Xu Ren Li *v* Nakano Singapore (Pte) Ltd
[2011] SGHC 197

Case Number	: District Court Appeal No 12 of 2011
Decision Date	: 25 August 2011
Tribunal/Court	: High Court
Coram	: Chan Sek Keong CJ
Counsel Name(s)	: Han Hean Juan (Hoh Law Corporation) for the appellant; Lei Chee Kong Thomas (Lawrence Chua & Partners) for the respondent.
Parties	: Xu Ren Li — Nakano Singapore (Pte) Ltd

Employment Law

Statutory Interpretation

Tort

25 August 2011

Chan Sek Keong CJ:

Introduction

1 This was an appeal against the decision of the district judge ("the DJ") dismissing the claim by the appellant, Xu Ren Li ("the Appellant"), for damages in respect of injuries which he suffered while at work (see *Xu Ren Li v Nakano Singapore (Pte) Ltd* [2011] SGDC 159 ("the GD")). At the conclusion of the hearing of the appeal, I allowed the appeal in part. In my view, the Appellant and the respondent, Nakano Singapore (Pte) Ltd ("the Respondent"), were equally at fault, and I accordingly apportioned liability in the ratio 50:50. I now give my reasons for so deciding.

Factual background

2 At the material time, the Appellant, a 43-year-old PRC national, was employed as a construction worker by the Respondent in the construction of a condominium known as "Saint Thomas Suites Condominium" located at St Thomas Walk, Singapore.

3 The Appellant claimed that on 30 March 2009, at about 7.00pm to 7.20pm, while he was using a staircase ("the Staircase") in an uncompleted building at the construction site ("the Building") to make his way down from the 19th floor to the 10th floor to catch the passenger lift located on that floor, he lost his balance on one of the steps and fell against an on-facing wall situated at the staircase landing on the 12th floor, hitting his right shoulder and landing on his buttocks. At the time of his fall, the Appellant was the last person in the group of workers going down for their dinner. As he was trailing his co-workers, no one saw him fall. He picked himself up and rejoined his colleagues at the passenger lift.

4 The Appellant claimed that as a result of his fall, he felt intense pain in his right shoulder, right arm and back. He returned to his dormitory after dinner to rest because his right shoulder was painful and he could not lift up his right arm. The Appellant reported the accident to his supervisor the next

day and was sent to Singapore General Hospital for medical treatment. The doctor noted that he had sustained minor shoulder and back injuries. The Appellant was given medical leave for ten days and was told to return for a CT scan of his injured shoulder.

5 On 9 April 2009, the Respondent arranged for the Appellant to receive follow-up treatment at National University Hospital ("NUH"). From 11 April 2009 till 16 October 2009, the Appellant visited NUH six times and was given six medical certificates to cover his absence from work. [note: 1]

6 On 16 April 2009, the Appellant lodged a report with the Ministry of Manpower ("MOM"). On 18 April 2009, the Respondent lodged a report with MOM and disputed the manner in which the Appellant had (so he claimed) sustained his injuries. The Respondent alleged that the Appellant had been involved in an affray on the afternoon of 30 March 2009 with another PRC construction worker, in the course of which he was pushed. His injuries were caused by the resultant fall. As such, the Respondent claimed that the Appellant's account of his fall at the Staircase was fabricated. Alternatively, the Respondent alleged that the Appellant was wholly responsible for the accident, either through his own negligence or by deliberately injuring himself.

7 On 12 October 2009, the Appellant filed a writ of summons against the Respondent claiming damages for personal injuries arising from his fall. The basis of the Appellant's claim was that the Respondent had breached both its statutory duty under reg 23(2) of the Workplace Safety and Health (General Provisions) Regulations (Cap 354A, Rg 1, 2007 Rev Ed) ("Reg 23(2)") and its common law duty of care in failing to provide a safe place of work, in that:

(a) there was no handrail or other support along the wall of the Staircase for the Appellant to hold on to while descending;

(b) the step on the Staircase where the Appellant fell was broken; and

(c) there was no proper lighting in the stairwell where the Staircase was located.

