# DCPI 1219/2020

[2021] HKDC 388

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

# PERSONAL INJURIES ACTION NO. 1219 OF 2020

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BETWEEN

WU CHUNG KEI Plaintiff

and

CHEUNG CHUNG TIM Defendant

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##### Before: His Honour Judge Andrew Li in Chambers (Open to public)

Date of Hearing: 8 - 9 December 2020

Date of Decision: 9 December 2020

Date of handing down Reasons for Decision: 31 March 2021

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REASONS FOR DECISION

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*INTRODUCTION*

1. This is the plaintiff’s application by summons dated 19 October 2020 (“the Summons”) for a *Mareva* injunction restraining the disposal of property against the defendant pursuant to Order 29, rule 1 of the Rules of the District Court, Cap 336H (“RDC”).
2. At the hearing on 9 December 2020, I dismissed the Summons with costs in favour of the defendant and gave the following order:

“1. The Summons is hereby dismissed;

2. The costs of and occasioned by this application be paid by the Plaintiff to the Defendant with certificate for Counsel, and such costs to be summarily assessed by the Court by way of paper disposal;

3. The Defendant do lodge with the clerk of this Court his statement of costs for summary assessment and serve a copy on the Plaintiff within 7 days;

4. The Plaintiff do lodge with the clerk of this Court his list of objections, if any, and serve a copy on the Defendant within 7 days thereafter;

5. For the avoidance of doubt, the time for complying any direction or order for the payment of the summary assessed costs under Order 62, rule 9B (1)(a) of the Rules of the District Court does not apply pursuant to sub-paragraph (2) of that Order; and

6. The Plaintiff’s own costs to be taxed in accordance with the Legal Aid Regulations.”

1. I said I would give the reasons for my decision in due course. Here are the reasons.

*BACKGROUND*

1. The plaintiff claims damages against the defendant for personal injuries he had suffered as the result of an accident happened on 17 May 2017, where the plaintiff allegedly fell off from a ladder that he was working on (“the Accident”).
2. The plaintiff was instructed by the defendant to carry out painting works for the interior walls of a house located in Yuen Long (“the House”).
3. The plaintiff had, amongst other things, the control to determine the location within the House to carry out his duties as well as the control to determine the procedure, method, and equipment used to carry out his duties. In particular, the selection and use of the wooden A-shaped ladder (“the Ladder”) that the plaintiff allegedly fell off from.
4. At the time of the Accident, the plaintiff was an experienced decoration worker with over 30 years of experience in the decoration industry as well as the holder of a valid safety card.
5. The Accident was not witnessed by any other person nor was there any video footage capturing how the Accident unfolded.
6. In the related employees’ compensation (“EC”) proceedings, after a trial before His Honour Judge Harold Leong, the plaintiff was awarded a sum of HK$176,402.43 with interest and costs against the defendant (“the EC Case”)[[1]](#footnote-1).
7. It is to be noted that the defendant was not insured. He was unrepresented and acted in person during the trial of the EC Case. After judgment was entered against him and the sealed order was served on him on 13 July 2020 in the EC Case, the defendant paid the judgment sum together with interest in a total sum of HK$200,146.50 on 31 July 2020, leaving only the plaintiff’s costs and disbursements as the only outstanding sum remained unpaid in the EC Case as of the date of issuing of the Summons.
8. The defendant then instructed his present solicitors to represent him in the EC Case to deal with the costs issue.
9. On 5 August 2020, the defendant’s solicitors wrote to the plaintiff’s solicitors asking for the breakdown of the plaintiff’s costs on a without prejudice basis.
10. On 31 August 2020, the plaintiff’s solicitors wrote to the defendant’s solicitors and provided the breakdown.
11. On 30 September 2020, the plaintiff’s solicitors wrote again to the defendant’s solicitors demanding for a reply.
12. On 5 October 2020, the defendant’s solicitors wrote to the plaintiff’s solicitors on a without prejudice basis asking for more time for them to advise the defendant on the costs issue.
13. It should also be noted that the writ in the personal injury action (“PI Case”) herein was issued on 14 May 2020 while the statement of claim (“SoC”) and the statement of damages (“SoD”) were filed on 15 July 2020.

