJURIES ACTION NO. 2416 OF 2006

BETWEEN Li Ching Plaintiff and Guard Able Limited Defendant

Coram : H.H. Judge Chow Dates of Hearing : 16th - 18th July and 31st August, 2007 Date of handing down Judgment : 12th November, 2007 J U D G M E N T This is the Plaintiff's claim for damages for personal injury, loss and damages sustained by her in the course of her employment arising out of the negligence and breach of common duty of care of the Defendant under the Occupiers Liability Ordinance. The Plaintiff joined the Defendant on 19.3.2002 as a security guard. At that time she was aged 43. On 31.3.2002, she was on duty and was arranged to rest from 12:00 a.m. to 1:00 a.m. In her witness statement dated 16.9.2005, she reiterated the incident: After I finished having dinner at the rest room, I sat on the sofa near the door of the rest room and I closed my eyes to rest. At that time there were four night shift security guards, and I was the only female. I was afraid that they would enter the rest room and disturb my rest, therefore I locked the door after I entered the rest room. While I was resting with my eyes closed, all of a sudden I felt somebody touching my right hand, and I was taken aback. When I looked up, I discovered that the person who touched me was the group leader Mr. Tang Siu Kwong. Mr. Tang did not knock the door, and he used the key to open the door of the rest room and he quietly approached me and touched my right hand, I was terrified and astonished. After that, Mr. Tang told me, s 6 minutes past 1, you immediately go and patrol the central garden! . After he said that he turned and walked away. I therefore rose up from the sofa right away. However, as the rest room was cramped, I needed to squeeze my body, and I could not walk normally inside the room but could only walk in small steps. When I was prepared to turn round and exit the cramped area, I twisted my left foot, lost balance, fell and sprained my left ankle, the left side of my waist and then my left shoulder then hit against the door, and my neck sprained backward to the left. I immediately felt severe pain at my neck and my left shoulder, numbness at my left upper limb, severe pain to the waist, pain from my left bottom to my left lower limb, and severe pain and swelling at my left

foot. The pain made me sweat all over and I screamed because of the pain. At that time, Mr. Tang was in front and when he heard me screaming, he came to me and asked what happened (Underlines provided) The rest room was used by staff for changing and resting, as well as for storage of transformers. There was a sofa in the room. Tang Siu Kwong (the Defendant's witness) said that about 3 persons could get changed at the same time in that room. Mr. Lau Kai Yu (the Plaintiff's witness) said that 2 to 3 persons could do this. The key issue which this Court has to resolve is: what is the cause which made the Plaintiff sprain her left ankle? In the statement of claim, she pleaded The Plaintiff was alarmed by Mr. Tang's behaviour and stood up from the sofa attempting to squeeze her way to the door of the room hurriedly. As a result, the Plaintiff sprained her left ankle, lost balance and fell, hitting the left side of her body against the door of the room. She therefore sustained serious injuries to her neck, shoulder, back and left ankle. In evidence-in-chief she said that she took a loo turning she sprained her left ankle. She lost her balance. It is doubtful that she could get up quickly if her leg was numb. It is sheer common sense that when a leg is numb a person cannot stand up quickly. In the Statement of Claim and her witness statement she did not mention that her leg was numb. It is not the limited space in front of her which caused her to sprain her left ankle. She did not point to that as the cause of the spraining of her ankle. When she was turning 90 turning her body she paid attention. She said that she did not walk hurriedly. Then there is no reason she would sprain her ankle. She did not say that her left leg had struck anything in front of it. Hence, it is unknown why she sprained her left ankle. The numbness in one's leg would not make a person sprain his/her ankle. It would only make it difficult for that person to walk at an ordinary speed. The Plaintiff's Counsel submits that As a result of the hurried return to work, she fell on weak legs and injured herself But it was not pleaded in the Statement of Claim or in her witness statement that she fell on weak legs and injured herself. She only mentioned this matter in Court. If this is what actually happened, she should have mentioned it as the basis of her claim. Dr. Cheung Tak Fai in his medical report (dated 26.3.2004) states that the Plaintiff attended his clinic on 28.3.2003, and She gave the history of an injury during work on the captioned date. While she went out from the rest room, she tripped over the door-step and fell. She sprained her left ankle and hit her left side of body against door-case, sprained her neck and low back as well. She experienced severe left ankle and back pain and left upper limb numbness that she could barely walk a few steps. The medical report (dated 20.2.2004) of Dr. Y.F. Yeung of the Department of Surgery of the Prince of Wales Hospital states: Madam Li fell down on duty after tripping over the door frame in 3/2001 and suffered from left shoulder pain radiating down to the fingers afterwards. The report of Dr. Li Shun Cheong of the Tai Po Jockey Club Clinic (dated 7/1/2004) states: She claimed to experience a dizzy spell during work on 22/3/2002. This resulted in a fall and sprained her left ankle. The medical report of Dr. Chan Ho Yan of the Alice Ho Miu Ling Nethersole Hospital (dated 14.3.2003) says that the Plaintiff sprained her left ankle while she was on duty with preceding syncope on 22/3/02. She must have told the above doctors of what had happened on the date of the accident. She has not adduced evidence to show that the doctors misunderstood what she told them. Her account of the accident to the doctors differ from what she pleaded and what she said during trial. In the Notification of Accident at Work submitted to the Labour Department on 29th April 2002, she stated As I was wearing the shoes provided by the company and those were not in the

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