# DCPI 803/2017

[2019] HKDC 1384

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

# PERSONAL INJURIES ACTION NO 803 OF 2017

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BETWEEN

CHENG KWOK HUNG SAMUAL Plaintiff

and

POON TUNG HOI 1st Defendant

LIU CHENG YI 2nd Defendant

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Before: Master Peony Wong in Chambers (Open to Public)

Date of Hearing: 21 August 2019

Date of Decision: 7 November 2019

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DECISION

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1. Taxation hearing was held before me on 12 June 2019 on the bill of costs (“the Bill”) presented by the Receiving Party. After conclusion of the taxation, the Receiving Party made an application for review of the decision under O 62 r 33 of the Rules of the District Court Cap 336H. An Appointment to Review of Taxation was filed on 25 June 2019. The review hearing was held on 21 August 2019. A request was made by letter from the Receiving Party on 28 August 2019 for the taxing master to state in writing by reference to the objections to the decision the reasons for the decision on the review, and any special facts or circumstances relevant to it, under O 62 r 34(4) of the Rules of the District Court.

*Preliminary application*

2. The Receiving Party made an application at the review hearing as a preliminary point, to have the review hearing adjourned before another Master. The basis of such application was that the Paying Parties made a joint application by way of inter-partes summons seeking variation of the costs order nisi (“the Summons”), returnable on the same day as the Review hearing. Reference was made in the Summons to the Paying Parties’ joint costs offer made on 7 September 2018, the joint sanctioned payments on costs made on 1 August 2018 and 18 October 2018, and the Receiving Party’s rejection of the offers and his counter offer. The Receiving parties submits that without prejudice matters had been disclosed in the supporting affirmation and the exhibits of the Summons.

3. The Receiving Party relies on O 62A r 21 of the Rules of the District Court, which states that:-

“21. Restriction on disclosure of sanctioned offer or sanctioned payment (O.62A, r.12)

…

(2) The fact that a sanctioned payment has been made must not be communicated to the taxing master until the amount of the costs to be allowed have been decided.

(3) Paragraph (2) does not apply –

1. where the taxation has been stayed under rule 18 following acceptance of a sanctioned payment; and
2. where the fact that there has or has not been a sanctioned payment may be relevant to the question of costs of the issue of liability.”

The Receiving Party submits that disclosure of sanctioned payment having been made would embarrass the Master reviewing his/her own decision.

4. The Receiving Party also complains that the Paying Parties had not requested for the Summons and supporting affirmation to be placed inside a closed envelop, causing apparent prejudice. This point was not strenuously argued at the Review hearing, since when I first became aware of the arguments of the parties, and before I had the opportunity to peruse the file, I had instructed my clerk to seal the Summons and the supporting affirmation with its exhibits in a sealed envelope. Thus at the hearing and before the determination of the review application, I had not read the content of the Summons and its supporting affirmation and exhibits.

5. The Paying Parties’ reply was that the time limit for both applications for review of a taxing master’s decision and amendment of order nisi are 14 days after the decision, and that there are many cases where the review and application for amendment of order nisi were conducted at the same hearing. The Paying Parties also submit that the amount of sanctioned payments was not disclosed in the Summons or the supporting affirmation, therefore there could not be any prejudice caused.

6. O 62 r 34(1) of the Rules of the District Court states:-

“(1) A review under rule 33 shall be carried out by the taxing master to whom the taxation was originally assigned.”

7. After hearing arguments from both sides on this point, I find that there is no ambiguity as to the wording of “the taxing master to whom the taxation was originally assigned”. It must mean the taxing master who made the decision at the taxation hearing.

8. This interpretation is also supported by the fact that both review application and application to amend the costs order nisi have the same time limit of 14 days from the date of the taxation decision. The Receiving Party’s interpretation would mean that the review of many cases could not be conducted by the taxing master who made the decision on taxation. That could not be a logical interpretation, in light of the clear wording of O 62 r 34(1) of the Rules of the District Court.

9. I have also found that as there is no reference to the amount of sanctioned payments or of the sanctioned offer, accordingly there was nothing that would affect in any way my decision in the review proceedings.

