## DCPI 96/2015

## DCPI 439/2015

DCPI 476/2015

(Heard Together)

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 96 OF 2015

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##### BETWEEN

HOU TSUN TAT Plaintiff

and

WONG WAI CHUNG Defendant

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**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 439 OF 2015

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##### BETWEEN

CHENG SHING CHI DESMOND Plaintiff

and

WONG WAI CHUNG Defendant

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**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 476 OF 2015

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##### BETWEEN

KWOK CHUN MAN Plaintiff

and

WONG WAI CHUNG Defendant

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(Heard together by order of

Master J Chow dated 18 May 2017)

Before: His Honour Judge MK Liu in Chambers (open to public)

Date of Hearing: 31 October 2017

Date of Decision: 31 October 2017

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DECISION

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1. There is a summons (“the setting aside summons”) issued by the defendant (“Wong”) for an order setting aside the default judgment obtained by the plaintiff in each of these actions. On 18 May 2017, Master J Chow made an order in each action that the 3 setting aside summonses should be heard together. This is the substantive hearing of the 3 summonses.

*Background*

1. I would first set out the background facts which are not in dispute.
2. Wong was a medical doctor but he claims that he has retired now.
3. In each of these actions, the plaintiff is suing Wong for damages for the injuries sustained as a result of breach of various duties by Wong in investigating, diagnosing, advising, treating and prescribing medication to the plaintiff at Wong’s clinic.
4. The Medical Council of Hong Kong (“MCHK”) held a disciplinary inquiry on 19 February 2014 in respect of 3 charges laid against Wong, which are as follows:-

In or about 2009 to 2012, Wong, being a medical practitioner, disregarded his professional responsibility to his patients in that:-

1. Charge 1

In respect of the plaintiff in DCPI 96/2015 (“Hou”), Wong inappropriately or without proper justification prescribed Rohypnol to Hou without proper examination and/or proper cause.

1. Charge 2

In respect of the plaintiff in DCPI 476/2015 (“Kwok”), Wong inappropriately or without proper justification prescribed Rohypnol Kwok without proper examination and/or proper cause.

1. Charge 3

In respect of the plaintiff in DCPI 439/2015 (“Cheng”), Wong inappropriately or without proper justification prescribed Rohypnol to Cheng without proper examination and/or proper cause.

1. Before the disciplinary inquiry, MCHK has tried to give notice of the inquiry to Wong by sending out a notice of inquiry on 4 October 2013 to the address given by Wong (“the registered address”) in the general register in which Wong was registered as a general practitioner. The mail was returned to MCHK by the Hong Kong Post.
2. On 21 November 2013, an assistant secretary of MCHK (“the assistant secretary”) called Wong and managed to talk to Wong over the phone. The assistant secretary asked Wong to provide an address so that MCHK could send the notice of inquiry to him. Wong refused and said he had retired, and he had provided all his explanation in writing to the preliminary investigation committee (“PIC”) of MCHK. The assistant secretary explained to Wong that the PIC considered that there was a prima facie case and MCHK would hold an inquiry. Wong refused to receive the notice of inquiry and hanged up the phone. The evidence given by the assistant secretary is not disputed by Ms Joyce Chan, counsel for Wong in all the 3 actions.
3. On 4 December 2013 and 20 January 2014, MCHK sent copies of the notice of inquiry to 3 properties which, according to MCHK’s knowledge, were owned by Wong. All these mails have not been returned to MCHK by the Hong Kong Post. The addresses of the 3 properties are as follows:-
4. Flat C, 18/F, Block 25, Baguio Villa, No 555 Victoria Road, Hong Kong (“Address 1”)
5. Flat A, 20/F, Good View Court, 21 Robinson Road, Hong Kong (“Address 2”)
6. Flat B, 5/F, Monmouth Place, No 9L Kennedy Road, Hong Kong (“Address 3”)
7. Wong did not attend the disciplinary inquiry held on 19 February 2014. MCHK decided to proceed in Wong’s absence. At the end of the inquiry, MCHK acquitted Wong on Charge 1, but convicted Wong on Charge 2 and Charge 3.
8. Mr Victor Gidwani, counsel for the plaintiffs in all the 3 actions, has helpfully summarized the events occurred in these proceedings in his written submissions. The accuracy of the summary prepared by Mr Gidwani is not disputed by Ms Joyce Chan, counsel for Wong in all the 3 actions. I would set out the events as per Mr Gidwani’s summary below:-
9. DCPI 96/2015

