

HONG KONG / JUDGMENT

CHAN SHING CHING v. HONG KONG DISTRICT SECURITY LTD AND ANOTHER

COURT

District Court

DECIDED

10 April 2007

CASE / FILE NUMBER

DCPI910/2005

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bjbj DCPI910/2005 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION PERSONAL INJURIES ACTION NO. 910 OF 2005 BETWEEN CHAN SHING CHING Plaintiff and HONG KONG DISTRICT 1st Defendant SECURITY LIMITED PAUL Y. CONSTRUCTION 2nd Defendant COMPANY LIMITED Coram: H H Judge Marlene Ng in Court Date of Hearing: 10 April 2007 Date of Ruling: 10 April 2007 R U L I N G Today is the first day of trial. However, from a card issued by the Legal Aid Department to the plaintiff, it is evident that the plaintiff has applied for legal aid on 30 March 2007. No memorandum of notification of an application for legal aid has been filed with the court as yet. I am also informed by Miss Lau, counsel for the defendant, that the defendant has not been notified of the application for legal aid. However, Miss Lau informs me that the defence will not take issue over the fact that the plaintiff has in fact applied for legal aid. Pursuant to section 15 of the Legal Aid Ordinance, the present proceedings are automatically stayed. The plaintiff was previously represented by Messrs Day & Chan. Notice to Act in person was filed on 12 March 2007 and the defendants solicitors were notified on 14 March 2007. Miss Lau informs me that on 19 March 2007, the defendant has through loss adjusters approached the plaintiff for copies of certain documents disclosed in the plaintiff's list of documents, but such copies have not yet been provided. Thereafter, the plaintiff left Hong Kong and returned on 28 March 2007. On 30 March 2007, the plaintiff applied for legal aid and failed to appear at the hearing on 2 April 2007 at which the defendant sought directions on, inter alia, the preparation of the trial bundle. At the hearing before me today, Miss Lau applies to lift the legal aid stay on the following basis:

- (a) the plaintiff was not previously on legal aid and has instructed private legal representation;
- (b) the plaintiff has not notified the defendants of any intended or actual application for legal aid;
- (c) the application for legal aid is late and the defendants are prejudiced since they have arranged for counsel and witness to attend the trial;

- (d) the plaintiff could have handled the trial. The relevant principles have been summarised in my judgments in *Ted Ohya* also known as *Ohya Takaaki v Abdo A Osman* also known as *Abdo Abdelhanned Osman* DCCJ4042 of 2005, unreported, 23 March 2006, and *Mak Siu Bo v Yeung Wai Fan* trading as *Wai Hing Trading Company* DCCJ4057 of 2004, unreported, 4 December
2006. I will state the principles briefly. Mr Recorder Kwok SC in the *Bank of China (Hong Kong) Limited v Fu Ming Kong Michael & Another* HCA7769 of 2000 and HCMP3909 of 2000, unreported, 24 June 2005, stated that: The purpose of the statutory stay under section 15 of the Legal Aid Ordinance is to allow sufficient time:-
- (a) for the director to process an application for legal aid; and
- (b) in the event of legal aid being granted, for the assigned lawyer(s), to effectively represent the assigned client, and, where appropriate, to apply for more time. The statutory stay is an aid in, and not an obstacle to the administration of justice. The Court of Appeal in *Lee Shiu Ming v Yeo Hiap Seng (Hong Kong) Limited* CACV39 of 1993, unreported, 14 July 1993, set out the principles for the court's guidance when considering whether to lift the legal aid automatic stay. The guiding principle is to do what is fair and just between the parties. Yuen J (as she then was) in *Re Ip Lai Fan and Ip Lam On* HCSD10 and 11 of 2000, unreported, 3 November 2000, summarised Nazareth JA's guidance in *Lee Shiu Ming's* case as follows: the court should be slow to lift a stay before an application for legal aid is determined, especially if a point of law had to be dealt with by a layman. However, if the court was satisfied that the application for legal aid was an abuse of process, then the court should exercise its discretion to lift the stay. First, I do not consider that the plaintiff's application for legal aid on 30 March 2007 as suspiciously late or an abuse of process to thwart the trial. There can be no doubt that the plaintiff knew of the trial dates, but his former solicitors only ceased to act in mid-March 2007. In making the application for legal aid on 30 March 2007, i.e. just over two weeks after his former solicitors ceased to act, I cannot say the plaintiff acted with undue delay or with a view to delay the trial. Further, the fact that the plaintiff retained private solicitors previously cannot be a ground to support lifting of the stay in the present circumstances. I note that the present personal injuries claim by the plaintiff involves issues of law. This is self-evident from the endorsement and statement of claim prepared by the former solicitors of the plaintiff. The plaintiff's claim is based not only on negligence but also on breach of the employment contract, the common duty of care, and statutory duties under the Occupiers Liability Ordinance, the Construction Sites (Safety) Regulations and Occupational Safety and Health Ordinance. A quick review of the defence, particularly paragraphs 14 to 16, also show that there are specific defences relying on the interpretation of the relevant statutory provisions. It is also trite that if liability is established, assessment of the award for pain, suffering and loss of amenities will require assistance from the parties on precedent cases. Indeed, in paragraph 3.1 of the defendant's Answer to Revised Statement of Damages, the defendant has cited legal authority on the subject. I am therefore of the view that a trial involving these matters will benefit from legal representation of the