10. I have therefore refused the Receiving Party’s application for adjourning the review before another Master.

*The review*

11. At the review hearing, the Law Costs Draftsman representing the Receiving Party indicated that there had been mistakes with the item numbers of the review. The 2nd entry in the first column should be No 2, and the following entries should then be No 3 to 10. I shall refer to the corrected Item Numbers of Review in the following part of this Decision.

12. The following are the items under review and the reasons for the review decision:-

| No | Page and  item no.  in the bill  of costs | Description  of item | Amount/  Time  claimed | Amount/  Time allowed | Reasons for Review | Master's Answer |
| --- | --- | --- | --- | --- | --- | --- |
| 1. | Page 2 | Fee Earners  (“EC1”)  (“EC2”) | HK$2,600.00  HK$3,860.00 | HK$2,200.00  HK$3,000.00 | 1. The respective hourly rates of (a) $2,200.00 per hour (ie subject to “the pre 2018 scale party and party old rates for solicitors”) and (b) $3,000.00 per hour (ie subject to “the post 2018 scale party and party new rates for solicitors”) allowed by the Master to EC, a solicitor that was qualified and admitted as a solicitor in 1997 and was at the material time having 19-21 years of post-qualification experience during the period when the case was handled by her, are both considered inappropriately low by reasons stated below:- 2. The party and party rates for solicitors were agreed by the Judiciary and the Law Society of Hong Kong from time to time to purposely give guidelines to both the taxing officers/masters and the legal practitioners; 3. By virtue of the Law Society Circular 118/92 dated 18 May 1992, the new guidelines are to allow to solicitors hourly rates in the High Court of between $1,200 and $2,400 in respect of work done after 1 April 1992 in place of then old hourly rates for work done in the High Court of between $1,000 and $1,800. In relation to District Court work, the hourly rates potentially allowable will be two-third of the High Court rates; 4. By another Law Society Circular 115/95 (PA) dated 24 April 1995, the level of the solicitors' hourly rates in the High Court are to increase by generally one third to approximately $1,600 and $3,200. Notwithstanding there is no mention about the District Court work, the hourly rates of the latter are potentially allowable will be two-third of the then newly increased High Court rates; 5. It was after various taxation hearings took place in the courts in the past years involving the issue of quantum of appropriate hourly rates to be allowed to solicitors having less than 10 years' PQE until the issuance of the Law Society Circular 97-234 (PA) dated 21 July 1997 which provides suggested allowable rates to solicitors and parties according to their PQE and standing so as to avoiding unnecessary arguments as in the past. It is necessary to apprehend the real meaning and spirit of this Circular 97-234 (PA) and taking careful note of the essential words in paragraph 1 are “… to increase these rates by up to above one third above the present level …: The new rates are as follows:. Then in the Table below that provides the Years of Practice etc. “from old rate to new rate etc ... Having said above, a solicitors having over 10 years of practice, he/she is entitled to be allowed in the District Court from the old rate of $2,100.00 to the new rate of $2,600.00 for work done carried out from the date of the aforesaid Circular. 6. Accordingly, the arguments advanced by some of the practitioners during taxation proceedings that the allowable amount to say a solicitor of having 10 years' PQE for work done in the District Court should be between $2,100 and $2,600, ie within an allowable range of rates, is clearly wrong and misleading. 7. Indeed, the various and repeated arguments in taxation hearings in the past years as to whether or not the rates provided in Circular 97-234 (PA) and repeated in the Consolidated Circulate 08-213(PA) are suggested changes from the then old rate to the new rate or the same operate as various “ranges” of allowable rates to a solicitor having the years of practice as provided (“the rates issue”) 8. By the issuance of the latest Circular 17-1017(PA) dated 11 December 2017, it is clear that the rates issue has been removed and to provide a clearer guidelines of allowable sums to solicitors in accordance with the PQE so as to avoiding any further unnecessary argument over the appropriate amount to be allowed to solicitors. 9. Accordingly, the originally claimed rates by EC should be allowed as claimed after the review. 