## DCPI 491/2009

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 491 OF 2009

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##### BETWEEN

LEE KING WAI, the Administrator of the Plaintiff

estate of HO SHUK KAY, Deceased, on behalf of the estate

and on behalf of all the dependants of the Deceased

### and

HOSPITAL AUTHORITY Defendant

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Coram : Deputy District Judge Osmond Lam in Chambers

Dates of hearing : 30th June, 2009

Date of handing down Decision : 10th July, 2009

**DECISION**

1. By a Summons dated 4th June 2009, the Defendant applied for this Court’s ruling for an Order that:
2. The Plaintiff’s solicitors shall serve on the Defendant’s solicitors a report/reports by their medical expert with reference to the Bolam Test with regard to the Plaintiff’s allegations against Tai Po Hospital within 28 days;
3. The Plaintiff shall amend the Statement of Claim within 28 days thereafter;
4. The Defendant shall file and serve a Defence within 28 days from paragraph (b) above;
5. The costs of and occasioned by this application and the costs of and occasioned by the application to amend this Statement of Claim be to the Defendant in any event; and
6. The Plaintiff’s own costs to be taxed in accordance with the Legal Aid Regulations.
7. The matter arose in this manner. Madam Ho the deceased was aged 87 at the time of death. On or about 30th May 2006, Madam Ho who was originally staying at an old age home was transferred to Tai Po Hospital through the Accident and Emergency Department of the North District Hospital for alleged behavioral problems. When Madam Ho was staying in Tai Po Hospital, on 1st June 2006 she apparently had had a slight fall on her left knee. This matter was allegedly not reported nor was this matter sufficiently or properly recorded by the staff of the Tai Po Hospital. On the same day, Madam Ho had developed a low grade fever upon which some preliminary tests including chest X-ray were done. Nothing else was done by the staff in Tai Po Hospital.
8. On the next day at around 11 am, Madam Ho began to develop symptoms and she was found to have developed shortness of breath palpitation and increased heart rate. Tests were done and eventually Madam Ho was rushed to Alice Ho Miu Ling Nethersole Hospital (“ANH”). It was alleged that there was a failure to detect the seriousness and urgency of her condition and Madam Ho was only managed and observed at the Accident and Emergency Department of ANH. After some delay of a few hours, Madam Ho’s condition became very poor and only then tests were being carried out and at about 5pm it was noticed that Madam Ho had right leg swelling which was a sign that suggested acute pulmonary embolism the condition which she was later diagnosed to have suffered. When she was eventually diagnosed to have suffered from that condition and transferred and treated accordingly at the intensive care unit of ANH, it was allegedly said to be too late. Madam Ho passed away unfortunately at around 9:25pm on the same day that she was admitted into ANH.
9. The Amended Statement of Claim filed on 3rd June 2009 stated the Particulars of Negligence of the Defendant and/or its agents and/or servants in the following terms :
10. Failure and/or causing or permitting delay to report and/or record incidents and happenings of persons under their care and management, in particular, such incident and/or happenings which might affect the consideration, diagnosis of conditions suffered and/or management of such persons subsequently including but not limited to, a fall suffered by Madam Ho, in Tai Po Hospital in the action herein;
11. Failure and/or causing or permitting delay to reasonably, sufficiently and/or properly consider, recognize, and/or diagnose the condition and/or disease suffered by persons under their care and management in general and even when there were sufficient and reasonable history, signs and symptoms to suggest such consideration, recognition and/or diagnosis;
12. Failure and/or causing or permitting delay to reasonably, sufficiently and/or properly manage or treat persons under their care and management in general and further when there were sufficient and reasonable urgency to do so.
13. The Plaintiff eventually produced three expert opinions of Professor Tse Hung Fat of University of Hong Kong Department of Medicine and it seems the relevant ones for the purpose of this application would be the first two reports.