*The Summons*

1. The Summons for *Mareva* injunction was filed on 19 October 2020 and was brought to the attention of the defendant when the same was served on the defendant’s solicitors at around 4:00 pm on that day. However, no return date was marked on the copy of the Summons served, which was stated to be an “*Inter-Parte* Summons”. There was also no mention of any pending application for *interim* interlocutory injunction at the hearing on 23 October 2020 as subsequently stated in the plaintiff’s skeleton submissions served on the defendant on 22October 2020, which was filed just one day prior to that hearing.
2. Neither the defendant nor the defendant’s legal representatives were served any prior notice or warning by the plaintiff regarding his intention for seeking an interim interlocutory injunction.
3. I disallowed the plaintiff’s application for interim interlocutory injunction on 23 October 2020 and instead adjourned the Summons for arguments before me on 7 December 2020. At the end of the hearing, I gave directions for the parties to file evidence for the substantive hearing.

*DISCUSSION*

*The defendant’s landed properties*

1. The defendant owns two landed properties:
2. A property known as Flat 10 on the 24th Floor of Block B, Yat Nga Court, No.3 Tat Nga Lane, Tai Po, New Territories, Hong Kong (“the 1st Property”). The 1st Property is jointly owned by the defendant and his wife, Li Kwan Yung; and
3. A property known as Ground Floor and the Garden thereto, No 5E Ta Tit Yan, Tai Po, New Territories, Hong Kong, which is held in the defendant’s sole name (“the 2nd Property”).
4. The 2nd Property is part of a village house, on No 5E Ta Tit Yan, Tai Po, New Territories, Hong Kong, that consists of 3 storeys (“the Village House”). The ground floor and the garden of the 2nd Property is owned by the defendant; the 1st floor is owned by the defendant’s younger son, Cheung Wai Chun; and the 2nd floor including the rooftop is owned by the defendant’s elder son, Cheung Wai Man (“the Elder Son”).
5. On 4 August 2020, the defendant entered into a sale and purchase agreement (“the S&P Agreement”) of the 2nd Property with the Elder Son in the consideration of $3.88 million where the Elder Son would purchase the 2nd Property from the defendant. The scheduled completion date for the sale and purchase was on 28 December 2020.
6. Based on the suspicion that the sale was an attempt to dissipate his assets in order to defeat the judgment hoping to be obtained by the plaintiff in the PI Case, the plaintiff applied for an extension of his legal aid certificate which was duly granted on 7 October 2020 to cover the injunction application. As said, the Summons for the *Mareva* injunction was filed on 19 October 2020.

*The plaintiff’s case*

1. Miss Alison Choy for the plaintiff in her written submission submits that:-
2. There is a serious question to be tried in that the plaintiff has a good arguable case in the PI Case;
3. There are assets within the jurisdiction;
4. The balance of convenience is in favour of the granting the injunction;
5. There is a real risk of dissipation of assets; and
6. There has been full and frank disclosure.

*The defendant’s case*

1. The defendant opposes the plaintiff’s application on the following grounds:
2. The defendant has a good arguable case in the underlying PI Case to contest liability against the plaintiff;
3. There is no real risk of dissipation of assets; and
4. The balance of convenience is not in favour of the granting the injunction.

*The Court’s factual findings*

1. The following are the factual findings I made in this case, based on the evidence filed by the defendant and the Elder Son which I accept.
2. The defendant and his wife are parents to 3 grown up children. Each of the children have their own respective families (collectively the “Cheung Family”). The Cheung Family all live together in the Village House.

1. Before the defendant’s children became working adults, the defendant was the sole breadwinner of the family and the defendant’s wife was a full-time housewife.
2. Because the defendant was aging and reached retirement age, the Elder Son was assigned to be the borrower and guarantor for the mortgage of the 2nd Property.

