#### DCPI325/2007

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 325 OF 2007

BETWEEN

KOAH MING FUNG Plaintiff

and

GLORY GOLD LIMITED Defendant

Trading as KAM HO SEAFOOD RESTAURANT

##### Before: H H Judge Lok in Chambers (Open to the public)

Date of Hearing: 14 August 2008

Date of Decision: 14 August 2008

## D E C I S I O N

1. This is an application by the Plaintiff to transfer this action to the Court of First Instance. According to the supporting affirmation made by the Plaintiff, she thought that she could resume her former employment as a waitress when the claim was first filed in the District Court. However, she later discovered that her injuries were much more serious than she expected. As a result, she could not resume her former employment as a waitress. Based on these premises, the legal representative of the Plaintiff assessed that the Plaintiff’s claim would very much exceed the jurisdiction of the District Court and, as a result, she made the present application to transfer the case to the Court of First Instance.
2. The Defendant objects the application on the ground that the claim by the Plaintiff is very much exaggerated, and also that the Plaintiff’s claim for quantum is not supported by the expert evidence of the Defendant. This is, in fact, the first hearing of this summons. The Defendant has not filed any affirmation in opposition, and the Court does not have a copy of the medical report of the Defendant’s expert. However, I take that both parties want the Court to have a quick resolution of the present summons, and the parties just simply submit the expert reports to the Court so that further hearing can be avoided. I agree that this is a sensible course to take in respect of this application.
3. It seems that the main dispute between parties is in relation to the claim for loss of earnings. The Plaintiff’s expert is of the view that the sick leave granted by the other doctors are reasonable, and that the Plaintiff should not be able to resume her former employment as a waitress. However, the Defendant’s expert disagrees. He thinks that 3 months of sick leave is more reasonable, and that there is nothing to prevent the Plaintiff from resuming her former employment as a waitress.
4. The approach of the Court in dealing with this sort of application has already been discussed by me in the case of *Lai King Yiu v Acciona Infraestructuras* S.A., unreported, DCPI2256/2006 (decision on 25 April 2008). In paragraph 8 of that judgment, I said the following:

*“In respect of the principles to be considered in an application for transfer of the proceedings from the District Court to the High Court under section 41 of the District Court Ordinance, Cap. 336, Suffiad J said the following in the case of Wong Miu Kwan v FPD Savills Management Limited [2006] 1 HKC 575 at paragraph 21:*

*“21. ...Quite apart from such statutory provisions, as a matter of practice, the Court or a Master should also consider the following matters:*

*(a) In the absence of abuse, a Plaintiff should be entitled to frame his case in a manner that he wishes.*

*(b) At an interlocutory stage, it will not be proper for the court or a master to view the Plaintiff’s claim in the same way as it would be viewed at a trial by weighing the different evidence or by believing or disbelieving some or all of the evidence. That exercise can only be carried out when all the evidence, cross-examination and submission has been heard, particularly where there are factual and or other disputes between the parties, as for instance disputed expert opinion.*

*(c) Accordingly, the Plaintiff’s case on quantum as framed by him ought to be viewed at its highest when determining the proper jurisdiction where the case should be heard.*

These principles have been adopted by 2 District judges in Ng Wai Sun v China Overseas (HK) Ltd. & Ors, unreported, DCPI1320/2004 (decision of HH Judge Marlene Ng on 25 September 2005) and Wong Kwong Wa v Hip Hing Construction Co. Ltd., unreported, DCPI2039/2006 (decision of HH Judge Thomas Au on 11 July 1997).”

1. I will also adopt the same principles in considering the present application. There is a genuine dispute between the experts about the injuries of the Plaintiff, and also whether she should be able to resume her former employment as a waitress. In my view, it is not for the Court at this interlocutory stage to decide on the merits of these issues. These matters should be resolved by the trial Judge after hearing the expert evidence. The Plaintiff’s case should, therefore, be viewed at the highest for the purpose of the present application. As the Plaintiff assesses the quantum of her claim in excess of $1 million, I think that it would be an appropriate case for the Court to transfer the claim to the Court of First Instance.
2. I make the order accordingly.

# (David Lok)

# District Judge

Miss P Wong, of Messrs Cheung Wong & Associates, for the Plaintiff

Miss Chong, of Messrs Tsang, Chan & Wong, for the Defendant