## DCPI 1041/2008

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSON INJURIES ACTION NO. 1041 OF 2008

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##### BETWEEN

Liu Chung Ching Plaintiff

### and

A.S. Watson Group (HK) Limited 1st Defendant

trading as Park’n Shop

Golden Resources Development 2nd Defendant

Limited

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Coram : H.H. Judge Chow

Date of Hearing : 11th July, 2008

Date of handing down Decision : 9th September, 2008

DECISION

1. In this application the Plaintiff asks the court to make the following orders:-
2. The sum of $75,000 paid into court on 23.5.2008 by the 2nd Defendant be paid out to the Plaintiff in satisfaction of the cause of action in respect of which it was paid in;
3. The 2nd Defendant do pay to the Plaintiff costs of this action, to be taxed, if not agreed and such costs to include all costs incurred by reason of there being two defendants; and
4. The 2nd Defendant do pay to the 1st Defendant its costs, to be taxed, if not agreed.
5. In this action the Plaintiff claims for personal injuries, loss and damages sustained by her in an accident which occurred on 24.11.2006 at the ground floor and 1st floor, Fook Sing Court, No. 378 Queen’s Road Central (“the Premises”). At the material time, the 1st Defendant was the occupier of the Premises, while the 2nd Defendant was a supplier of the 1st Defendant.
6. The Plaintiff’s causes of action against the 1st Defendant are breach of the Occupiers Liability Ordinance, Cap. 314, and a claim on negligence. The cause of action on the negligence of the 1st Defendant is that it failed to ensure that the delivery worker employed by the 2nd Defendant was not to use the escalator, or that it failed to warn the delivery worker not to use the escalator or that it failed to prevent the delivery worker from using the escalator.
7. The cause of action against the 2nd Defendant is on the negligence of its delivery worker in handling the delivery cart on the escalator. There is only one cause of action against the 2nd Defendant.
8. On 23.5.2008 the 2nd Defendant filed and served a notice of payment into court whereby a sum of $75,000 was paid into court. A notice of acceptance of money paid into court was filed and served by the Plaintiff on 6.6.2008. The notice of payment into court reads:-

“TAKE NOTICE that the 2nd Defendant has paid a sum of HK$75,000.00 into court.

The said sum of HK$75,000.00 is in satisfaction of all the causes of action in respect of which the Plaintiff claims.”

(Underlines provided)

1. On 6.6.2008 the Plaintiff filed and served a notice of acceptance of payment. The notice reads:-

“TAKE NOTICE that the Plaintiff in this action accepts the sum of HK$75,000 paid into Court by the 2nd Defendant on 23rd May 2008 in satisfaction of all causes of action in respect of which it was paid in and in respect of which the Plaintiff claims.”

1. The fundamental question this Court has to consider is: what is the purpose of paying in this sum of HK$75,000.00. There is only one cause of action against the 2nd Defendant. Was the payment made in satisfaction of the cause of action in respect of which the Plaintiff claims against the 2nd Defendant only? The answer must be in the negative, because it was not so stated in the notice of payment. The notice of payment does not refer to the cause of action “against the 2nd Defendant”. The notice of payment refers to “all the causes of action in respect of which the Plaintiff claims”. So the phrase “all the causes of action” must cover the causes of action against the 1st Defendant, as well as the cause of action against the 2nd Defendant. If the 2nd Defendant had intended to pay in $75,000 in satisfaction of the Plaintiff’s cause of action against the 2nd Defendant only, it could have specified that cause of action; alternatively, it could have specified that the money paid in is in satisfaction of the Plaintiff’s cause of action against the 2nd Defendant only. But it had not done so. There is no ambiguity in the notice of payment into court by the 2nd Defendant. It must be given the effect according to law.
2. What is the effect of the Plaintiff’s acceptance of the payment in? The answer lies in Order 22 r.3(4) of the Rules of the District Court (“RDC”), which provides:-

“(4) On the plaintiff accepting any money paid into court all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates, both against the defendant making the payment and against any other defendant sued jointly with or in the alternative to him, shall be stayed.”