1. Due to the result of the EC Case and the conduct of the PI Case, the defendant needed to raise funds in order to satisfy the judgment and the costs order in the EC Case and to pay for his lawyers to defend the PI Case. This does not mean the defendant did not have sufficient funds due to the EC Case and the PI Case as suspected by the plaintiff. I accept rather this is merely to increase the defendant’s cashflow in order to effectively handle both the EC Case and the PI Case. I find there is nothing sinister about this.

1. As the defendant had reached retirement age and did not wish to sell his landed properties to outsiders, the Elder Son offered to top up the mortgage of the Elder Son’s property.

1. Upon preliminary assessment of the Elder Son’s mortgage application, he was advised by the bank that as he was a co-borrower for the existing mortgage on the 2nd Property, it would be ideal if he could, while raising the new mortgage loan, redeem the existing mortgages on the 2nd Property as well as the Elder Son’s own property. By doing so, the Elder Son was advised that he would obtain the best interest rate offer and ensure that he would maintain sufficient credit capacity at the same time. Hence, it was then a condition under the Elder Son’s mortgage with the 2nd floor of the Village House (which he owns) that the mortgage on the 2nd Property be fully repaid first before the drawdown of the new mortgage.
2. In consideration of this, and upon knowing that pursuant to §§29AI and 29AL of the Stamp Duty Ordinance (Cap 117), the sale of the 2nd Property is a sale of residential property between closely related persons chargeable with *ad valorem* stamp duty at Scale 2 rates, the defendant agreed to “sell” the 2nd Property to his Elder Son at the same time as fair treatment to the Elder Son. Hence, a 2.25% stamp duty was paid for this transaction.

1. I accept the defendant’s claim that by redeeming the existing mortgages and raising the new mortgage loan, the Elder Son would be able to raise a net sum of around HK$1.3 to HK$1.4 million to assist the defendant in paying the costs in the EC Case and in defending the PI Case.

1. Hence, the defendant entered into the S&P Agreement of the 2nd Property with his Elder Son on 4 August 2020 as mentioned above.

*Issues to be decided*

1. The legal principles governing the grant of a *Mareva* injunction are trite. I do not intend to repeat them here.
2. The following 3 grounds are the main areas of contention between the parties: (I) whether the defendant has an arguable defence to contest liability in the PI Case; (II) whether there is any real risk of dissipation of assets; and (III) where does the balance of convenience lie.

*(I) whether the defendant has an arguable defence to contest liability in the PI Case*

1. Miss Choy submits on behalf of the plaintiff that he has a solid case on liability with no chance of any contributory negligence on his part in the PI Case. She also submits that the amount that the plaintiff is seeking under the SoD at HK$2.68 million is a realistic amount which her client will likely be able to obtain at the trial of the PI Case. Hence, the plaintiff invites the Court to “freeze” the defendant’s assets under the *Mareva* injunction up to that sum.
2. However, with respect to Miss Choy, her submission has ignored 2 obvious facts, namely, (1) this figure represents the plaintiff’s best case scenario as pleaded under the SoD which he is unlikely able to achieve at the trial; and (2) his pre-accident income is now said to be at HK$31,200 per month when the specific factual finding made by HH Judge Harold Leong in the EC Judgment was at HK$8,333 per month only.

1. Thus, 2 issues arose under this head, namely, (a) whether there is any prospect of the court in making any finding of contributory negligence against the plaintiff; and (b) whether there is any issue of *res judicata* on the plea of his monthly income at the time of the Accident.
2. I shall take these 2 issues in turn below.

*(a) Contributory Negligence*

1. I do not regard liability is an open and shut issue in this case as the plaintiff has suggested in his counsel’s submissions.
2. As mentioned above, at the time of the Accident, the plaintiff was an experienced decoration worker with over 30 years of experience, in addition to being a holder of a valid safety card. Due to the plaintiff’s experience, the plaintiff had control over the manner in which the plaintiff carried out his duties, including the selection and usage of equipment: see §7 of defence.