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| Date | Events |
| 15/1/2015 | Writ of summons (with a general endorsement) issued |
| 14/12/2015 | Service of the writ of summons by inserting to the letter box at Address 1 |
| 18/12/2015 | The writ of summons was returned by a woman saying there is no such person, ie Wong, living at Address 1 |
| 19/12/2015 | Service of the writ of summons by inserting to the letter box at Address 3 |
| 6/1/2016 | The amended writ of summons (with a general endorsement) issued |
| 12/1/2016 | Service of the amended writ of summons & other documents by inserting to the letter box at Address 2  Service of the amended writ of summons & other documents by inserting to the letter box at Address 1  Service of the amended writ of summons & other documents by inserting to the letter box at Address 3 |
| 25/5/2016 | Re-amended writ of summons (with a general endorsement) issued |
| 16/6/2016 | Service of the re-amended writ of summons and court order by inserting to the letter box at Address 3  Service of the re-amended writ of summons and court order by inserting to the letter box at Address 2  Service of the re-amended writ of summons and court order by inserting to the letter box at Address 1 |
| 9/9/2016 | Interlocutory judgment with damages to be assessed was entered against Wong |

1. DCPI 439/2015

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| Date | Events |
| 2/3/2015 | Writ of summons (with a general endorsement) issued |
| 8/1/2016 | The amended writ of summons (with a general endorsement) issued |
| 12/1/2016 | Service of the amended writ of summons and notice of checklist review hearing by inserting to the letter box at Address 1  Service of the amended writ of summons and notice of checklist review hearing by inserting to the letter box at Address 2  Service of the amended writ of summons and notice of checklist review hearing by inserting to the letter box at Address 3 |
| 25/5/2016 | Re-amended writ of summons (with a general endorsement) issued |
| 16/6/2016 | Service of the re-amended writ of summons and court order by inserting to the letter box at Address 1  Service of the re-amended writ of summons and court order by inserting to the letter box at Address 2  Service of the re-amended writ of summons and court order by inserting to the letter box at Address 3 |
| 9/9/2016 | Interlocutory judgment with damages to be assessed was entered against Wong |

1. DCPI 476/2015

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| --- | --- |
| Date | Events |
| 6/3/2015 | Writ of summons (with a general endorsement) issued |
| 8/1/2016 | The amended writ of summons (with a general endorsement) issued |
| 12/1/2016 | Service of the amended writ of summons and notice of checklist review hearing by inserting to the letter box at Address 1  Service of the amended writ of summons and notice of checklist review hearing by inserting to the letter box at Address 2  Service of the amended writ of summons and notice of checklist review hearing by inserting to the letter box at Address 3 |
| 25/5/2016 | Re-amended writ of summons (with a general endorsement) issued |
| 16/6/2016 | Service of the re-amended writ of summons and court order by inserting to the letter box at Address 1  Service of the re-amended writ of summons and court order by inserting to the letter box at Address 2  Service of the re-amended writ of summons and court order by inserting to the letter box at Address 3 |
| 9/9/2016 | Interlocutory judgment with damages to be assessed was entered against Wong |

