DCPI 926/2009

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO.926 OF 2009

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BETWEEN

CHAN CHING SANG Plaintiff

And

WEI KEH WEI VICTOR 1st Defendant

GOODWELL PROPERTY MANAGEMENT

LIMITED 2nd Defendant

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Coram: Master B. Mak in Court (Open to public)

Date of Hearing: 19th January 2011

Date of Handing down of Judgment: 31st January 2011

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ASSESSMENT OF DAMAGES

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*Background*

1. This is an assessment of damages of the 2nd Defendant’s claim against the 1st Defendant.

2. The 2nd Defendant issued a Notice to the 1st Defendant claiming Contribution and Indemnity on 20th May, 2009.

3. On 12th August, 2009, Master S. Lo ordered an Interlocutory Judgment on liability in respect of the 2nd Defendant’s claim against the 1st Defendant for Contribution and Indemnity with costs.

4. At the hearing on 19th January, 2011, the 1st Defendant was absent. A Notice of Trial dated 16th November, 2010 in respect of the present hearing was issued and posted to the 1st Defendant. I am satisfied that due notice of today’s hearing has been given to the 1st Defendant. Therefore, the hearing continued in the absence of the 1st Defendant.

*The Plaintiff’s case*

5. Madam Fung Po Ching, Assistant Human Resources Manager of the 2nd Defendant gave evidence.

6. She testified that the Plaintiff was employed by the 2nd Defendant as a Building Attendant of Horizon Suite Hotel, Ma On Shan, New Territories (“the Hotel”). The 2nd Defendant was the property manager of the Hotel.

7. On 14th October, 2006, the Plaintiff was instructed to station at the lift lobby of the Hotel to maintain the queue and the order the elevator users. The 1st Defendant complained to the Plaintiff’s supervisor, Mr. Fung Pak Kei, that the Plaintiff had touched his shoulder.

8. Mr. Fung requested the Plaintiff to apologize to the 1st Defendant, which the Plaintiff did accordingly.

9. While the Plaintiff was apologizing to the 1st Defendant, the 1st Defendant grabbed and tweaked the Plaintiff’s right arm and should repeatedly. The Plaintiff was injured as a result.

10. The Plaintiff was sent to Prince of Wales Hospital for treatment.

11. The Plaintiff was granted sick leave from that day up to 16th October, 2009.

*Claim under DCEC 994 of 2008*

12. The Plaintiff instituted a Employee’s Compensation Claim entitled DCEC 994 of 2008 against the 2nd Defendant.

13. The said claim was settled in the following manner :-

(a) Compensation $241,680.00

(b) Further sick leave compensation $ 9,781.00

(c) Costs $ 62,300.00

Sub-total: $313,761.00

Plus (c) Costs incurred by the 2nd

Defendant $ 56,170.00

Total: $369,931.00

*The present action*

14. The Plaintiff instituted the present action against the 1st and 2nd Defendants under Common Law.

15. The 2nd Defendant made Sanctioned Payments in the total sum of $200,000.00, which was accepted by the Plaintiff with leave of Master G. Own dated 23rd December, 2010.

16. By way of settlement, the 2nd Defendant was ordered to pay the Plaintiff agreed costs in the sum of $159,630.

17. The 2nd Defendant has incurred costs in the sum of $96,800.

18. All the sums liable to be paid and costs incurred by the 2nd Defendant are to be paid by AXA General Insurance Hong Kong Limited (“AXA”) pursuant to an Employee Insurance Agreement between the 2nd Defendant and AXA.

*The relevant legal provisions*

19. Section 25(1)(b) of the Employees’ Compensation Ordinance provides that :-

“(1) Where the injury in respect of which compensation is payable was caused in circumstances creating a legal liability in some person other than the employer (in this section referred to as the third party) to pay damages to the employee in respect thereof-

…

(b) the employer by whom compensation is payable…shall have a right of action against the third party for the recovery of any sum which he is obliged to pay as a result of the accident, whether by way of compensation or indemnity, or by virtue of any agreement made with the employee prior to the accident, and may exercise such right either by joining in an action begun by the employee against the third party or by instituting separate proceedings:

Provided that the amount recoverable under this paragraph shall not exceed the amount of damages, if any, which in the opinion of the court would have been awarded to the employee but for the provisions of this Ordinance.”

20. Section 3 of the Civil Liability (Contribution) Ordinance provides that :-

“(1) Subject to the following provisions of this section, any person liable in respect of any damage suffered by another person may recover contribution from any other person liable in respect of the same damage (whether jointly with him or otherwise).

…

(4) A person who has made or agreed to make any payment in bona find settlement or compromise of any claim made against him in respect of any damage (including a payment into court which has been accepted) shall be entitled to recover contribution in accordance with this section without regard to whether or not he himself is or ever was liable in respect of the damage, provided, however, that he would have been liable assuming that the factual basis of the claim against him could be established.”

21. In *Wah Kwong Construction Material v Wong Man Yip*, CACV 54/1994, the Court of Appeal held that the words “any sum” under Section 25(1)(b) of the Employees’ Compensation Ordinance are not limited and that a claimant can recover not only the compensation or indemnity but also costs which he is obliged to pay as a result of the accident.

22. Applying the same principle, Her Honour Judge H.C. Wong in *Hong Kong Red Cross v The Hong Kong Federation of Youth Groups*, DCCJ 2233/2007 held that a claim based on Section 25(1)(b) of the Employees’ Compensation Ordinance and Section 3 of the Civil Liability (Contribution) Ordinance also includes costs paid to the claimant and the his’s own legal costs in defending the claim.

*Findings*

23. I am satisfied that the above legal principles are applicable to the present case.

24. I find that the 2nd Defendant is entitled to recover from the 1st Defendant the sum of $826,361.

*Interest*

25. The 2nd Defendant shall be entitled to interest on the said sum at half judgment rate from the date of Notice of Contribution and Indemnity (i.e. 20th May, 2009) to the date of this decision and thereafter at judgment rate to the date of payment.

*Costs*

26. I order that the 1st Defendant doth pay the 2nd Defendant costs of the Contribution and Indemnity Proceedings, by summary assessment, in the sum of $48,000.00, to be paid forthwith.

B. Mak

Master, District Court

Mr. Ringo Kwong of Messrs. Winnie Leung & Co. for the 2nd Defendant

The 1st Defendant, absent.