1. Hence, in the event that the defendant is found negligent, the plaintiff may well be found contributorily liable for, amongst other things, failing to select appropriate equipment and failing to safely use said equipment: see §9 of defence.

1. It is the defendant’s case that the defendant had seen the plaintiff “walking the ladder” whilst the plaintiff was working in the House and had expressly told the plaintiff that doing so was extremely dangerous as the plaintiff could easily fall and injure himself. The defendant, instead, suggested the plaintiff to adopt a much safer approach, to *“… first dismount the ladder, move the ladder to the required position, and then safely mount the ladder, again”*: see §18 of the defendant’s affirmation.

1. Whilst the plaintiff denies that the defendant had any discussion with the him that the plaintiff was “walking the ladder”, the plaintiff expressly admits that he did in fact “walk the ladder” due to his own laziness and as it was apparently the “usual practice” by workers in the plaintiff’s position: see §§20-21 of the plaintiff’s 2nd affirmation.

1. Additionally, the plaintiff explicitly states that *“(N)o one would do it in the way suggested by the Defendant, otherwise all such works would take double the time to finish”*: see §21 of the plaintiff’s 2nd affirmation. Thus, arguably it can be said that the plaintiff chose not to adopt a safe approach to his work; had no regard for his own safety; and had knowingly exposed himself to unnecessary risk or damage or injury.

1. Similarly, it was only first mentioned in the plaintiff’s 1st affirmation that the *“works [at the House] had to be done as soon as possible as [the workers] were in a rush and did not have much time left”*: see §20 of the plaintiff’s 1st affirmation. In none of the pleadings does the plaintiff nor the defendant mention that the project was rushed. In fact, it is unlikely that the plaintiff was sorushed in his work as this was merely the second day on which the plaintiff had worked in the House before the Accident occurred. Likewise, it is open to question as to why did the plaintiff not first complete *“other works which did not involve the ceiling… [where] a 4-step ladder would be more suitable”*: §12 of the plaintiff’s 1st affirmation.

1. I agree with Mr Leon Chan for the defendant that the present hearing may not be the appropriate forum to go into detail on the contributory negligence issue. However, there are ample authorities to suggest that a worker working in similar circumstances can be held liable in contributory negligence. Thus, in my view, liability is still very much a live issue in this case.

*(b) Res Judicata / Issue Estoppel*

1. In the EC Case Judgment, HH Judge Harold Leong ruled that the plaintiff earned a total income of HK$100,000 in the 12 months preceding the Accident. Accordingly, it was held that the monthly income of the plaintiff was HK$8,333: See §44 of the EC Case Judgment. This figure is drastically different from the monthly income of HK$31,200 that the plaintiff is now claiming under the SoD.
2. Judge Leong ruled in the EC Case that the only reliable and objective document in relation to the plaintiff’s pre-Accident earnings was the plaintiff’s tax records from the Inland Revenue Department: See §44 of the EC Case Judgment. The plaintiff’s so-called “income records” were not accepted and the learned judge found that the plaintiff was not an honest witness: See §40 of the EC Case Judgment.
3. Whilst the plaintiff now alleges that the monthly sum of HK$31,200 was not picked arbitrarily, but rather the sum the plaintiff “actually” earned in the year preceding the EC Case, I agree with Mr Chan that this is not the appropriate forum to challenge the findings of HH Judge Harold Leong in the EC Case. I am of the view that such challenge should be made by way of an appeal of the EC Case Judgment which the plaintiff had not done and is now badly out of time.
4. The plaintiff was represented by the same set of solicitors in the EC Case as in the current PI Case. The plaintiff had never appealed the findings of the EC Case including his monthly income was at HK$8,333, let alone appealing the EC Case itself. Accordingly, the plaintiff ought to be aware that he is estopped from contesting the issue of the plaintiff’s monthly earnings due to the doctrine of *res judicata*.: See *Stephenson v Garnett* [1898] 1 QB 677 at 680 per A.L. Smith LJ; *Carl Zeiss Stiftung v Rayner & Keeler Ltd* [1970] 1 Ch 506 at 538 per Buckley J; *Yat Tung Investment Co Ltd v Dao Heng Bank Ltd* [1975] AC 581 at 590; and *Wong Wang Sum v Lee Kam Engineering Co* [1996] 3 HKC 627.
5. I accept Mr Chan’s submission that where there is a post-trial judgment after trial in an earlier EC proceedings, *issue estoppel* comes into play in the subsequent corresponding personal injuries case between the same parties not from the statutory methodology for calculating the amount of EC payable but from the findings/ determinations by the Court that were essential steps in its reasoning for granting the employees’ compensation judgment: See *Mohammad Amjad v John M Pickavant & Co* [2013] 1 HKC 145 at §74 per Master Marlene Ng (as she then was).
6. In *Wong Wang Sum*, *supra*, the defendants successfully applied to strike out part of the amended statement of claim on the ground that matters pleaded therein, notably, that the plaintiff’s loss of earnings and loss of earning capacity, had already been determined by the District Court in the preceding employees’ compensation case. It was held that the matter ought not be litigated again and insofar as the claim is based on the same subject matter, it ought to be struck out: *Wong Wang Sum* at 634B-C per Cheung J (as he then was).