8 The Appellant also pleaded other particulars of breach of statutory duty and common law duty, but they will not be considered in these grounds of decision as they were not material to the disposition of the Appellant's claim in the court below.

9 The Respondent denied liability on the ground that its failure to install any handrail along the wall of the Staircase was not a breach of either its statutory duty or its common law duty to provide a safe place of work. It also pleaded that the Appellant's injuries were not caused by his fall, but were instead caused as a result of his affray with a co-worker. Alternatively, if the Respondent was indeed negligent, the Appellant was himself also negligent in going down the Staircase hurriedly to catch the passenger lift.

The decision below

10 The DJ dismissed the Appellant's action for the following reasons:

(a) the Respondent was not in breach of Reg 23(2); and

(b) although the Respondent owed a duty of care to the Appellant to ensure that there was adequate lighting at and proper steps on the Staircase, the Appellant had failed to prove that the Respondent was in breach of this duty as:

(i) the lighting at the Staircase was adequate; and

(ii) the Appellant's evidence that he had fallen by stepping on a broken step was not reliable as he had produced a photograph of a broken step which might have been located on a floor other than the floor where he fell.

11 The DJ also found that the effective cause of the Appellant's fall was "the [Appellant]'s own negligence in rushing down the steps" (see the GD at [23]). It appeared from the GD (at [22]–[23]) that the DJ considered the Appellant's conduct to be the sole effective cause of his fall.

The issues on appeal

12 On appeal to this court, the Appellant raised the same issues as those raised in the court below and reiterated the arguments that were rejected by the DJ. Similarly, the Respondent reiterated the arguments which found favour with the DJ.

13 In essence, there were three issues which I had to decide, *viz*:

(a) whether the Respondent, in failing to install any handrail along the Staircase, was in breach of its statutory duty under Reg 23(2) ("Issue 1");

(b) whether the Respondent was in breach of its common law duty of care to provide a safe place of work for its workers ("Issue 2"); and

(c) whether the Appellant was negligent in falling while making his way down the Staircase ("Issue 3").

Issue 1: Was the Respondent in breach of its statutory duty under Reg 23(2) in failing to install any handrail along the Staircase?

14 Issue 1 centred on Reg 23(2), which provides as follows:

Measures to be taken to prevent falls

23. …

(2) For every staircase in a factory building or which affords a means of exit from the factory building, a substantial handrail shall be provided and maintained, which —

(*a*) if the staircase has an open side, shall be on that side; and

(*b*) if the staircase has 2 open sides, shall be on both sides.

15 The DJ found that the Respondent was not in breach of Reg 23(2) for the following reasons (see [7] of the GD):

Having read the provision, *I think the statutory obligation is only to provide handrails for staircases with open sides*. This rule aims to prevent workers falling from height at the exposed side. The [S]taircase here, however, has no open sides. It is flanked by walls (a walled staircase). Hence, [Reg] 23(2) … does not apply. [emphasis added]

16 In my view, the DJ's interpretation of Reg 23(2) was wrong. Reg 23(2), read purposively and

sensibly, entails that a handrail must be provided for every staircase in a factory building (which, as defined in s 5(3)(*q*) of the Workplace Safety and Health Act (Cap 354A, 2009 Rev Ed), includes premises where building operations or any engineering construction works are carried on) or which affords a means of exit from a factory building. The word "which" in the third line of Reg 23(2) (as reproduced at [14] above) does not qualify the earlier reference to a factory building, but merely specifies that if a staircase is open on one side, a handrail must be provided on that side, and if a staircase has two open sides, handrails must be provided on both sides. Reg 23(2) applies to all staircases, whether or not they have any open side or sides. Where a staircase has no open side, such as the Staircase in the present action (which was a walled staircase), a substantial handrail must still be provided on at least one side as the minimum requirement under Reg 23(2). Counsel for the Respondent argued that Reg 23(2) was ambiguous and, because it was a penal provision, such ambiguity should be construed in favour of the Respondent. I rejected this argument as, in my view, the principle of construction is the converse. In the area of social legislation where the prevention of injury to workers is paramount, any ambiguity in such legislation should be construed to achieve its purpose, *viz*, to protect the safety and welfare of the worker.

