Insurance & Personal Injury

Can an Injured Rescuer Sue?
– Exemption to the Rule of Novus actus interveniens

Introduction

In order for a victim who suffers from injury to recover damages from a wrongdoer, not only must he prove that the wrongdoer has done something wrong, but he must also prove that the wrongdoer's acts have caused the injury. To put it more precisely, the injury must be a reasonably foreseeable consequence of the wrongdoer’s acts. This is known as the notion of causation under the law of tort.

Sometimes, where a wrongdoer is negligent but before harm to the victim results, a subsequent event occurs, without which the injury would not be caused to the victim. In this case, the event might constitute a *novus actus interveniens*, literally “new act intervening”, which breaks the chain of causation and relieves the wrongdoer from liability.

However, if the rule of *novus actus interveniens* is strictly applied, what happens when the wrongdoer has by his negligence caused danger to someone or something, and injury was caused to a third party in his course of rescuing that someone or something? Does the act of rescue amount to an intervening act so that the wrongdoer is absolved from liability? This article will explore the issue with illustration of several real cases.

**Duty Owed to Rescuers**

Where a person, by his negligence, creates a situation that calls for rescue, he is subject to two duties – a primary duty to the imperiled victim, and a secondary duty to the rescuer. The rationale behind this is simple: although the wrongdoer might owe no duty of care to the rescuer in the first place, the wrongdoer’s negligence has created a dangerous situation which invites the rescue and the wrongdoer ought, as a reasonable man, to have foreseen the likelihood of intervention by a rescuer.

**Application of the Rule of Novus actus interveniens in Rescuer Cases**

Having established that the wrongdoer does owe a duty of care to the rescuer, the next issue to ascertain is whether the rescuer’s act constitutes an intervening act which breaks the chain of causation.
Generally, the act of a rescuer, which is a reflex action to an emergency situation created by the wrongdoer, will not constitute an intervening act, in the cases where such actions are natural and foreseeable consequences of the wrongdoer’s negligence. This can be illustrated by the following cases.

In the case of *Videan v British Transport Commission* [1963] 2 Q.B. 650, a station master was killed while trying to rescue his child, who had walked onto the defendant’s railway lines, from being run over by a motor-trolley driven by an employee of the defendant. In deciding whether the station master’s widow can recover compensation on behalf of the station master from the defendant, the Court found that the trolley driver was negligent in not keeping a proper look-out and travelling too fast. The Court also found that his negligent driving had caused an emergency which invited rescue. Therefore, the Court ruled that station master’s act to rescue his child was not an intervening act and thus the defendant was vicariously liable for its employee’s negligence.

In another case of *Hyett v Great Western Railway Company* [1948] 1 K.B. 345, the plaintiff was working in the defendant’s premise. Due to the leakage of paraffin, a fire broke out and the plaintiff was injured in his attempt to extinguish the fire. The Court found that the defendant was negligent in allowing the truck to remain with paraffin leaking from it. The Court also found that it was natural to anticipate that a reasonable man seeing a fire staring on the premise where he was working would take necessary steps to put out the fire. Although in this case there was only a threat to property, not life, the Court still held that the defendant was liable for the plaintiff’s injury.

However, it should be noted that in some cases, where the rescuer has done something negligent contributing to his injury, his damages may be reduced by taking into account his contribution to his own injury. In *Harrison v British Railways Board* [1981] 3 All E.R. 679, the plaintiff was the guard on the train, and he saw the defendant attempting to board a moving train. Instead of signaling the driver to stop or to apply the emergency brakes, he gave the incorrect signal which resulted in the train continuing to accelerate away from the station. The plaintiff then tried to grab hold of the defendant who fell off the train and therefore injured the plaintiff. Despite holding the defendant liable for the plaintiff’s injury, the Court found that had the plaintiff given the correct signal or applied the emergency brakes, he would probably have reduced the possibility of injury and its severity. Accordingly, the Court reduced the damages recoverable by the plaintiff by 20 per cent.

**A Recent Hong Kong Case**

The Court in Hong Kong has also dealt with the duty owed to an injured rescuer in the recent case of *Fok Chick Yeung Apple v I-Cable Telecom Limited* [2015] HKDC 1203 (15 October 2015). In that case, the plaintiff was an employee of the defendant, and his task was to install
cable TV reception devices, which were stored in and carried by a van. On the day of accident, when the plaintiff’s colleague was opening the tailgate of the van, the plaintiff saw an object falling out from the van. The Plaintiff then dashed forward in an attempt to catch the object and was injured when his head bumped into the edge of the tailgate.

During the trial, one of the issues the parties debated over was whether it was reasonably foreseeable that an employee in the plaintiff’s position would dash forward to catch the falling object. On the authority of Hyett and as a matter of common sense, the Court rejected the defendant’s arguments that rescuers should feel no urge to rescue property, and found that it was reasonably foreseeable that an employee in the plaintiff’s position would, on seeing his employer’s property in danger, dash forward in an attempt to save it. This was even more so when the items carried in the van were expensive devices and accessories. Accordingly, the Court held that the defendant was 100 per cent to blame in failing to take steps to ensure that objects carried in the van would not fall out from it.

**Conclusion**

In conclusion, once the Court has reached the conclusion that the rescuer’s act is a reasonably foreseeable consequence of the wrongdoer’s negligence, the injured rescuer will be able to recover damages from the wrongdoer. However, it must also be noted that, although the Court does realize that rescuers often act in the heat of the moment, the damages recoverable by a rescuer may be reduced if the Court finds that the rescuer himself has partly contributed to his injury.