## DCPI 297/2010

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**PERSONAL INJURIES ACTION NO. 297 OF 2010**

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| BETWEEN | LEUNG KANG WAI | Plaintiff |
|  | and |  |
|  | DUSSMANN SERVICE HONG KONG LIMITED formerly known as  P. DUSSMANN HONG KONG LIMITED | Defendant |
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Coram : Deputy District Judge Shipp in Chambers (open to public)

Date of hearing : 23 September 2011

Date of handing down decision : 11 October 2011

# DECISION

1. This is an application by the plaintiff to seek leave to appeal to the Court of Appeal from the Order dated 29 July 2011. The factual background of this case has been sufficiently set out in my Ruling of 29 July 2011. I take this opportunity to set out some of the relevant background of this case which was raised during the hearing on 23 September 2011.

2. The following was pleaded in paragraph 2 of the Statement of Claim:-

“As a result of the Accident, the Plaintiff suffered serious injuries to his back and left shoulder and subsequently developed post-traumatic stress disorder”

3. It was on this basis that the plaintiff sought leave by way of summons on 11 March 2011 from Master J. Chow to adduce psychiatric evidence. Master J. Chow dismissed the application on 25 May 2011. The defendant appealed and the appeal was heard before me on 29 July 2011. I dismissed the appeal for the reasons set out in my Ruling. During the hearing on 29 July 2011, the defendant’s arguments have shifted from PTSD to depression i.e. the defendant was suffering from depression rather than PTSD.

4. The defendant’s arguments have shifted again, albeit not drastically, that by reason of the pain caused by the accident, the defendant was/is suffering from depression. Thus there is a causal link between the accident and the defendant’s depression. Mr. Chan concedes there is no diagnosis of PTSD.

5. Mr. Chan argues that the defendant had been diagnosed with recurrent depressive disorder, moderate with somatic syndrome by Dr. Cheng on 19 August 2010. Mr. Chan says this is attributed to the pain caused by the accident and I was taken to paragraph 3 of the report of Ms. Valda Cho, a clinical psychologist at Caritas Medical Centre, where she referred to the defendant’s difficulties adjusting to the pain. However, Ms. Valda Cho did not say the defendant was suffering from depression.

6. Mr. Chan also referred to several psychiatric reports prepared by Dr. Cheng. Mr. Chan submits that looking at these reports at face value, one should discern that the depression was caused by the pain and the pain was caused by the accident. Thus, there is causation.

7. Mr. Chan referred to paragraphs 18 and 19 of the case of Farman Khan v Lau Lai Hong HCPI 850/2008, 29/4/2010 Fung J (unreported), in support of his submission that the court should order psychiatric reports on whether the accident is a possible cause for the depression.

8. The case of Farman Khan is of no assistance to Mr. Chan. One should look at the case of Farman Khan in its own factual context. The court did not order a full expert opinion in that case but simply asked the plaintiff to consult his treatment doctors to see if there is some explanation of a possible link between the accident and other ailments of the plaintiff.

9. Mr. Cheng for the defendant referred to the case summaries prepared by Dr. Cheng. Dr. Cheng first saw the plaintiff on 23 February 2010. According to Dr. Cheng’s notes, the plaintiff had no depressive features in the first 2 years after the accident despite experiencing some degree of pain. It was only in 2009 that the plaintiff began to have “depressive features” because he was bothered by financial problems.

10. I was also reminded by Mr. Cheng of the high threshold required in applications of this nature. In light of paragraph 9 herein, I am not convinced I have erred in the exercise of my discretion. I am not convinced that the plaintiff has a prospect of success, let alone a high prospect of success in his intended appeal.

11. Accordingly, the application is dismissed with costs to the defendant. The plaintiff’s costs are to be taxed in accordance with Legal Aid Regulations. The costs order will be made absolute within 14 days.

(COLIN ANDREW SHIPP)

Deputy District Judge

Mr. Alwin CHAN, instructed by Messrs. Au & Vrijmoed, assigned by the Director of Legal Aid for the Plaintiff

Mr. Alfred C P CHENG, instructed by Messrs. Winnie Leung & Co., for the Defendant