IN THE COURT OF APPEAL OF

THE REPUBLIC OF VANUATU

CASE NO. 6A/1984

BETWEEN: SOCIETE CIVILE INTERCONTINENTAL and GROUPEMENT FRANCAIS D'ASSURANCES (Appellants)

AND : GEOFREY LEIGH represented by his father MORRY LEIGH (Respondent)

I have read my learned brother, Judge Cazendres' judgment and wish only to add comments indicating my agreement.

I do not think that the boy's parents were negligent.

It is accepted by the appellants that the hotel management were negligent. They had a transparent glass door which was indistinguishable from an empty space, but had placed a plastic strip upon the glass at the eye-level of an adult. But there was no such warning strip lower down the pane at the eye-level of the boy who was 9 years old and about normal height for his age. There is no evidence that he was above or below average height. He endeavoured to pass through what he assumed to be an open space and shattered the glass pane caushing servere injuries to his right leg.

The learned judge found that the boy had not observed that he w was approaching a glass partition and that this was because the hotel management had failed in their duty or warning young children that there was a transparent partition.

The hotel have not submitted that hthe child has any responsibility. However, they put forward a somewhat vague argument about the boy's parents being partially responsible.

They point out that the boy was in the foyer area with another young child, that his parents were not with him and that he ran towards the doors. The implication is that the boy had been negligent in some way, that had he been walking and not running he may not have run into the glass door. The argument, in our view, is quite fallacious in that it is clearly based upon a hypothesis which rests upon certain assumptions. What is suggested is that if the hotel had done its duty towards children by placing some eye catching plastic strip at a child's level of visibility the boy would still have suffered this accident because he was so negligent as to be running across the foyer towards the entrance. But had he been walking, then according to the hypothesis he would have seen the warning and would have avoided an been walking the would have noticed that he was approaching a transparent glass door and there would have been no accident, although there was no strip at his eye-level.

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We cannot accept that the boy's running was a contributing factor to the accident. Why should a child not run in an area which is free from danger ? It may be disturbing to some adults, it may be an unnecessary annoyance for which the parents may be reproached, but it does not amount to negligence on the part of the child.

If a danger which one is approaching is concealed on is not expecting it whether one is walking or running. The highest level to which this argument may be raised in favour of the hotel is to accept that if one is walking there is more likelihood of the danger being observed. However, that places no onus upon an adult or a child to walk because of the unlikely chance of coming upon a concealed danger.

A normal boy of nine years may be expected to have some sense of self-preservation. Such children walk in towns amid traffic, play soccer, rugger, hockey, ride cycles and are exposed to many of the normal hazards of their customary life. Parents cannot be expected to supervise all activities of such children.

In the circumstances fof this case we do not agree that the parents failed in their responsibility to the child or to the hotel. Their presence could not remove the danger; it could not make visible that which was invisible to the child. They had not set loose a child so young or handicapped that it would not be likely to observe a warning strip on the glass at eye-level.

We respectfully differ form the finding of the learned Chief Justice that the parents were partially to blame.

We find that the hotel management are entirely at fault and we consider them liable for all damages.

The learned judge's awards as to medical and other expenses and his assessment of general damages we consider to be fair.

However, damages assessed for pain and suffering, loss of amenities and the like are not approached in French law as they are in English law. The maximum that can be awarded under such heads of damage are those claimed in the pleadings and the Court has no power to exceed them. He can of course reduce them otherwise the sky would be the limit. Therefore we are obliged to amend the amounts awarded under those heads, which had been increased by the learned Chief Justice and reduce them to the sums claimed by the plaintiff (respondent).

For the foregoing reasons I concur in the judgment of my learned brother, Judge Cazendres.

Dated at Vila this 12th day of December, 1984.

(J. T. Williams)

J. T. Williams

Appeal Judge