*Wong’s contentions*

1. Wong says that the default judgment obtained by the plaintiff in each of the 3 actions has to be set aside, for (a) the default judgment is an irregular judgment, and (b) alternatively, he has a meritorious defence.
2. Wong contends that all the 3 default judgments are irregular judgments, for he did not have any notice of the writs in these 3 actions. His contentions are as follows:-
3. He was not living at Address 1, Address 2 or Address 3 (“the 3 Addresses”) at the time of respective attempts of service by the plaintiffs, ie the period from 14 December 2015 to 23 June 2016. He had not received the writs whether on his own or through any persons, and he had not been informed of the writs or the current proceedings by any persons.
4. He no longer has any interest in Address 1 after transferring his half share interest to his ex-wife on 8 January 2015 during their divorce proceedings. Wong and his ex-wife have not contacted each other since their divorce in around June 2015.
5. Wong no longer has any interest in the property at Address 2 after selling it out on 18 August 2014.
6. Although the property at Address 3 was and is owned by Wong, that property was let to a tenant Ms Wang Pong Yun (“Wang”) from 20 July 2013 to 19 July 2017. Wang had always known Wong by his English name “Daniel Wong” instead of “Wong Wai Chung” to which the writs were addressed. Wang had no idea as to who was “Wong Wai Chung”. On the first two occasions of receiving mails addressed to “Wong Wai Chung” at Address 3, Wang returned the mails by putting them inside a postbox nearby and marked “return to sender” on the envelopes. However, similar letters were continuously coming in. Wang just threw them away. It never occurred to Wang that the mails containing the writs were aimed to be sent to Wong until Wong made enquiries with her about those mails on 8 May 2017.
7. Since around July 2013, Wong has been living at No 164 Kam Shan Village, Tai Po, New Territories (“the Tai Po Address”).
8. Wong also contends that he has a meritorious defence to the claim in each of the 3 actions.
9. He was found not guilty on Charge 1 by MCHK.
10. Although he was found guilty on Charge 2 and Charge 3, Kwok and Cheng have adduced no evidence to prove the alleged loss and damage caused by Wong’s improper prescription.

*The principles*

1. The principles concerning setting aside a default judgment are well known. The starting point is effective service means the proceedings have been brought to the notice of the defendant and not merely delivery of the writ to his usual or last known address. However, when service of proceedings has been effected in accordance with Order 10 rule 1(2), if the defendant claims that he does not have notice of the proceedings, he bears the burden to prove this by convincing evidence. The court is not bound to accept his bare allegation but is entitled to review the evidence provided by him critically. See *New York Life Insurance Worldwide Ltd v Chan Wai Man Anthony* (DCCJ 3843/2008, 29 March 2011), per HH Judge Wilson Chan (as he then was):-

“5. In *Cosec Nominees Limited v Lau Hon Ming Alan* [2001] 3 HKC 290, Deputy High Court Judge Jeremy Poon (as he then was) held that under Order 10, rule 1(2) of the Rules of the High Court, service of proceedings is duly effected when the proceedings are brought to the notice of a defendant and not on merely delivery of the Writ to his last known address.

6. In paragraph 17 of the Master’s Decision, the learned Master set out an often-quoted passage from the Hong Kong Civil Procedure, saying that in a case where a defendant deposes that he had not received the Writ through the post, the court has little option but to believe this, save where there is sufficient material to cast doubt upon the defendant’s credibility to enable the court to disbelieve him.

7. I think this may have put the matter too much in favour of a defendant. In *Bank of China (Hong Kong) Limited v Cheung King Fung* [2007] 1 HKLRD 462, at paragraphs 33 and 34, after referring to the same passage in the Hong Kong Civil Procedure, Tang JA (as he then was) had this to say:

“33. We do not read this as suggesting that the court must accept a defendant’s assertion no matter how improbable.