1. Additionally, I accept Mr Chan’s submission that, in relation to damages, the question is not whether or not the sum demanded could have been recovered in the former action, but whether the same cause of action had been litigated and considered in the former action. Damages resulting from one and the same cause of action must be assessed and recovered once and for all. This is especially so since the plaintiff had plenty of opportunities to adduce the evidence in the EC Case regarding his monthly earnings but had not done so: *Chan Siu Lun v Hui Cho Yee & Anor* (unreported, CACV 171/1999, 13 October 1999) at §§11-13 per Leong JA.

1. In my judgment, the EC Case had concluded matters which were necessary to decide as the groundwork of the decision itself, the plaintiff’s pre-Accident monthly earnings were at HK$8,333. Such matters cannot be raised and challenged again in the PI Case because such re-litigation would be tantamount to suggest that the EC Judgment was erroneous. Thus, the essential dispute in the PI Case should rest on contributory negligence: *Mohammad Amjad* at §85 per Master Marlene Ng (as she then was).
2. Hence, in my view, as the plaintiff had failed to appeal the decision of the EC Case, the plaintiff is now estopped from arguing that the plaintiff’s monthly earnings are anything other than HK$8,333.
3. This would have the effect of substantially reducing the plaintiff’s claim in the PI Case as the claim for pre-trial and post-trial loss of earnings (together with the loss of MPF) alone was over HK$2.31 million out of a total claim of $2.68 million pleaded under the SoD.
4. Hence, once his pre-trial income has become unarguable, it is in my view very doubtful whether the plaintiff still can say that there is a serious issue to be tried in the Summons.

*(II) No real risk of dissipation of assets*

1. The test of dissipation of assets is objective. The Court is not concerned with the motives behind a defendant’s conduct, but rather the Court is concerned with the effect of said conduct. That said, the mere fact that a defendant’s conduct is likely to deplete his assets available for judgment is not sufficient, there must be something more than a real risk that the judgment will go unsatisfied: See *Chan Fai Cheung v Ho Chi Wing & Others* [2018] HKCFI 399 at §5 per Mimmie Chan J.

1. Further, the purpose of a *Mareva* injunction is to prevent the injustice that a plaintiff may face where a defendant is permitted to deal with the defendant’s assets as to put them out of the plaintiff’s reach in the event the plaintiff is successful in their claim. However, a distinction must be drawn where a defendant is using his assets for personal expenditure, such as living expenses; or proper expenses such as everyday business expenses and legal costs. Where a defendant uses his assets to meet proper expenses, there is no dissipation of assets and there is no injustice to the plaintiff: See *Cheung Sai Lun v Lau Tai Chin & Anor* (unreported, HCCW 677/2004, 19 September 2007) at §§7-8 per Barma J (as he then was).