10. The said hourly rates was provided in Circular 97-234(PA) and has been determined as outdated in accordance with FAMV 33/2008, Hon. J P Chan.   3. The Defendants' suggestion of a 7 years' PQE is competent enough to be the handling solicitor in this action has been proved to be speculative and to the fact that the Defendants' case was handled by solicitors of similar years of PQE.  4. There is no reason to have substantial reduction from the outdated hourly rate.  5. The hourly rate EC2 was provided by The Law Society under Circular 17-1017 (PA) dated 11th December 2017.  6. There is no reason to depart from the guideline of Solicitor's hourly rate on party and party taxation. | This is a Personal Injuries action that is straightforward and lacking in complexity. Liability was not disputed.   * In the Receiving Party’s solicitors’ letter dated 3rd January 2018, it was stated that they took the view that the case is less complicated than the ordinary personal injury litigation. * A solicitor of much less PQE would be capable of handling the case. |
| 2. | Page 6, item 18 | General  Care and  Conduct | EC1 - 1 hour 5 minutes | Taxed off | 1. The pre-action stage formed part and parcel of the costs of the action.  2. According to Order 62/App/23 in allowing the time for general care and conduct of the proceedings, the taxing master will have regard to, inter alia, the duration of the proceedings; the steps to be taken; and the number of unqualified persons or junior solicitors who required supervision.  3. The pre-action stage included the collection of evidential documents, ie medical reports, police documents and conducting company searches of the 1st and 2nd defendants.  Notwithstanding experience of the fee earner, the aforesaid works would require specific supervision to by the fee earner to the unqualified staffs. The fee earner is entitled to oversee the conduct of the staff in the discharge of the duty.  4. The pre-action stage covered the period from February 2016 up to April 2017 (15 months). There is no reason to deprive from the general allowance of 5 minutes per month under this head of claim. | - The general care and conduct claimed for the pre-action stage concerns the solicitor overseeing the conduct of the staff in collection of documents and conducting company searches.  - For pre-action stage, the LE did not claim any time costs, whereas EC claimed approximately 14 hours. There was therefore no supervision as EC performed all simple matters without the assistance of LE. |
| 3. | Page 19,  Item 85.3 | General Care and Conduct | EC1 - 45  minutes  EC2 - 35 minutes | EC1 - 30  minutes  EC2 - 30 minutes | 5. The period involved in the post-action stage is as follows:-   1. ECI: From April 2017 to December 2017 (9 months)   (ii) EC2: From January 2018 to July 2018 (7 months)  6. There is no reason to deprive from the general allowance of 5 minutes per month under this head of claim. | - There is no fixed rule for allowing 5 minutes per month for general care and conduct in the post-action stage.  - Bearing in mind the simple and straightforward nature of the case, I have allowed a just and reasonable amount of 30 mins each for EC1 and EC2 under this head. |
| 4. | Page 9,  Item 32 | Considering  Notice of Contribution and  Indemnity by the 1st defendant against the 2nd defendant filed on 08/06/2017 | EC1 - 5 minutes | Taxed off | 1. All the Contribution Proceedings' documents were named and served upon the plaintiff by the 1st and 2nd defendants throughout the action.  2. Although the plaintiff is said to be not a party in the contributory proceedings, it is proper and necessity for the plaintiffs solicitors to peruse and consider the documents in the Contribution Proceedings upon receiving from 1st and/or 2nd defendant.  3. Apparently, the Consent Order dated 8 June 2018, under paragraph 2, “the 1st and 2nd Defendant do pay the costs and disbursements of this action including the costs of this application to the Plaintiff ……”. Under Order 62, r. 28(2), a successful litigant is entitled on a party and party basis to “all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed.  4. It is proper and necessary for the Plaintiff to know, at least the extent of the indemnity or contribution being sought or indemnified between the 1st and 2nd defendants in respect of the plaintiffs claim in the Contribution Proceedings from time to time. | - The Order of Master Michelle Soong dated 26 September 2017 expressly stated that (a) with regard to the main action, the costs of this application in relation to paragraphs 1 to 13 be in the cause of the main action; and (b) as far as the contribution and/or indemnity proceedings is concerned, the costs of this application in relation to paragraphs 14 to 23 be in the cause of the Contribution and/or Indemnity Proceedings.  - In the Consent Order dated 8 June 2018, it was ordered that (a) the 1st defendant and 2nd defendant do pay the costs and disbursements of this action including the costs of this application to the plaintiff in the apportionment of 60/40; and (b) the Contribution and Indemnity Proceedings between the 1st defendant and 2nd defendant be discontinued with no order as to costs.  - Without an order of the court, a party is not entitled to recover any costs. |
