

HONG KONG / JUDGMENT

NG SHING CHIT v. LEE KIN CHU

COURT

Court of First Instance

DECIDED

24 July 2017

CASE / FILE NUMBER

HCA1228/2015

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bjbj vwc) Ng<t t Date of Hearing: 24 July 2017 Date of Decision: 24 July 2017 decision This is an application by the defendant to adjourn the trial which was fixed to begin today with five days reserved. This morning, the defendant s counsel, Mr Wong informed the court that the defendant lost consciousness last Saturday and was admitted to hospital. X-ray conducted on the defendant found that there was a tumor. The case was adjourned upon Mr Wong s application to 2:30 ormed the court that last Saturday, the defendant fell and lost consciousness. The defendant s son was with her and she was sent to the hospital. X-ray was conducted and it showed that there was an unclear mark on the forepart of her brain, the significance of which is subject to consultation with the brain specialist which will happen shortly. The defendant s son had consulted a psychiatrist Dr o attend trial and answer questions. A note issued by the hospital was submitted to the court to the effect that the defendant cannot attend the trial today. The defendant was 81 years old. Since the 1970s and until about the 10 years ago, the defendant and the plaintiff were lovers and the present dispute relates to a property which was once registered in the joint names of the plaintiff and the defendant. It is common ground that the defendant was not only a party but a key witness in this case. The case would depend on the credibility of the evidence of the witnesses, especially the plaintiff and the defendant themselves. Mr Wong said since the defendant s condition was only discovered two days ago, it was not a case where the adjournment was due to the defendant s failure to comply with court procedures. Court will only vary milestone dates, such as trial date, if there are exceptional circumstances justifying the variation. Court has a positive duty to manage cases actively to achieve the underlying objectives to ensure that cases are dealt with as expeditiously as is reasonably practicable. Nevertheless, in the process the court should exercise power to secure just resolution of disputes in accordance with the substantive rights of the parties. Illness of a party or an important witness may be a reason. The Court has to be satisfied of the fact of his illness and of the materiality and importance of his evidence, and that the adjournment will not cause injustice to the other party which cannot be compensated by costs. The onus is on the defendant to prove the need for such an adjournment. Mr Poon was not challenging the basis of the adjournment but he asked that whatever Mr Wong had submitted from the bar table today should be put into an affirmation by the defendant s son after today s hearing. If so, Mr Poon would not be taking a point that the evidence was submitted by Mr Wong. The plaintiff would in some way prejudiced as he is entitled to have the proceedings

being brought to a conclusion as soon as reasonably and fairly practical. Having said that the relief sought by the plaintiff was that the defendant should transfer the property to him subject to the defendant's life interest. So this is not a case where the plaintiff is seeking possession of the property now whilst the defendant is still alive. Having heard the parties, I would order an adjournment of the trial and the vacation of the trial dates from 25 to 28 July 2017. I would also order the defendant to file an affirmation by her son, Mr Go Man Yin, by 28 July 2017 confirming what Mr Wong had submitted to the court today. Instead of fixing a date for trial when the defendant's condition has not been ascertained, the parties agreed that a direction hearing should be fixed no earlier than 2 weeks from now where the parties would inform the court of the condition of the defendant and be ready to assist the court to fix a new date for the trial.

Accordingly, I direct that a hearing be fixed no earlier than 2 |o| h sl h sl h sl h sl hr}g gd sl gd sl gd sl lhc_c hr}g h~~} h sl hr}g h~~} h sl & gd hOA, hOA, hOA, hOA, hOA, hJ;@ gdOA, &`#\$ gdGO hOA, hOA, hOA, hOA, hOA, hOA, hOA, hOA, hOA, hOA, hOA, hOA, &#\$ &#\$ &#\$ [Content\_Types].xml \_rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/ theme1.xml \$O} Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@|j!Q\_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .}x E /,EE} theme/theme/_rels/themeManager.xml.rels 5 6? \$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/themeManager.xmlPK theme/theme/ theme1.xmlPK theme/theme/_rels/themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/ drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml )x6K9SFB 9/L%:0 O&6I 3#zj 1\*:? XBU\$ drs/downrev.xmlL @dg b6NA [Content\_Types].xmlPK \_rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK [Content\_Types].xml dlyLho ;d]6 yJ.; \_rels/.rels fLV:\* ]m@= T;GI b9`5 drs/e2oDoc.xml WPn \k _fgO' 6b (drs/ downrev.xmlL !kZO K(dFC [Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK drs/ downrev.xmlPK [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/ e2oDoc.xml WPn \k N\x8 J^Ja 38\_r Ps{y ez>I ?v@Z drs/downrev.xmlL z+vB ?Ro&^ }%mo QIrk [Content\_Types].xmlPK \_rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK [Content\_Types].xml dlyLho ;d]6 yJ.; \_rels/.rels fLV:\* ]m@= T;GI b9`5 drs/e2oDoc.xml)x6K9SFB 9/L%:0 O&6I 3#zj 1*:? XBU\$ drs/downrev.xmlL @dg b6NA [Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK drs/ downrev.xmlPK [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/ e2oDoc.xml WPn \k \_fgO' 6b ( drs/downrev.xmlL !kZO K(dFC [Content\_Types].xmlPK \_rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK [Content\_Types].xml dlyLho ;d]6 yJ.; \_rels/.rels fLV:\* ]m@= T;GI b9`5 drs/e2oDoc.xml WPn \k N\x8 J^Ja 38_r Ps{y ez>I ?v@Z drs/downrev.xmlL z+vB ?Ro&^ }%mo QIrk [Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK drs/ downrev.xmlPK bf"\ e,n\ e,n\ Zn~x N#" {4 14}> High Court Normal.dotm Windows User Microsoft Office Word Judiciary Title <?xml version="1.0" encoding="UTF-8" standalone="no"?><b:Sources SelectedStyle="\APA.XSL" StyleName="APA" xmlns:b="http://schemas.openxmlformats.org/ officeDocument/2006/bibliography" xmlns="http://schemas.openxmlformats.org/ officeDocument/2006/bibliography"></b:Sources> <?xml version="1.0" encoding="UTF-8" standalone="no"?> <ds:datastoreItem ds:itemID="{9FA017BA-00D2-46B0-8C93-92347E99BDA4}"

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Prepared on 27 October 2026 · Esheria