1. The Courts have in the past discharged *Mareva* injunctions where it is shown that there will be sufficient assets left in the defendant’s estate even after a particular sale, to satisfy a plaintiff’s claim: *See Wong Wai Fung Dong v Ho Chiu Fung* [2018] HKDC 753.

1. In my judgment, there is no dissipation of assets in our present case as I find the 2nd Property was transferred to the Elder Son in order to secure a mortgage and as fair treatment to Elder Son as shown by the evidence produced by the defendant. In turn, the mortgage was to raise funds for this present litigation and other related purposes. As such, I find these are legitimate uses of the defendant’s assets which cannot be considered a dissipation of assets nor causing an injustice to the plaintiff.

1. Moreover, there have been no signs that the defendant had attempted or was attempting to evade liability to satisfy the judgment in the EC Case. The defendant was unrepresented in the EC Case up until after the EC Case Judgment was handed down by HH Judge Harold Leong. Since then, the defendant had already settled the judgment sum in the EC Case with interest. Upon legal advice, he has also offered what he would regard as a reasonable sum to settle the costs of the EC Case under a letter dated 20 October 2020 to the plaintiff’s solicitors.

1. In any event, the defendant is still jointly holding the 1st Property with the defendant’s wife, which is free of mortgage and worth more than HK$6 million of which the plaintiff can of course go after in the event that he succeeds in the PI Case.

1. I also agree with the defendant that the 2 cases referred to in the plaintiff’s skeleton arguments, namely, *Kwai Hung Realty Co Ltd v Lockia Development Ltd* (unreported, HCA 3280/2001, 15 October 2003) and *Lam Chor Hang v Lau Ming Gu & Anor* [2018] HKCFI 533 do not assist the plaintiff’s case regarding the argument on dissipation of assets.

1. With respect, the nature of *Kwai Hung Realty, supra,* being a case concerning monetary loans between 2 companies, is completely different from the PI Case we have before me which involved the dispute of 2 individuals. Further, in no way one can say that the defendant is a “dormant company” with only the 2nd Property being his only valuable asset. As the evidence disclosed by the defendant reveals, he has more than sufficient funds as well as a share in the 1st Property to satisfy any judgment that the plaintiff may able to obtain against him in the PI Case. The fact that the plaintiff may have to take a few more steps to execute any prospective judgment against the defendant is not a good reason to grant a *Mareva* injunction against him.

1. Likewise, the *Mareva* injunction application in *Lam Chor Hang, supra,* was effectively a post-judgment *Mareva* injunction as interlocutory judgment had already been entered against the 2nd defendant. Hence, the court was no longer concerned whether there was a good arguable case against the 2nd defendant, but rather only if there was a real risk of dissipation of assets: *Lam Chor Hang* at §10 per DHCJ Kent Yee.

1. In our present case, pertinently, there has not been any interlocutory judgment entered against the defendant, let alone any judgment. For the reasons I have given above under the discussion of contributory negligence, liability certainly remains a live issue in this case. Hence, in my view, the present case is very different than the situation in *Lam Chor Hang*, in that the plaintiff is seeking a pre-judgment *Mareva* injunction to which he has no guarantee of success at all.
2. Thus, on the ground of risk of dissipation, I would have dismissed the plaintiff’s application also.

*(III) The balance of convenience is not in favour of grant*

1. In my judgment, based on the evidence filed by the defendant and the Elder Son, of which I accept, there was a higher risk of injustice caused to the defendant should the injunction be granted.
2. On the evidence, I accept the refinancing of the 2nd Property was not only used to cover the related expenses and costs in the EC Case, but also, amongst other things, to raise funds for defending the PI Case.