| 5. | Page 9,  Item 34 | Considering Notice of Contribution and Indemnity filed on 12/6/2017 and served by the 2nd defendant | EC1 - 5 minutes | Taxed off | Same reasons as item 4 hereinabove. | Same reasons as Item No 4 above |
| 6. | Page 10,  38 | Climatological report supplied by Hong Kong Observatory on 01/08/2017 | EC1 - 5 minutes | Taxed off | 1. The 2nd defendant stated in his Police Statement and Witness Statement that the weather during the occurrence at the accident scene was in heavy rain.  2. According to the Climatological report, the weather during occurrence at the accident scene was drizzling/rainfall at 0.5mm.  3. The report was obtained in order to (i) to make use in the plaintiffs witness statement; and (2) to rebut the 2nd defendant's evidence of the weather during the occurrence at the accident scene when necessary.  4. Accordingly, it is proper and necessary for the plaintiff to obtain such report for the conduct of this action. | * Liability is not in dispute. Therefore the weather condition is not relevant.   - The climatological report was never disclosed in the Receiving Party’s 2 Lists of Documents or relied on by the Receiving Party |
| Page 21, item 8 | Prescribed charges for obtaining Climatologic al report from Hong Kong  Observatory | HK$795.00 | Taxed off |
| 7. | Page  11,  Item  48 | Statement of Claim by the  2nd defendant against the 1st  defendant in the  Contribution  Proceedings filed on 10/10/2017 | EC1 - 20 minutes | Taxed off | Same reason as item 4 hereinabove. | Same reasons as Item No 4 above. |
| 8. | Page  11 item 50 | Defence of the 1st defendant in Contribution and/or Indemnity  Proceedings filed on 24/10/2017 | EC1 - 30 minutes | Taxed off | Same reason as item 4 hereinabove. | Same reasons as Item No 4 above. |
| 9. | Page  12,  Item  51 | Statement of Claim of the 1st defendant against the 2nd defendant in the Contribution and/or Indemnity Proceedings filed on 24/10/2017 | EC1 - 30 minutes | Taxed off | Same reason as item 4 hereinabove. | Same reasons as Item No 4 above. |
| 10. | Page  15,  Item  74 | Instructions to Counsel dated 26/10/2018 | EC2 - 2 hours 30 minutes | Taxed off | 1. No charge was laid by the Police against either the 1st or 2nd defendants in relation to the accident. The complexity on liability as against the 1st and 2nd defendants and the chance of succeed to against which particular defendant is important.  2. It is proper and necessity to seek counsel's advice on the quantum of the 1st and 2nd defendant's joint offer and the acceptability thereof.  3. Alternatively, the further steps to be taken if the joint sanctioned offer is not accepted.  4. Even if the Learned Master maintains the view that counsel's involvement is not necessary and the work should be within the competence of the fee earner. By reason of the disallowance of counsel fee for the advice, an appropriate time should be allowed to a notional solicitor, ie the fee earner to carry out the necessary research on the liability, quantum and evidence and also the acceptability of the 1st and 2nd defendants' joint offer in order to enable the fee earner to advise the plaintiff for the acceptance thereto. | Only issue is quantum, and limited to PSLA and special damages.  - For such a simple and straightforward Personal Injuries case, it is not necessary to obtain advice from counsel on quantum limited to the two matters stated above.  - The settlement amount of $150,000 does not justify seeking counsel’s advice. |
| Page 17, item 84.2 | Communication with Counsel, Mr Daniel K K Chan | EC2 - 40 minutes | Taxed off |
| Page 20, item 1 | Advice in telephone conference with instructing solicitors discussing on issue of liability, quantum and evidence and advising in acceptability of the joint calderbank offer from the 1st and 2nd defendants on the quantum issue, and advising on the making of a sanctioned offer and/or calderbank offer to the 2nd defendant on the issue of liability; and letter of advice  (inclusive of perusal of papers (two box files) | HK$25,000.00 | Taxed off |

( Peony Wong )

Master

Mr Dicky Cheung (Counsel) and Mr Billy Chan (Law Costs Draftsman), instructed by Cheng & Co, for the plaintiff

Mr Kwan Siu Tung Emily (Solicitors) of Winnie Leung & Co and Mr Barry Leung (Law Costs Draftsman), instructed by Winnie Leung & Co, for the 1st and 2nd defendants