#### DCPI1429/2008

IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1429 OF 2008

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| BETWEEN | LAU PIK NGAI ADA | Plaintiff |
|  | and |  |
|  | TO CHUN FUNG ALBERT | Defendant |

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##### Coram: H H District Judge Marlene Ng in Chambers (Open to the Public)

Date of Hearing: 6th October, 2009

Date of Handing Down Decision: 7th October, 2009

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SUMMARY ASSESSMENT OF COSTS

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###### I. Background

1. In this case, I dismissed the Defendant’s summons to stay the present action pending the determination of the judicial review proceedings in HCAL71/2008.
2. In my written decision handed down on 28th August 2008, I granted a costs order *nisi* that costs of the Defendant’s summons taken out on 30th June 2009 (including all costs reserved if any) be paid by the Defendant to the Plaintiff on party and party basis with certificate for counsel, and there be legal aid taxation of the Plaintiff’s own costs. No application was made to vary such costs order *nisi* within 14 days, so it has become absolute.
3. In my written decision handed down on 28th August 2009, I also directed that the amount of costs payable to the Plaintiff pursuant to the aforesaid costs order be dealt with by way of summary assessment. Pursuant to my further directions, the Plaintiff lodged her Statement of Costs on 14th September 2009 and the Defendant lodged his Summary of Objections on 31st September 2009.
4. In the Plaintiff’s Statement of Costs, the Plaintiff’s solicitors certified that the Plaintiff was on legal aid and waived the right to any further sum of money including common fund costs in respect of the aforesaid costs order.

###### II. Legal principles

1. I bear in mind that for summary assessment of costs the court should not conduct any mini-taxation, but should carry out the assessment on broad principles.

