DCPI 900 of 2007

# IN THE DISTRICT COURT OF THE

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES NO. 900 OF 2007

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BETWEEN

###### CHIANG CHIN TSAIPlaintiff **Plaintiff**

and

SHUM KIN WONG 1st Defendant

HONG KONG & CHINA TRANSPORATION 2nd Defendant

CONSULTANT LIMITED

\_\_\_\_\_\_\_\_\_\_\_\_

Coram: Temporary Registrar C. Lee in Chambers

Date of paper disposal: 22nd November 2010

Date of Handing Down Decision: 23rd November 2010

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DECISION

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INTRODUCTION

## 1. This is a provisional taxation by way of paper disposal without oral hearing. The initial idea is to save time and cost. The condition precedent is, of course, that the legal practitioners or the litigants are well prepared for that so as to facilitate the expeditious disposal of the matter. From the chronology of events as stated below, one will see how some legal practitioners, while they wish to exercise the right and benefit from the provisional taxation, fail to abide by their duty to properly prepare for the paper taxation and to abide by what is provided in the Practice Direction (PD) 14.3. This is not uncommon in the District Court.

## THE PRACTICE DIRECTION

## 2. In Part B of PD 14.3, paragraphs 4 and 5, it is provided that:

## *“4. The parties have a duty to discuss the items of costs objected to and try to reach an amicable settlement, narrow down the items in dispute and consider making offers pursuant to O.62A.*

## *5. In case of failure to observe any of the directions herein, the taxing Master may make the party and/or the practitioner responsible for such failure personally liable for costs.”*

## Paragraph 31 of PD 14.3 provides that if the parties have narrowed down the disputed items, the receiving party shall inform the taxing Master in writing of the remaining items in dispute at the same time as he lodges the taxation bundle in accordance with paragraph 28.

## Paragraphs 28 and 29 provides for the preparation of taxation bundle:-

*“28. A bundle of all documents relating to the items objected to should be lodged with the Court not less than 2 clear days before the date fixed for provisional taxation by a taxing Master or taxation with a hearing.*

*29. The bundle should be in the following form:*

*(1) The documents must be marked with the same item numbers as those in the List of Objections to which they relate;*

*(2) The documents must be arranged in the same sequence as they appear in the List of Objections; and*

*(3) It is not necessary to divide in and out correspondences and telephone calls into different parts. They can be put into a bundle with dividers demarcating the stages of the proceedings.”*

1. The Plaintiff filed the Bill of Costs on 29th April 2010 together with the Notice of Commencement of Taxation (NOCT). The Bill consists of 3 parts. Part 1 relates to the litigation works engaged by Messrs. Samuel Ho & Co.. Part 2 relates to the litigation works engaged by Messrs. Massie & Clement. Part 3 relates to the litigation works engaged by Messrs. KY Lo & Co. In addition, there are 3 parts in relation to common fund costs.
2. The 1st taxation call over without oral hearing was conducted by the then Registrar on 15th July 2010 who adjourned the 1st call over to the 2nd call over on 19th August 2010, likewise, without oral hearing. He directed that:-

*“(1) the Bill of Costs filed by the RP be adjourned to 19.8.2010 at 3:30 pm for 2nd call over (paper disposal);*

*(2) the Receiving Party shall inform the taxing Master in writing of the items agreed by the RP with DLA/PP pursuant to para. 31 of PD 14.3 at the time of lodging taxation bundle. If no items in dispute can be agreed between the parties, the RP shall report to the taxing Master by joint letter with DLA/PP details of efforts made by the parties to narrow down the item in dispute pursuant to para.4 of PD 14.3 at the time of lodging taxation bundle;*

*(3) the Plaintiff (RP) to inform the Court in writing within 14 days as to whether the NOCT and the Bill have been served to DLA.”*

1. I note that the taxation bundle with 2 box files for Part 2-stage 2 were lodged on 14th July 2010. No taxation bundle for other parts has ever been filed but those other parts are in dispute according to the list of objections.
2. By a letter dated 25th July 2010, RP replied to the then Registrar that the NOCT and the Bill have been served on DLA.

## By a letter dated 16th August 2010 from Messrs. KY Lo & Co., enclosing the letter dated 21st July 2010 from Messrs. Massie and Clement, Messrs. KY Lo & Co. notified the then Registrar that Messrs. Massie and Clement agreed to reduce the amount for 6 disputed items, namely 40-43, 46 and 47 of the Bill out of 53 disputed items. Messrs. Massie and Clement mentioned a letter dated 5th May 2010 in its letter dated 21st July 2010 but it was not provided by Messrs. KY Lo & Co.. It must be noted that in breach of the then Registrar’s directions, no document is produced to suggest that PP or DLA agreed to the suggested reductions.

## Further, Messrs. YT Chan & Co., the paying party failed to reply to Messrs. KY Lo’s letter dated 26th July 2010 in an attempt to comply with PD 14.3, paragraph 4.