34. It is quite clear from *Forward v West Sussex County Council & Others* [1995] 1 WLR 1469, that **a defendant is required to provide “convincing evidence”**: at page 1473G. The Master of the Rolls went on to say of the Judge that “He was in our view **quite right to be sceptical** of the contention that the fourth defendant had not received the writ in the absence of compelling evidence to show that it had not been forwarded on to him, as would in the ordinary course be accepted”: at page 1474H. Of course, how much evidence is required must depend on the circumstances of the particular case.”

8. Thus, where service has been properly effected under Order 10, rule 1(2), **the burden is on the defendant** to show that the proceedings were not brought to his notice.” (Emphasis added)

1. The phrase “usual or last known address” in Order 10 rule 1(2) should be read disjunctively. That address does not confine to the defendant’s residence, but means a location where the defendant may be reached or where written communication could be established. See *Lau Ying Sau Sailing & anor v Wan Kwan Cheung* (DCCJ 1405/2010, 7 March 2012), per DDJ Grace Chan (as she then was):-

“15. It is established law that “usual or last known address” in Order 10 rule 1(2) should be read disjunctively, which means that a defendant may be served at either his “usual” or his “last known” address. The word “address” does not confine to a person’s residence, but essentially means **a location where a person may be reached or where contact or communication in written form, such as letter, could be established**. A defendant may have a number of last known addresses as well as a number of usual addresses, but there is no need for the plaintiff to effect service of the originating process on all of such addresses. Proper service of the originating process on any one of the defendant’s last known addresses or any one of his usual addresses will suffice: *The Hong Kong Mortgage Corporation Limited v Ching Kit Yu & anor* HCMP 2226/2002, per Deputy High Court Judge To (as he then was).”

1. If the default judgment is a regular one, the defendant has to adduce evidence carrying some degree of conviction to show that he has a real prospect of success (not just merely an arguable defence) if he is given a chance to defend the case. See *Premier Fashion Wears Ltd v Li Hing Chung* [1994] 1 HKLR 377, per Godfrey JA (as he then was) at 383:-

“Of the modern cases, I would single out *Alpine Bulk Transport Co. Inc. v. Saudi Eagle Shipping Co. Inc.* [1986] 2 Lloyd's Rep 221. This, I believe, shows that for the purposes of O.13 r.9 it is generally not sufficient for a defendant merely to show an arguable defence, although that alone would justify leave to defend being given under O.14. A defendant who seeks to set aside a regular judgment must at least show that his case has a real prospect of success. To do so he must satisfy the court that his case, and the evidence he has adduced in support of it, carries some degree of conviction. It seems to me that unless potentially credible affidavit evidence from the defendant has demonstrated a real likelihood that he will succeed on fact, he cannot have shown that he has a real prospect of success. ………… The court still has to form a provisional view of the probable outcome of the action.”

