DCPI 1504/2007

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO.1504 OF 2007

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BETWEEN

WONG YUEN MEI Plaintiff

and

YOUNG YAU YAU CECELIA Defendant

\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Coram: Master B. Mak in Court

Date of Hearing: 18th January 2010

Date of Handing down of Judgment: 9th February 2010

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ASSESSMENT OF DAMAGES

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*Background*

1. This is an assessment of damages of the Plaintiff’s claim against the Defendant.

2. Interlocutory Judgment was entered on 30th October, 2008 with damages to be assessed due to her failure to give notice of intention to defend.

3. At the hearing on 18th January, 2010, the Defendant was absent. A Notice of Trial sent to the Defendant by the Court Registry at 105A, 1st Floor, Liberte Place, No.833 Lai Chi Kok, Kowloon by post was returned by the Post Office. According to the online search record in relation to the Defendant’s up-to-date address from the web-site of the Dental Council of Hong Kong, the said address is the current address of the Defendant.

4. A clerk of the Plaintiff’s solicitors, Mr. Cheng Ka Kuen, took pictures in the vicinity of the said address in the morning of 18th Juanary, 2010. After reading the 11th Affirmation of Cheng Ka Kuen and the exhibits thereto, I am satisfied that the said address is the current address of the Defendant. Therefore, the hearing continued in the absence of the Defendant.

*The Plaintiff’s case*

5. The Plaintiff was a flight attendant. She has been suffering from buck-teeth condition, i.e. a condition concerning her protruding upper central incisors.

6. On or about 22nd July 2004, the Plaintiff consulted the Defendant, who was a registered dentist, with a view to treat her buck-teeth condition.

7. The Defendant prescribed a course of orthodontic treatment (“the treatment”) which involved the extraction of her 4 first molars with regular check-up sessions about once every 2 weeks after the extraction.

8. As a result of the treatment, the Plaintiff suffered serious pain, suffering, discomfort and inconvenience as follows :-

(1) her upper teeth could not fit comfortably with her

lower teeth;

(2) she suffered from ulcer of gum, causing serious pain

when she ate, drank or spoke;

(3) she also suffered from headache, depression, anxiety

and insomnia;

(4) due to the above problems, she could not discharge

her duties properly as a flight attendant, including but

not limited to the making of announcements to

passengers;

(5) she could not chew food properly. By reason thereof,

she have to cut food into small pieces and swallow the

food without chewing;

(6) that caused her to suffer from serious loss of appetite

and serious loss of weight.

9. The Plaintiff sought advice from Dr. Lee Man Biu and eventually received remedial treatment from Dr. Leung Ting On. Due to the extraction of her 4 first molars, there are now huge gaps between her teeth, which cannot close up significantly despite Dr. Leung’s effort. Food would be trapped in those gaps, which resulted in tooth decay in 13 of her teeth. In order to deal with her tooth decay problem, she engaged the service of Dr. Yu Kin Kuen.

10. The treatment by the Defendant did not improve the Plaintiff’s buck-teeth. Worse still, her teeth have become even more out of alignment. Coupled with the worsening of the health condition of her teeth, the Plaintiff feels upset and depressed. She also feels uncomfortable with her appearance.

11. The Plaintiff was examined by Dr. John K.Y. Ling. He is a specialist in Orthodontics in the “Specialist Register” of the Dental Council of Hong Kong. Dr. Ling found that the 2nd molars of the Plaintiff were tipped and tilted, the grinding surfaces of the teeth would be adversely affected and the ordinary chewing function would diminish. Further, the Plaintiff is found to have symptoms of mild temporo-mandibular joint dysfunctions, which included the symptoms of pain and of the clicking and crepitus of jaw joints.

12. Dr. Ling further opined that because the treatment by the Defendant was unduely prolonged, the longevity of the teeth of the Plaintiff would be decreased. Due to food remains can be easily trapped in the space left behind by the extraction, there is an increased risk of tooth decay for the adjacent teeth.

*Pain, suffering and loss of amenities*

13. Mr. Hui, Counsel for the Plaintiff, referred me to the case of Lee Hau Chi Mariam Teresa v. Chung Chee Keung Peter & ors. (2007) DCPI1594/2006. In this case, the Plaintiff received a prolonged and underperformed orthodontic treatment by having her 4 first premolars extracted. She has suffered unnecessary pain and sufferings in having to undergo a 2nd surgery. Deputy District Judge S.T. Poon (as he then was) awarded $300,000 under this head.

14. I accept that both cases are closely comparable. Accordingly, I take the view that the sum of $300,000 claimed by the Plaintiff under this head is appropriate.

*Costs of future medical treatments*

15. Dr. Ling recommended that the Plaintiff should receive a number of remedial treatments in order to rectify (or at least to alleviate) the Plaintiff’s on-going problems, which include :-

(1) temporo-mandibular joints

dysfunction splints ($1,000 x 20) $20,000

(2) medications for jaw-joint

problems ($1,000 x 20) $20,000

(3) crowns and replacements for

tooth 37 ($7,000x5) $35,000

(4) further remedial treatment sessions

with Dr. Leung Ting On ($750x2) $ 1,500

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Total: $76,500

16. I accept that the above costs of future medical treatments are reasonable and necessary and I so award.

*Special damages*

17. The Plaintiff has incurred the following expenses :-

(1) the Defendant’s dental fees and

disbursements $26,480

(2) Dr. Lee’s dental fees and

disbursements $ 1,000

(3) Dr. Leung’s dental fees and

disbursements $31,540

(4) Dr. Yu’s dental fees and

disbursements $ 3,330

(5) 30 packs of special teeth floss

($46.50x30) $ 1,395

(6) 30 packs of special mini-brushes

($49.90x30) $ 1,497

(7) transportation expenses to and from

clinics $ 1,000

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Total: $66,242

18. I accept that those were the expenses reasonably and necessarily incurred and I so award.

*Summary of Quantum*

19. In summary, the award is as follows :-

(1) PSLA $300,000

(2) Costs of future medical treatments $ 76,500

(3) Special damages $ 66,242

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TOTAL: $442,742

*Interest*

20. I award interest as follows :-

(1) interest on the award for PSLA is to run from the date of the Writ (i.e. 20th July 2007) to the date of Judgment (i.e. 30th October 2008) at 2% per annum;

(2) interest on the award for special damages is to run from 31st July 2007 to the date of Judgment (i.e. 30th October 2008) at half judgment rate and thereafter at Judgment rate until payment.

*Costs*

21. I order that the Defendant shall pay costs to the Plaintiff with Certificate for Counsel.

22. I have considered the Plaintiff’s Statement of Costs. The Plaintiff’s costs is assessed by summary assessment in the sum of $80,134.

(Signed)

B. Mak

Master

Mr. George Hui instructed by Messrs. Siao Wen & Leung

for the Plaintiff

Defendant: absent