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## As at the date of the 2nd call over on 19th August 2010 by way of paper disposal, I note that there are 3 areas of poor preparation: (i) in breach of PD 14.3, paragraph 28, there is no taxation bundle for Part 1, Part 3 and common fund cost; (ii) in breach of PD 14.3 paragraph 29, the taxation bundles prepared for Part 2-stage 2, save as items 24 to 33, fail to comply with the requirement, namely, the documents must be marked with the same item numbers as those in the List of Objections to which they relate. The documents must be arranged in the same sequence as they appear in the List of Objections. The documents divider for disputed items 1-23, 33 to 53 are missing; (iii) in breach of PD 14.3, paragraph 4 and the then Registrar’s directions, RP failed to produce correspondence to show that as between RP, PP and DLA, there was a real attempt to discuss; to report the agreed items or the efforts to narrow down the items in dispute.

## Despite the above, the taxation was fixed for provisional taxation by way of paper disposal on 22nd November 2010 with 3 hours reserved.

## By a letter dated 15th November 2010 from Messrs. KY Lo & Co., the RP simply enclosed again the letter dated 21st July 2010 from Messrs. Massie & Clement.

## On the date of provisional taxation, one may realize the difficulties to conduct provisional taxation with the above poor preparation. This Court is really put into a guessing exercise. On the available documents, this Court tried its best endeavours to rule as many items and possible (see the Schedule below). However, without the Parties’ assistance and their compliance with PD, some of the items are to be adjudicated in the next oral hearing. Not only judicial resources are wasted, parties are to incur additional cost on attending the next oral hearing.

## This judgment serves as a reminder to legal practitioners that while they wish to benefit from paper taxation, they should have abided by their basic duty to assist. It is quite difficult to understand why some practitioners could not have spared a few minutes to study the relevant PD, instead, they would rather spend time to ask for indulgence or write to explain away the mistakes in the event of breach.

## In the premises, upon reading the Plaintiff/Receiving Party’s Bill of Costs filed on 29th April 2010, the Defendant/Paying Party’s List of Objections filed on 27th May 2010 and the letters dated 21st July 2010 and 15th November 2010 from solicitors for the Plaintiff and the Defendants respectively, the Registrar made the following orders:-

1. Part of the Bill is taxed as amended as per the Schedule below (“Order Nisi”).
2. Parties are at liberty to seek clarification to the Court in writing with copy to the other side on or before 6th December 2010 and such application shall be dealt with by the Master without oral hearing, subject to the directions of the Master.
3. If no objection is made to the Order Nisi or no clarification is sought on or before 6th December 2010, the Order Nisi shall become absolute.
4. The remaining part of the Bill is adjourned to a date to be fixed to be heard before the Registrar with 2 hours reserved.
5. Messrs. Samuel Ho & Co., Messrs. KY Lo & Co., Messrs. Massie & Clement and Messrs. YT Chan & Co. do explain in writing by way of joint letter the 3 areas of poor preparation, the breach of the then Registrar’s directions and the breach of PD 14.3 within 14 days from the date hereof with copy to DLA for this Court to consider wasted costs order.
6. Cost reserved.

## Schedule of taxation without oral hearing by Registrar C. Lee on 22.11.10

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| *Objection No.* | *Bill Item No.* | *Ruling* | *Brief reasons: RP=receiving party; PP=paying party; PQE=post qualification experience; LOO+=list of objections; h=hour; m=minute* |
| 1 | Section A: (i) hourly rate of SH;  (ii) hourly rate of  SLC | Taxed off $250 for SH ($2,300 allowed);  Taxed off $140 for SLC ($660 allowed) | -Claim lodged in 2004. SH had 9 years of PQE. Case not complicated. Usual rate between $2300-$2500 for 9 years PQE. $2,300 reasonable.  -usual rate of LC is between $533-$660 for District Court’s scale. $660 is reasonable. |
| 2 | 2 | Taxed off. | -PP’s LOO states: “subject to proof of necessity and justification because writ issued by then solicitors in part 2”. If RP asks for paper disposal and further narrow down fails, RP should have prepared a brief table of reply to LOO with reference to taxation bundle. RP failed to do so and the item is taxed off. |
| 3 | 3 | Taxed off | -PP’s LOO states: “subject to proof of necessity and justification because document obtained during aided period”, If RP asks for paper disposal and further narrow down fails, RP should have prepared a brief table of reply to LOO with reference to taxation bundle. RP failed to do so and the item is taxed off. |
| 4 | 4 | Taxed off 2 h 30 m (6 hours allowed) | Total time spent not reasonable and proportional to the nature and complexity of the claim. Litigation works routine in nature with common use of table to take instructions on date of incident; persons, place and what happened. |
| 5 | 5a | Taxed off | Included in item 4 above. |

Time engaged: 4 hours

Messrs. KY Lo & Co. for the Plaintiff/RP

Messrs. YT Chan & Co. for the Respondent/PP

Clement Lee

Temporary Registrar of the District Court