1. With these principles in mind, I turn to analyze the arguments advanced by both sides.

*Regular or irregular judgment?*

1. Ms Chan argues that there is no valid service of the writ in each of the 3 actions. Ms Chan submits:-
2. Hou, Cheng and Kwok got the 3 Addresses from the affirmation of the assistant secretary made on 30 January 2014 for the purpose of the disciplinary inquiry of MCHK. Given the lapse of time of about 2 years since that affirmation, it was unreasonable for Hou, Cheng and Kwok to rely upon the information in that affirmation to serve the writs on Wong in late 2015 and in 2016.
3. According to an affirmation of service (“the affirmation of service”) filed by Hou in DCPI 96/2015 on 31 December 2015, after the writ of summons in that action served at Address 1 was returned, his solicitors (also representing Cheng and Kwok in the 2 other actions) conducted a land search on the 3 Addresses on 18 December 2015, which revealed that Wong was no longer the owner of the property at Address 1 and the property at Address 2.
4. In the circumstances, Hou, Cheng and Kwok must have known that Address 1 and Address 2 could no longer be regarded as the Wong’s usual or last known address. There is no reason for them to believe that a writ left at Address 1 and a writ left at Address 2 would reach Wong.
5. In the 2 assignments concerning the transfer of the property at Address 1 and the property at Address 2, the Tai Po Address is stated as Wong’s address. Accordingly, Hou, Cheng and Kwok should know that the Tai Po Address is Wong’s usual or last known address. However, no writ of summons has been delivered to that address.
6. There is force in these submissions. However, one question remains unanswered, ie why Address 3 cannot be regarded as Wong’s usual or last known Address. Hou, Cheng and Kwok came to know Address 3 by reading the assistance secretary’s affirmation. As set out in the affirmation of service, the land search done on 18 December 2015 shows that Wong remains as the owner of the property at Address 3. Bearing in mind that a usual or last known address merely means a location where a person may be reached or where contact or communication in written form could be established, while Wong is the owner of the property at Address 3, naturally Address 3 can be regarded as a usual or last known address of Wong. The fact that Wong has an address in Tai Po does not prevent Address 3 from being Wong’s usual or last known address, for a person may have more than one usual or last known address. See *Hong Kong Mortgage Corporation Limited v Ching Kit Yu* (HCMP 2226/2002, 15 April 2003), [12] and [13].
7. I hold that by inserting the re-amended writ into the letter box at Address 3 on 16 June 2016, the plaintiff in each action has served the re-amended writ on Wong in accordance with Order 10 rule 1(2). That being the case, Wong bears the burden to show that notwithstanding all these, the proceedings have not been brought to his attention prior to the entering of the default judgments.
8. In respect of the service at Address 3, Wong’s contentions are those summarized in §12(d) above, and the evidence in support of these contentions are the affirmation made by Wang. In that affirmation, Wang also said that although in the 2 tenancy agreements between Wong as the landlord and she herself as the tenant, Wong’s full name “Wong Wai Chung” was stated in these 2 tenancy agreements, she did not remember this and only knew that her landlord was “Daniel Wong”. The 2 tenancy agreements have been produced by Wong, one was signed on 11 July 2013 (“the 2013 TA”) and the other was signed on 17 July 2015 (“the 2015 TA”).
9. I am of the view that Wang’s evidence is unbelievable.
10. Ms Chan confirms with the court that the name of Wong on the HKID Card is “Wong Wai Chung”. The name “Daniel” does not appear on his HKID Card.
11. The name “Wong Wai Chung” is clearly and unambiguously set out both in the 2013 TA and in the 2015 TA. Further, in the 2013 TA, Wang is required to pay a deposit of HK$64,000 and a monthly rental payment of HK$32,000. In the 2015 TA, Wang is required to pay a deposit of HK$68,000 and a monthly rental payment of HK$34,000. Naturally, all these payments would be made by Wang by either drawing cheques payable to Wong (in doing so, Wang has to put down the name “Wong Wai Chung” on the cheques), or depositing or transferring money to Wong’s account (in doing so, Wang has to check to make sure that the account holder is “Wong Wai Chung”[[1]](#footnote-1)). In these circumstances, to say that she had no memory of the name “Wong Wai Chung” is unbelievable.
12. It was not just one single mail being sent to Address 3, but mails came in continuously, and the addressees of all these mails are the same person with the surname “Wong”. Wang knew that her landlord was one Mr Wong. Wang should realize that these mails may well be mails to her landlord or someone connected with her landlord. If she has any genuine doubt, she can always take out copies of the 2013 TA and the 2015 TA in her possession to check, or she may simply contact Wong to make enquiries. Instead of doing all these, save for the first two occasions, she just threw away the mails. This defies common sense.
13. Wang said that on the first two occasions, she returned the mails by putting them inside a postbox and marked “return to sender” on the envelopes. However, in the assistant secretary’s affirmation, the assistant secretary said that the notice of inquiry sent to Address 3 had not been returned to MCHK. Also, none of the mails sent by the plaintiffs to Address 3 has ever been returned. Wang’s evidence is contradicted by all these, including the evidence given by the assistant secretary, who has no interest in these proceedings and whose evidence is not disputed by Ms Chan.
14. I reject Wang’s evidence. Wong has not produced any convincing evidence to substantiate his contentions as summarized in §12(d) above. Accordingly, there is no evidence showing that notwithstanding the proper service of the writs at Address 3 under Order 10 rule 1(2), the proceedings have not been brought to Wong’s attention.
15. In my judgment, the default judgment obtained by the plaintiff in each of these actions is a regular judgment.