plaintiff should the Director of Legal Aid grant a legal aid certificate for the plaintiff. I also note that the defendant through Miss Lau complains that certain documents relating to quantum disclosed in the plaintiff's list of documents have not been produced. Miss Lau submits that the defendant requires production and sight of such documents prior to or at the trial of this action. The plaintiff informs this court that his former solicitors have returned over 1,000 pages of documents to him. Since they are mostly in English, he is unable to decipher their contents or identify the documents requested by the defendant. Miss Lau acknowledges that it is not proper for the defence or even myself as the trial judge to peruse the plaintiff's bundle of over 1,000 pages of documents to identify the relevant ones because such bundle may contain privileged documents. But the defendant is reluctant to proceed with the trial without sight of the outstanding discovered documents. Given this impasse, it is uncertain whether the trial can in any event proceed today. Such case management matter needs to be resolved prior to trial. I note that the defendant has not in the summons dated 28 March 2007 applied to deal with such matter. So this has not been resolved at the hearing before His Honour Judge Stanley Chan at the hearing on 2 April

2007. Such missed opportunity will have to be remedied by another case management hearing unless legal aid is granted in favour of the plaintiff, in which event I expect both parties solicitors to deal with the matter in an efficient and cost-saving manner. The plaintiff is reluctant to have the stay lifted. He says that he is still suffering from the effects of an attack on him in April 2006 by culprits who hit him over the head. It is not clear from the newspaper clipping he produced in respect of the incident what injuries he suffered. I place no reliance on such matter in reaching my conclusion above. Having considered the above matters and in particular Miss's submissions, I am afraid the legal aid stay will have to remain in place. This means that the trial will not proceed today. I propose to fix a hearing after the expiry of the legal aid automatic stay before the PI master for further directions and other case management issues and also to re-fix the trial dates. (Discussion on directions) The parties do attend a directions hearing in chambers (open to the public) before the PI master at 2.30 pm on 27 June 2007 at Court 46 with half hour reserved to deal with the issue of production of the plaintiff's documents and other outstanding case management matters. The trial of action be re-fixed before a bilingual District Judge in court at 9.30 am on 22 August 2007 at Court 16 with 23 August 2007 reserved. The estimated length of the trial is two days. (Explanation to plaintiff re order and costs) So I add two further orders, namely, that today's order be drawn up in Chinese and served, and costs of today's hearing be reserved. (Marlene Ng) District Court Judge Plaintiff, in person, present Ms Julia Lau, instructed by Messrs Deacons, for both Defendants PAGE - PAGE CRT9/10.4.2007/SC DCPI910/2005/Ruling A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V & `#\$ Normal.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 26 October 2026 · Esheria