17 I should add, further, that counsel for the Respondent accepted that the staircases from the 9th floor to the 19th floor of the Building had no handrails. It was argued that it was not practical for the Respondent to install handrails as they might be damaged before the Building was ready for occupation. I rejected this argument. The obligation created by Reg 23(2) is not qualified by considerations of practicality. If the Respondent was indeed concerned about handrails (had they been installed) being damaged, it could have installed temporary handrails along the staircases in the Building. Accordingly, I found the Respondent in breach of Reg 23(2) in failing to provide any handrail along the Staircase where the Appellant fell.

Issue 2: Was the Respondent in breach of its common law duty to provide a safe place of work?

18 Turning now to Issue 2, in my view, the Respondent was in breach of its common law duty to provide a safe place of work for its workers. The staircases from the 9th floor to the 19th floor of the Building (which were not in a finished state at the material time as the Building was still under construction) were unsafe for use by workers because:

(a) no handrail had been installed on at least one side of each staircase;

(b) the steps on the staircases were uneven as each step had a recess on the edge which had yet to be laid over with a non-slip tile (that was to be done only at the completion stage of the Building); and

(c) the staircases did not have any lighting and the staircase landings were only dimly lit.

In this connection, it is pertinent to note that a photograph of a completed staircase in the Building showed a handrail running along one side of the staircase as well as non-slip finishing at the edge of the steps. [note: 2]

19 I should add that in the present case, the staircases in the Building were constructed for use by residents – *ie*, they were not intended to be used by the Respondent's workers. However, the Respondent's workers had to use the staircases, notwithstanding their incomplete state of construction at the material time, because the passenger lift in the Building could not reach higher than the 10th floor. The staircases became an unsafe place of work because, despite their incomplete state, the Respondent's workers had to use them to gain access from the 10th floor to higher floors

of the Building.

Issue 3: Was the Appellant negligent in falling while making his way down the Staircase?

20 Moving on to Issue 3, in my view, the Appellant was contributorily negligent at the material time. He had used the staircases in the Building (which, as just mentioned, were still in an incomplete state of construction) many times in the course of his work and ought to have been aware of their physical condition. His co-workers had also used the same staircases for the same purposes every working day. Yet, none of them had fallen or slipped on the staircases. The Appellant was aware that there was no lighting at the staircases and that the staircase landings were only dimly lit. He was also aware that the steps on the staircases were unfinished and uneven. As such, the Appellant should have exercised care when using the staircases. He should not have descended them at a fast pace. In his testimony, the Appellant agreed that he had been moving quickly down the Staircase when he fell. His act of rushing down the Staircase significantly increased the risk of his accident happening and also contributed to the degree of his injuries. For these reasons, I was of the view that the DJ's finding that the accident had resulted from the Appellant's conduct in rushing down the Staircase should not be disturbed, although I differed from the DJ in so far as I regarded the Respondent's breach of statutory duty and common law duty as a causative factor as well.

Conclusion

21 In the result, I found that both the Appellant and the Respondent were negligent. Based on the evidence before me, it was difficult to determine which party was more at fault. I thus decided that liability should be apportioned equally between the parties, with the costs of the appeal awarded to the Appellant. I also ordered the quantum of damages and the costs of the proceedings in the District Court to be assessed by a deputy registrar of the District Court.

[note: 1] See the Record of Appeal filed on 25 June 2011 at vol 2, pp 248–253.

[note: 2] *Id* at vol 2, p 404.

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