## DCPI 1154/2008

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 1154 OF 2008

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| BETWEEN | WU LEUNG KUI JACKY | Plaintiff |
|  | and |  |
|  | LEUNG MING YUN | 1st Defendant |
|  | CHAN SUI HING | 2nd Defendant |
|  | UNIFORMITY SECURITY COMPANY LIMITED (統一警衛有限公司) | 3rd Defendant |
|  | i-CABLE COMMUNICATIONS LIMITED | 4th Defendant |

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Coram : Her Honour Judge Mimmie Chan in Chambers (open to public)

Date of hearing : 30 May, 2011

Date of handing down Decision : 23 June, 2011

# DECISION

**Background**

1. On 7 March 2011, I handed down Judgment, awarding damages of $587,632 to the Plaintiff, Mr. Wu. After giving credit for a sum of $473,199.80 already received by him as employees' compensation, the net award came to $114,432.20. The said sum was ordered to be paid by the 1st to 3rd Defendants to Mr. Wu. Mr. Wu's claims against his former employer, the 4th Defendant in these proceedings ("**Cable**"), was dismissed, with costs to be paid by Mr. Wu to Cable ("**Order Nisi**"). Mr. Wu applied on 17 March 2011 to vary the costs Order Nisi, to seek an order that Mr. Wu should only pay 1/8 of Cable's costs of the action.

**The issue**

1. In gist, the arguments made by Counsel for Mr. Wu is that after the Civil Justice Reform ("**CJR**"), the Court should, particularly in respect of proceedings conducted after the commencement of CJR, be prepared to exercise its discretion to make orders as to costs to reflect the fact that a party has succeeded on a part or parts of his case, even if such party has not been wholly successful in the action. With this approach in mind, Counsel has urged the Court to make separate orders of costs on the separate issues identified in the Judgment, to reflect the overall situation that despite failing in his claim against Cable on its liability as Mr. Wu's employer in the 1st and 2nd Defendants’ assault on Mr. Wu, Mr. Wu in fact succeeded on the issues of (1) his having been assaulted; (2) his having suffered psychiatric injury as a result of the assault; and (3) his claim for damages suffered as a result of the assault. Counsel for Mr. Wu has urged the Court to accept that after the CJR, the Courts need not strictly adhere to the principles set out in *Re Elgindata Ltd (No. 2)* [1992] 1 WLR 1207, 1214.

**Should the Order Nisi be varied?**

1. I, for one, am sympathetic to the argument that after the CJR, the courts should generally be more ready and willing to depart from the general rule that costs should follow the event, in circumstances where the facts justify the Court so to do in order to reflect the spirit of the CJR, and the emphases on procedural economy, cost effectiveness and the facilitation of settlement of disputes.
2. Nevertheless, even after the CJR, there must be sound basis to depart from the general rule that a successful party should not be deprived of its costs or be ordered to pay the costs of another party. Order 62 rule 3 provides that in the exercise of its discretion, the court ***shall*** order costs to follow the event, except when it appears that in the circumstances of the case, some other order should be made.
3. Under the amendments made to Order 62, rule 5 of the Rules of the High Court and of the District Court, the Court in exercising its discretion as to costs shall take into account the underlying objectives set out in Order 1A rule 1, the conduct of all the parties, and whether a party has succeeded on parts of his case, even if he has not been wholly successful. The Court is entitled and indeed required under Order 62 rule 5 to consider the conduct of the parties: whether it is reasonable for a party to raise, pursue or contest a particular allegation or issue, the manner in which a party has pursued or defended his case on a particular allegation or issue, whether a party has succeeded on parts of his case, and whether the claimant who has succeeded in his claim has exaggerated his claim.
4. Even after the CJR, the Court of Final Appeal's approach on the question of costs, as adopted in the case of *Regent National Enterprises Ltd. v. Goldlion Properties Ltd.* FACV No. 10 of 2008, was to consider whether the issues affecting the question of costs were isolated or discrete issues so as to justify any departure from the rule that costs should generally follow the event, and whether the issues occupied a material amount of hearing time and led to the incurring of significant expense.
5. Costs are inevitably in the discretion of the Court and fact sensitive. Having considered the circumstances of this case, I am not satisfied that this is a fit or proper case for the Court to deprive Cable of any part of costs. I do not consider that it was unreasonable for Cable to raise the issues which it did in its Defence, to dispute that Mr. Wu had been assaulted by the 1st and 2nd Defendants, and that his psychiatric injury was caused by the assault.
6. I agree with Counsel acting for Cable, that the question of whether Mr. Wu had indeed been assaulted by the 1st and 2nd Defendants, being the most controversial issue in these proceedings, would have taken up the substantial part of the trial and preparations leading up to the trial in any event, whether or not Cable joins in disputing the issue. I am not satisfied that the issue and evidence raised by Cable on the assault had lengthened the trial.
7. On the question of whether the assault had caused the psychiatric and other damages alleged by Mr. Wu, as pointed out by Counsel for Cable, even Mr. Wu's own expert, Dr. Lai, had noted points of inconsistency in the assessment of Mr. Wu and expressed the opinion that Mr. Wu may not have given a true representation of his psychiatric condition. It was perfectly proper for Mr. Wu’s expert to do so, and it was reasonable and legitimate for Cable to appoint its own psychiatric expert to give evidence as a medical expert on Mr. Wu's condition and to assist the Court in the determination of these issues.
8. On the facts of the present case, I am not satisfied that Cable's contest of the issues of whether there was an assault, whether Mr. Wu suffered from mental disorder as a result of the assault, and the damages consequently recoverable was either unreasonable, unnecessary or improper, or that these issues had led to significant expenses being unnecessarily incurred. There was in fact sound basis for serious doubts as to the genuineness of Mr. Wu’s claim of psychiatric illness and incidentally, of his claim for damages. On the facts and evidence available, I do not consider that it would be just to deprive Cable of its costs of defending the issues of damage in the manner which it had done.

**Conclusion**

1. For the above reasons, I will dismiss Mr. Wu's application for variation of the Order Nisi. It follows that Mr. Wu will have to bear the costs of this application, with certificate for Counsel. Mr. Wu's own costs are to be taxed in accordance with the Legal Aid Regulations.

(Mimmie Chan)

District Judge

*Mr. Andy Hung, instructed by Messrs. Au Yeung, Cheng, Ho & Tin, assigned by the Director of Legal Aid, for the Plaintiff*

*Mr. Samuel Chan, instructed by Messrs. Deacons, for the 4th Defendant*