*Any real prospect of success?*

1. Since the default judgment in each of these actions is a regular judgment, Wong may only set aside the judgment if he can show that he has a real prospect of success if he is given a chance to defend the case.
2. Each of the default judgment is an interlocutory judgment on liability with damages to be assessed. The court has not yet made any determination on the quantum of damages in each action. In the 3 actions, Hou, Cheng and Kwok are prepared to claim damages in the amount of about HK$17 million, HK$6.9 million, and HK$6.1 million respectively. They have made applications to transfer these proceedings to the Court of First Instance. Whether they can recover any substantial amounts, and if yes, what should be the appropriate awards, are questions to be determined in the assessments of damages. At present, on the question whether Wong has a real prospect of success, it means whether Wong has a real prospect of success in challenging liability. Wong bears the burden to produce evidence carrying some degree of conviction to show a real prospect of success.
3. In respect of Cheng and Kwok, Wong merely says that they have not adduced any evidence to prove their loss and damage. This point is misconceived. Cheng and Kwok would have to produce evidence to prove their loss and damage in the assessments of damages in future, and Wong would have opportunities to challenge their evidence in the assessment exercises. These are issues concerning quantum, not issues concerning liability.
4. In respect of Hou, Wong says that he has been found not guilty by MCHK on Charge 1. MCHK found that Charge 1 had not been proved because evidence in support of that charge was only given by Hou’s father (whose evidence was not doubted by MCHK, but the father was not present in any consultation in which Hou was being attended by Wong), and there was no evidence from Hou in the inquiry. MCHK considered that there was no sufficient evidence in support of Charge 1. Apart from referring to the “not guilty” verdict by MCHK, Wong has not produced any satisfactory evidence showing that he should not be liable to Hou. Wong merely said that he only prescribed Rohypnol to Hou after doing proper examination. However, he has not said what examination was conducted before prescribing Rophynol to Hou, what was or were the reason(s) for giving the prescription.
5. I hold that Wong has not demonstrated a real prospect of success in defending the claim in each of these actions.

*Disposition*

1. As the default judgment obtained by the plaintiff in each action is a regular judgment and Wong has failed to demonstrate a real prospect of success, the setting aside summons in each action must be dismissed. I so order.
2. The parties agree that costs should follow the event, with a certificate for counsel. I make a costs order in each action that costs of the setting aside summons (including all costs reserved, if any) be to the plaintiff in that action forthwith, with a certificate for counsel, to be taxed if not agreed. In DCPI 439/2015, I further order that the plaintiff’s own costs be taxed in accordance with the Legal Aid Regulations.
3. I thank Mr Gidwani and Ms Chan for the helpful assistance provided to the court.

( MK Liu )

District Judge

Mr Victor Gidwani, instructed by KCL & Partners, assigned by the Director of Legal Aid, for the plaintiff (DCPI 439/2015)

Mr Victor Gidwani, instructed by KCL & Partners, for the plaintiff (DCPI 96/2015 and DCPI 476/2015)

Miss Joyce M Y Chan, instructed by Pansy Leung Tang & Chua, for the defendant (DCPI 96/2015, DCPI 439/2015 and DCPI 476/2015)

1. While parts of the full name of Wong may be redacted on the deposit slips, it would not be difficult to see on the deposit slips that the full name of the account holder consists of 3 words and the first alphabet of each word. [↑](#footnote-ref-1)