The 2nd Defendant submits that “Since the 1st and 2nd Defendants are sued in different causes of action, acceptance of the 2nd Defendant’s payment into court by the Plaintiff does not have the effect of staying the Plaintiff’s proceedings against the 1st Defendant.” This submission cannot stand, because the 2nd Defendant’s payment is “in satisfaction of all the causes of action the Plaintiff claims”, and the Plaintiff has accepted such payment in. Accordingly O.22 r.3(4) of the RDC applies, and all further proceedings in the action against both Defendants must be stayed.

1. Order 62, r.10(2) of the RDC reads:-

“(2) Where a plaintiff by notice in writing in accordance with Order 22, rule 3(1), accepts money paid into court in satisfaction of the cause of action or of all the causes of action in respect of which he claims, or accepts money paid in satisfaction if one or more specified causes of action and gives notice that he abandons the others, he shall be entitled to his costs of the action incurred up to the time of giving notice of acceptance.”

Order 62, r.10(2) applies to the present case. Therefore item 2 of the summons should succeed. But the costs should be those incurred by the Plaintiff up to the time of giving notice of acceptance.

1. Section 53A of the District Court Ordinance provides that “The costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, are in the discretion of the Court, and the Court has full power to determine by whom and to what extent the costs are to be paid.” As a result of the Plaintiff’s accepting the payment in by the 2nd Defendant all further proceedings in the action have been stayed. Under O.62 10(2) of the RDC, the Plaintiff is entitled to costs incurred up to the time of giving notice of acceptance.
2. The Plaintiff is entitled to have the claims heard at a trial so that liability among the parties can be determined. Because of the payment in by the 2nd Defendant, all further proceedings are stayed and there will be no trial to determine liability. As a result under Order 62, r.10 (2) of the RDC he is awarded costs for all the expenses incurred up to the time of his giving notice of accepting the payment into Court by the 2nd Defendant. Applying the same logic, I adjudge that the 1st Defendant is entitled to have the claims brought against it heard at a trial for the purpose of determining liability. Because of the payment in by the 2nd Defendant, the trial will never materialize. So all the expenses it incurred up to the time it received the Plaintiff’s notice of his acceptance of the payment in will be wasted. It is the 2nd Defendant which brought about this situation; so the 2nd Defendant must compensate the 1st Defendant, and pay to it all the costs up to the time it received the Plaintiff’s acceptance of the payment in. In this regard the Plaintiff succeeds in item 3 of the Summons.
3. The 2nd Defendant cited the judgment of the Hon. Mr. Justice Yam at P.129 of the General Accident Insurance Asia Ltd. v. Hampton Winter & Glynn and Hill Taylor Dickinson [1999] 2 HKLRD 109. That judgment does not apply in this case because in that case the payments-in made by one co-defendant did not stay the action against the other non-paying defendant. That case involves a difference scenario.
4. The 2nd Defendant also cited the case of Pang Lai Hung v. Maxson Transportation Limited and Others (DCPI 1565/2005), and submitted that “Furthermore, the question to be considered in awarding costs ultimately rests on liability and liability cannot be determined until there is a full trial of the case or until there is an admission of liability by the party concerned.” The scenario in that case appears to be different from the present case. That case involved 3 defendants. It appears that the payment in by 2 defendants did not affect the proceedings against the 3rd Defendant. So that case is of no assistance to the 2nd Defendant.
5. There is no opposition to item 1 of the Summons.
6. By reason of the matters aforesaid, I make the following orders:-

1. Regarding item 1, I make an order in terms of this item.
2. Regarding item 2, I order that the 2nd Defendant do pay the Plaintiff costs of this action, up to the time of giving notice of acceptance of the payment in, to be taxed, if not agreed, and such costs to include all costs incurred by reason of there being two defendants.
3. Regarding item 3, I order that the 2nd Defendant do pay the 1st Defendant costs of defending this action, up to the time the 1st Defendant received the Plaintiff’s notice of acceptance of the payment in, to be taxed, if not agreed.

Costs

1. I make an order nisi, to be made absolute in 14 days’ time, that the 2nd Defendant do pay costs of this summons to the Plaintiff and to the 1st Defendant, to be taxed, if not agreed.

( S. Chow )

District Judge

The Plaintiff : represented by Mr. Kevin Chan of M/S. Tang, Chan & Woo, Solicitors.

The 1st Defendant : represented by Miss Jane Lee of M/S. JSM, Solicitors.

The 2nd Defendant : represented by Mr. Tang Chi Keung of M/S. Paul C.K. Tang & Co., Solicitors.