###### III. Discussion

1. The Defendant raised a number of objections and I shall deal with each of them briefly.
2. First, in respect of “manual work” under item B1 of the Plaintiff’s Statement of Costs, the Defendant at first claimed that copying charges for HK$258.00 should be disallowed because the hearing bundles to counsel were provided by the Defendant. The effect of such argument is that the Plaintiff’s solicitors would not retain any set of the hearing bundles even though they were to and did attend the substantive hearing of the Defendant’s summons taken out on 30th June 2009 with counsel. At the hearing for summary assessment of costs before me, Ms Gwilt, counsel for the Defendant, conceded that such objection could not be maintained.
3. Secondly, in respect of “manual work” under item B2 of the Plaintiff’s Statement of Costs, the Defendant was prepared to concede to 1 hour instead of 2.5 hours claimed for manual work by the litigation clerk of the Plaintiff’s solicitors in photocopying/preparing bundles and attending on the client for swearing, filing and service of the Plaintiff’s affirmation. Taking a broad approach and bearing in mind the volume of the hearing bundles and in particular the Plaintiff’s own bundle, a slight discount to the 2.5 hours of work claimed is warranted.
4. Thirdly, in respect of “communication including conference, telephone calls and letters” under item C1 of the Plaintiff’s Statement of Costs, the Defendant argued that the claim for 2 hours of work by the Plaintiff’s solicitors was excessive on the basis that the Plaintiff’s affirmation was short and there was no need to advise the Plaintiff on the gist of the submissions “because that concerned law”. Having broadly considered the Plaintiff’s 5-page affirmation together with 5 exhibits, I am satisfied that it required more than the light effort suggested by the Defendant. I also note that counsel’s written submissions were not confined to matters of law, and it was necessary and proper to keep the client informed of at least the thrust if not the full details of the arguments advanced.
5. Fourthly, in respect of “attendance on the Medical Council/DOJ” under item C2 of the Plaintiff’s Statement of Costs, the Defendant submitted that the relevant costs should be disallowed since they fell under common fund costs. However, it is plain that the Plaintiff’s solicitors obtained copy correspondence and documents from the Medical Council and/or the Department of Justice for exhibiting them to the Plaintiff’s affirmation. In light of the party and party nature of such costs, Ms Gwilt conceded that the objection could not be maintained.
6. Fifthly, in respect of “attendance on the Defendant’s solicitors”, “attendance on counsel” (which included instructions to counsel with preliminary research on case authorities) and “initial research on cases of stay” under items C3, C4 and D2A of the Plaintiff’s Statement of Costs, the Defendant argued that the amounts claimed were excessive and further suggested that preliminary research on case authorities should be disallowed due to involvement of counsel. Having considered the matter broadly, I disagree that the Plaintiff’s solicitors could be faulted for spending time on some initial research. After all, counsel was not involved at the initial stage, and it was necessary and proper for the Plaintiff’s solicitors to appreciate the relevant law for effective preparation of the affirmation in opposition. Having thus conducted some initial research, it was also appropriate to inform counsel of the results of such research in the instructions to counsel. However, since counsel was only involved at late stage, I am persuaded that time spent on liaison with counsel should not have been extensive.
7. Sixthly, in respect of “preparation of documents” (namely, the Plaintiff’s affirmation in opposition and the Plaintiff’s summons dated 6th July 2009) under item D1 of the Plaintiff’s Statement of Costs, having considered the nature and contents of such documents, I disagree that the time spent by the Plaintiff’s solicitors was excessive.
8. Seventhly, in respect of “preparation for the hearing” (namely, submissions from the Defendant’s counsel and draft submissions from the Plaintiff’s counsel) under item D3 of the Plaintiff’s Statement of Costs, the Defendant argued that given counsel’s involvement the claim for 45 minutes spent on this item of work by the Plaintiff’s solicitors was excessive. In my view, granted that a solicitor’s role may be more limited when counsel is engaged to appear for a party at the hearing, it was still necessary and proper for the Plaintiff’s solicitors to adequately prepare for the hearing so that they would be in a position to assist counsel at the hearing.
9. Mr Lam pointed out that the total time claimed under part D was 10.5 hors of solicitors’ work. Of such total time claimed, the Defendant did not dispute 7.25 hours of solicitors’ work, which exceeded the total time of 5 hours conceded by the Defendant even if one were to put aside the disputed items under part D. I agree that the Defendant’s proposal for time costs for the work envisaged under part D was unrealistically low.
10. Eighthly, in respect of counsel’s brief under item E of the Plaintiff’s Statement of Costs, the Defendant claimed that the brief fee of the Plaintiff’s counsel was excessive since “usually Legal Aid Brief to Counsel is around HK$12,000.00”. Ms Gwilt was unable to cite any basis for saying that the Director of Legal Aid would engage counsel on the basis of legal aid “usual rates”.
11. It is common knowledge that the Director of Legal Aid maintains a panel of counsel of different seniority who presumably charge different brief fees. In my view, the Director of Legal Aid should assign counsel of such competency, skill and experience as the nature, complexity and difficulty of the issues for the application in question require instead of on any legal aid “usual” rates for counsel’s brief fee.
12. I am not persuaded that a brief fee of HK$12,000.00 properly reflects the work and efforts required of counsel in dealing with the substantive application for argument before me. That said, I consider the brief fee for the Plaintiff’s counsel was on the high side for half-day argument in the District Court. I say so bearing in mind the volume of the hearing bundles, the number and contents of the affirmations filed by the parties, the issues involved, the seniority of the Plaintiff’s counsel, and the undoubted assistance he rendered to the adjudication.
13. At the hearing for the summary assessment of costs, Mr Lam, solicitor for the Plaintiff, submitted that the Plaintiff should be awarded 2 further items of costs :
    1. 30 minutes of solicitor’s costs for attending the hearing for the summary assessment of costs; and
    2. 1 hour of solicitor’s costs for perusal of my written decision handed down on 28th August 2008.
14. Ms Gwilt had no objection to the item in (a) of the above paragraph, but contended that perusal of my written decision would have required only 30 minutes. I take into account the fact the Plaintiff’s handling solicitor would be familiar with the background facts and the arguments advanced at the substantive hearing for argument, and that the true focus of the perusal and consideration would be on the analysis and ruling in my written decision. But in my view the suggestion that 30 minutes would be sufficient was overly conservative.
15. At the hearing for summary assessment of costs, Ms Gwilt challenged the hourly rate of HK$2,400.00 for the Plaintiff’s handling solicitor who was admitted in 2001. She proposed HK$2,200.00 as the appropriate hourly rate. Taking into account the hourly rates of solicitors for different seniority that may be allowed on taxation as suggested by the Law Society in consultation with the Registrar of the High Court with appropriate adjustment for District Court cases, and bearing in mind the seniority and responsibility of the Plaintiff’s handling solicitor, the involvement of counsel only at the late stage and the delegation of mechanical tasks to junior staff, I am not persuaded that the hourly rate claimed was unreasonable.

*IV. Conclusion*

1. In light of the above and having considered the matter on a broad basis, I summarily assess solicitors’ costs and disbursements as HK$38,000.00 and counsel’s fee as HK$50,000.00, giving a total of HK$88,000.00.

# (Marlene Ng)

District Court Judge

Representation:

Mr Teddy Lam of Messrs Boase Cohen & Collins for the Plaintiff.

Ms Angela Gwilt instructed by Messrs Lawrence K Y Lo & Co for the Defendant.