#### DCPI782/2006

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 782 OF 2006

BETWEEN

WONG HON PIK Plaintiff

and

TUNG YIU KEUNG Defendant

trading as OI KWUN FAST

FOOD SHOP

##### Coram: H H Judge Mimmie Chan in Chambers (Open to the public)

Date of Hearing: 20 November 2007

Date of Decision: 20 November 2007

## D E C I S I O N

1. This is the plaintiff’s application by summons issued on 29 June 2007 for leave to extend the validity of the writ issued on 16 May 2006 for 12 months.
2. As Bokhary JA (as he then was) pointed out in his judgment in *Chow Ching Man v SunWah Ornament Manufactory Ltd.* [1996] 2 HKC 460,the case cannot be decided on sympathy alone. It is necessary to look at the law.
3. The principles for the grant of leave to extend the period of the validity of a writ are clearly set out in the Hong Kong Civil Procedure from paragraphs 6/8/3 to 6/8/5. It is clear that there is a two-stage inquiry. At the first stage the court must be satisfied that there is good reason to extend time for service of the writ, and where the application for renewal is made after the writ has expired and after the expiry of a relevant period of limitation, the applicant must not only show good reason for the renewal but must give a satisfactory explanation for his failure to apply for renewal before the validity of the writ expired. Only if the court is so satisfied that it should proceed to the second stage, and decide whether or not to exercise its discretion in favour of renewal by considering all the circumstances of the case, including the balance of prejudice or hardship.
4. It is clear from the examples given under paragraph 6/8/3 and paragraph 6/8/4 of the Hong Kong Civil Procedure that carelessness, oversight, the fact that negotiations for settlement are proceeding, that legal aid is awaited, that the defendant knew that a writ had been issued or is unable to show that there would be any specific prejudice or detriment to the defendant in conducting its defence are, unfortunately, not good reasons accepted by the court under the first stage of its consideration.
5. In this case the plaintiff’s former solicitors made the conscious decision not to serve the writ for 10 months after its issue. Although the plaintiff acted in person since 14 March 2007 after legal aid was discharged, the plaintiff took no action and made no adequate inquiries until she was informed, at the latest, by Master Pang at the hearing on 14 May 2007, that the writ would expire on 15 May 2007, that there were serious consequences if the writ was not served by then and that the plaintiff should immediately apply to extend the validity of the writ or seek legal advice. Prior to that, the plaintiff had the opportunity to instruct lawyers but she did not, notwithstanding the notice which she had of the court hearings fixed in April and May 2007.
6. The plaintiff sought advice from her current solicitors on 15 May 2007 but they, perhaps understandably, took no action either to serve the writ or apply to extend the validity of the writ until 13 June 2007, by which time the validity of the writ had expired. Unfortunately, the courts have long recognised that there is no distinction whether the application for renewal is one day late, or six weeks late, or 12 months late.
7. In these circumstances, in the light of the clear authorities binding on this court, in particular the decision in *Delta Pia,* unreported, HKAJ 31/2002 29 April 2003, I regret that I am not satisfied that there are grounds for me to conclude either that good reason to extend time has been given or that there is satisfactory explanation for the plaintiff’s failure to apply to extend the writ before the expiry of its validity period. Ignorance of the law, I am afraid, is no defence.
8. Since I am not satisfied that there is a good reason, I need not proceed to the second stage of the balance of hardship.
9. Accordingly, I dismiss the plaintiff’s application with costs to the defendant, to be taxed if not agreed, with certificate for counsel. The service on 13 June 2007, after the period of validity of the writ, is invalid. It follows that as the plaintiff’s claim in respect of the accident which occurred on 22 May 2003 is time barred, this action should be struck out or dismissed either as disclosing no reasonable cause of action or an abuse of process or under the court’s inherent jurisdiction, with costs to the defendant, with certificate for counsel.

# (Mimmie Chan)

# District Judge

Mr Charles Lin-fung Tse of Messrs Yip, Tse & Tang, for the Plaintiff

Miss Christine Lee, instructed by Messrs Clyde & Co., for the Defendant