14. The Defendant complained that there is nothing in any of the three expert reports that point to any negligence, failure or delay in diagnosis and in the management, care and treatment of Madam Ho **at the Tai Po Hospital**. In fact, in the first report under 5.1 Professor Ho wrote *“ she complained of sudden onset of dyspnea and chest discomfort in TPH, and ECG showed new-onset ST depression over V3-V6, the initial diagnosis of acute myocardial infarction and transferral to A&E department was appropriate management.”* In the second report under 3(a), Professor Ho again *“In fact, the initial diagnosis of ACS by medical staffs in TPH was an appropriate differential diagnosis and thus HSK (Madam Ho) was transferred to A&E department of ANH. Despite the initial clinical diagnosis of ACS in TPH and clearly abnormal ECG on arrival, only an initial diagnosis of heart failure was made in A&E department of AHN.*”
15. Professor Ho went on to criticize the care and management of Madam Ho by the A&E department of ANH and that all the signs were there and they should have been recognized and treated as early as possible. However, that is beyond the scope of this application and I cite it only as a background information. No doubt the Defendant will have their experts in dealing with these criticisms.
16. What is abundantly clear, nonetheless, is Professor Ho’s view that the problems arose in ANH and there is no criticisms of the staff at Tai Po Hospital nor did Professor Ho say anything openly about the relevance of that alleged fall suffered by Madam Ho in the morning (recorded and/or reported or not). Reading between the lines, Professor Ho did not contribute anything to that alleged fall or the management at the Tai Po Hospital as contributing factors to this unfortunate incident.
17. I have been referred to the principles laid down in Bolam v Friern Hospital Management Committee [1957] 2 All ER 118; Bolitho v City and Hackney Health Authority [1998] AC 232 and Elijah Saatori v Raffles Medical Group HCPI No. 1114/2006, Saunders J.
18. The Plaintiff represented by Mr. Selwyn So of counsel argued that Professor Ho did mention something about the injury suffered at Tai Po Hospital. In modern medicine, there can be no one contributory factor, but many such factors to be considered. Furthermore, Mr. So said that the whole matter of care and management should be considered as a whole and not in parts and bits or in different hospitals; and if any allegation is not well supported by the expert opinion, then it is actually to the Defendant’s advantage and not to its prejudice. Thus, Mr. So maintained that it should not be artificial and arbitrary.
19. I cannot agree. Whilst we should not be slaves to pleading rules and practice directions, these rules are there for a particular purpose. They seek to limit parties to the real issues in dispute and not to waste unnecessary costs and expenses in the investigations of something which even the experts may well find to be insignificance and non-consequential.
20. For instance, if Professor Ho were of the view that the care and management at Tai Po Hospital was much below the standard expected, then investigations by the Defence has to be made and witness statements to be taken as to what happened at Tai Po Hospital and whether anyone noticed that fall by Madam Ho and what subsequent actions had been taken by the staff at Tai Po Hospital. If no allegations were to be made against the Tai Po Hospital, both parties can concentrate on the real issues in this case which is whether the care and management of Madam Ho at ANH was negligent or not, and of course whether that lack of care caused the death of Madam Ho. That is the issue in this case according to Professor Ho and the parties should therefore concentrate on this issue.
21. As a result, I make an Order in terms of paragraph (a) of the said Summons of the Defendant but I vary the 28 days applied thereat. I do not know how long Professor Ho would need to write a further report only dealing with Tai Po Hospital and since we are having a summer vacation he might take longer. Thus I give further time namely 42 days from today to Professor Ho. In addition, I shall make further Orders in terms of paragraphs (b), (c), (d) and (e) with certificate for counsel. I further order that the costs in respect of the hearing on 11th June 2009 before Registrar S.T. Poon be to the Plaintiff, to be taxed if not agreed. Needless to say, I thank both parties for their clear and concise manner in presenting this application on behalf of their respective clients.

( Osmond Lam )

Deputy District Judge

The Plaintiff : represented by Mr. Selwyn K M SO instructed by Messrs. Tang & Lee, Solicitors, assigned by DLA.

The Defendant : represented by Ms. S. CHO of Messrs. Kennedys, Solicitors.