1. In this case, neither the plaintiff nor his legal aid assigned solicitors had given any warning, inquiry, or advance notice to the defendant or the defendant’s legal representatives prior to taking out the *Mareva* injunction application. In my view, the entire application was unnecessary and has needlessly increased the defendant’s burden, including the risks and costs, in the conduct of the PI Case.

1. As I have found above, there is no dissipation of assets in this case. The transaction was for purely innocent reasons. Had the plaintiff raised their concerns regarding the transaction of the 2nd Property without first launching this *Mareva* injunction, I am sure that they would find that the Summons was unnecessary.
2. The plaintiff relied on a letter from the solicitors who represented the Employees Compensation Assistance Fund Board (“the Fund Board”) dated 1 September 2020 in alerting them of the S&P Agreement as a reason to take out the Summons. Allegedly, the Fund Board had mentioned in the letter that the defendant was uninsured and, by reason of the sale of the 2nd Property, there was a risk that the defendant was dissipating his assets to avoid his liability towards the plaintiff, which would affect the interest of the Fund Board. Based on this letter, the plaintiff submits that “the (Fund Board) *suggested* that (the plaintiff’s solicitors) advise (the plaintiff) to seek an order from the court to set aside a sum from (the defendant’s) sale of the 2nd Property”.
3. With respect, there was not what the Fund Board’s solicitors had stated in their letter. They merely asked the plaintiff’s solicitors to consider and advise their client, ie “… (Y)ou *may* therefore wish *to consider and advise* your client…”(emphasis added).
4. Thus, in my judgment, in no way does this amount to the plaintiff’s solicitors being “*duty-bound* to issue an injunction application” as suggested by the plaintiff’s assigned solicitor in his affirmation.
5. The fact that the plaintiff did not see the need to take out an *ex parte* application suggests that he knew there was no urgency and that the risk of dissipation was not real. In my judgment, the plaintiff’s solicitors could have made enquiry with the defendant or his solicitors first before taking out the Summons.

1. Significantly, in this case, there has never been a risk of the public funds being used to enforce the judgment or the interest and costs in the EC Case. There has been no evidence of the defendant in trying to evade the judgment in the EC Case. As mentioned above, the defendant had in fact fully satisfied the judgment sum and interest on 31 July 2020 and has made genuine attempts in offering to pay the plaintiff’s costs and disbursements in relation to the EC Case through his solicitors. This all happened before the letter sent by the Fund Board to the plaintiff’s solicitors.

1. Thus, in my view, there has never been a need for the plaintiff to apply for relief payment under the provisions of the Employees Compensation Assistance Ordinance, Cap 365 nor has the Fund Board ever needed to intervene during the entirety of the EC Case. Thus, the reliance of the Fund Board’s letter as a reason to take out the Summons in my view is not sustainable.
2. In my judgment, the balance of convenience clearly lies in favour of the defendant in this case in order to allow him to complete the transaction of the 2nd Property on 28 December 2020.

*CONCLUSION*

1. For the above reasons, I had dismissed the Summons on 9 December 2020.

*Summary assessment of costs*

1. For the costs of the defendant incurred as a result of defending the Summons, having perused the statement of costs prepared by the defendant’s solicitors and the list of objections prepared by the plaintiff’s solicitors, I have summarily assessed the defendant’s costs at HK$120,000.
2. Given the fact that the plaintiff is on legal aid, the usual order of payment of the summarily assessed costs within 14 days will not apply in this case: see Order 62, rule 9B (1) & (2) of the RDC.
3. Lastly, I would like to thank counsel on both sides for their helpful submissions.

( Andrew SY Li )

District Judge

Miss Alison Choy, instructed by Messrs Or & Lau, for the plaintiff, assigned by the Director of Legal Aid

Mr Leon Chan, instructed by Messrs Boase Cohen & Collins, for the defendant

1. See §49 of Chinese Judgment of HH Judge Harold Leong dated 11 June 2020, DCEC 1352 of 2018, [2020] HKDC 408 (“the EC Case Judgment”) [↑](#footnote-ref-1)