DCPI510/2006

# IN THE DISTRICT COURT OF THE

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 510 OF 2006

BETWEEN

WAN SAI PING (尹細并) 1st Plaintiff

(Widow of LO CHUNG HING, deceased)

THE ESTATE OF 2nd Plaintiff

LO CHUNG HING, deceased

and

HONG KONG BAPTIST HOSPITAL Defendant

Coram: HH Judge Lok in Chambers

Date of Hearing: 15 May 2008

Date of Decision: 15 May 2008

D E C I S I O N

1. This is the second application before me for striking out the Statement of Claim. In the first application before me, the Defendant argued that the Statement of Claim was embarrassing. I agreed with the Defendant’s contention, but instead of striking out the pleading, I granted leave to the Plaintiffs to amend the Statement of Claim.
2. The present dispute arises out of the outbreak of SARS in Hong Kong in 2003. It is the Plaintiffs’ case that the deceased contracted the SARS virus during his stay in the Defendant’s hospital and he died as a result. The Plaintiffs argue that the deceased’s death was caused by the negligence of the Defendant.
3. In the first striking out application, there was an issue as to whether the Plaintiffs can prove the route of transmission of the SARS virus and whether the Plaintiffs can prove that deceased’s negligence has caused the contraction of the SARS virus on the part of the deceased. It is always the Defendant’s contention that, pursuant to Practice Direction 18.1, the Plaintiffs were required to serve, with the Statement of Claim, a copy of an expert medical report as to liability and causation. In the absence of such expert report, the Defendant argues that the Plaintiffs cannot prove their case at the trial and so the claim should be struck out. In the first striking out application, Mr P.W. Wong, then counsel for the Plaintiffs, conceded that expert report as to liability and causation was essential to the Plaintiffs’ case, and such report would be supplied to the Defendant once it was available. On this basis, the Plaintiffs should be given a chance to prove their case at the trial, and the claim was not struck out in the first striking out application.
4. Apparently no expert report was filed after the first striking out application, and the Defendant therefore made the second application to strike out the same claim. The second application first came before me on 10 March 2008. On that particular occasion, Mr Fong, counsel for the Plaintiffs, informed us that the Plaintiffs’ expert report was actually ready, and so the hearing was adjourned to enable the Defendant to peruse the expert report first.

1. In the expert report, Professor Wong, the Plaintiffs’ expert, relies on certain facts included in the various correspondence and statements to prove that the deceased probably contracted the SARS virus from the in-patient who shared the same ward with the deceased, and the Defendant should have taken certain measures to prevent the deceased from contracting the virus from this particular patient. Before proceeding with the second striking out application, Mr Fung, counsel for the Defendant, asks the Plaintiffs to disclose the statements relied on by Professor Wong in his report. These statements contain a lot of factual information which forms the factual basis of Professor Wong’s opinion. After perusing these statements, the Defendant would then reconsider its position on the striking out application.
2. Mr Fong for the Plaintiffs concedes that the statements and the documents requested by the Defendant should be disclosed in due course. However, as it is the burden on the part of the Defendant to prove a plain and obvious case in striking out a claim and that the Plaintiffs’ claim is bound to fail, the court should not ask the Plaintiffs to prove all their case at this stage. Further, ordering the Plaintiffs to disclose the documents now is oppressive. However, Mr Fong agrees that if the statements eventually disclosed by the Plaintiffs do not support the factual basis relied on by Professor Wong for his opinion, then the Defendant is free to make the third application for striking out the claim.

1. In my judgment, the Plaintiffs should disclose the statements relied on by Professor Wong before the court proceeds to hear the second striking out application. Whether the Plaintiffs can prove the route of transmission and causation has all along been the crucial issue in both striking out applications. As the Plaintiffs concede that they need to rely on expert evidence to prove such issue at the trial, the contents of the expert report are very relevant to the issue before the court in this striking out application. As the Plaintiffs rely on the expert report to oppose the striking out application, the statements relied on by Professor Wong to form the factual basis for his opinion should be disclosed to the Defendant, so that the latter can properly assess whether to proceed with the second striking out application.
2. Further, I do not find the Defendant’s request oppressive. One must appreciate that we are dealing with a novel case here. The outbreak of SARS was an unprecedented event, and in a way both the Plaintiffs and the Defendant have encountered difficulties in the preparation of their respective case. While the Plaintiffs should be given every opportunity to prove their case, the Defendant should, likewise, be entitled to know the details of the Plaintiffs’ claim, in particular the expert evidence, before the Defendant can proceed with the preparation of the defence. Ordering the Plaintiffs to disclose more details of their case is therefore not oppressive, and indeed it is necessary to enable the Defendant to consider its position in this litigation. Instead of mutual discovery as in most of the other run-of-the-mill personal injuries litigations, I am of the view that requesting the Plaintiffs to provide more information at this stage is more appropriate to the conduct of this case. This is also in line with the spirits of the Practice Direction 18.1.
3. I therefore allow the Defendant’s request, and the Plaintiffs should disclose the documents requested by the Defendant.

(David Lok)

District Judge

Mr Stephen Fong, instructed by Messrs Tai Mak & Partners, for both Plaintiffss

Mr Alfred K C Fung, instructed by Messrs JSM, for the Defendant