#### DCPI1470/2007

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 1470 OF 2007

BETWEEN

LEUNG SZE NOK Plaintiff

a minor by next friend

LEUNG YUEN FAT

and

TSUEN WAN PROPERTIES LIMITED Defendant

trading as

RIVIERA ICE CHALET

##### Before: Her Honour Judge H C Wong in Chambers (Not open to public)

Date of Hearing: 5 November 2010

Date of Decision: 5 November 2010

## D E C I S I O N

1. At today’s hearing, the plaintiff sought the court’s approval for the compensation of $160,000 as the sum agreed by the parties on the first day of the trial to be approved.
2. I approve the agreed sum as an appropriate award based on the condition of the minor which I have personally observed and I have also read the medical background on the infant, and based on the authorities cited by counsel for the plaintiff in his opening.
3. It is indeed fortunate that the minor had a complete recovery after the accident, I will accordingly make the order under Order 18 rule 11 that the sum of $160,000 be paid into court and to be invested by the Registrar of District Court, after deduction of the special damages of $13,455.50 to be paid to the minor’s father and next friend. The balance will be invested by the Registrar of District Court until the minor reaches the age of 18 or further order.
4. The remaining issues for today’s hearing have been set out in the plaintiff solicitor’s letter of 27 July 2010 to my clerk drawing my attention to Order 22 on the plaintiff’s sanction offer served on the defendant’s solicitor on 7 December 2009. In that letter, it referred to a cost order on a common fund basis. The letter enclosed a letter from the defendant’s solicitor of 26 July 2010 agreeing to the plaintiff’s proposal for costs to be taxed on a common fund basis, but refusing to agree to the plaintiff’s proposal of accrual of interests on the agreed sum of $160,000 from the date of writ and for the interests to be at an enhanced rate due to the plaintiff’s sanction offer of 7 December 2009.
5. Mr Li, counsel for the defendant, submitted that the agreed quantum of damages of $160,000 reached on the first day of trial was inclusive of interests, and the trial had proceeded on the issue of liability only. Therefore, there is no legal basis for the plaintiff’s application for interests to commence from the date of writ of summons, because the defendant had agreed the plaintiff’s costs to be taxed on a common fund basis. It is Mr Li’s contention that the only issue remaining for today’s hearing is the effect of the plaintiff’s sanction offer of 7 December 2009.
6. On the basis that the common fund taxation has been agreed on 26 July 2010 by the defendant’s solicitor, since 27 July this year, the matter as to costs to be taxed on a common fund basis is no longer contested or disputed.
7. Mr Li further argued that since the court’s award was based on the parties’ agreement of damages at $160,000, the plaintiff did not get more than the sanction offer, and Order 22 rule 24 only applied in cases where the defendant was held liable for more than the sanction offer that the court may order the defendant to pay interest above the judgment rate from the date the defendant could have accepted the plaintiff’s offer. This is not the case here.
8. Mr Li raised a further argument that the sanction offer date would not have any effect since the plaintiff is a minor and the acceptance of the sanction offer is subject to the court’s approval. The date of the sanction offer therefore is irrelevant.
9. Ms Liu argued that this seems to be contrary to the intention of the Civil Justice Reform and Order 22 which encourage early settlement by means of sanction offers.
10. I am not surprised by the query raised by Ms Liu because it would seem to be contradictory to the incentive for an early settlement intended by the changes in the rules. The Civil Justice Reform’s introduction of sanction offers and sanction payments under Order 22 would have no effect if the claimant is a person under disability, because the acceptance of such an offer is subject to the court’s approval. However, sanction offers under the CJR in a case where liability is not disputed, Order 22 applies to all persons under disability in the same way that it would apply to any other claimants and defendants.
11. The present case is a case where liability was in dispute, therefore, the issue for the trial was one of liability. I have carefully studied Order 22 and found it stated clearly that once the sanction offer or sanction payment is accepted, the claim is stayed. This is provided in Order 22(1).
12. Order 22(4), however, provides:

“If the approval of the court is required before a settlement can be binding, any stay which would otherwise arise on the acceptance of a sanction offer or a sanction payment takes effect only when that approval has been given.”

1. Order 22(4) is clear. The sanction offer only takes effect when approval of the court is given. This means, in these proceedings, the date of the judgment. The situation here is unlike the situation in the case of *Law Ping Leung*, referred to me by Mr Li, where Mr Recorder Yu referred to a sanction offer in that case of being an offer lower in sum than the judgment award. The sanction offer was $1.3 million while the judgment award was $1.715 million.

1. The sanction offer here in this case was agreed at $160,000 on the first day of the trial. The agreed sum was inclusive of interests, therefore, even though the sanction offer was made in December 2009, if the defendant had not contested or abandoned the issue of liability and accepted the plaintiff’s sanction offer, after December 2009, there may be an issue of interests arising after the expiry date of the sanction offer. Or in a case where the sanction offer was only accepted the day before the trial, then there may be a case for consideration on interests and costs.
2. In the present case, the agreement was reached on the first day of trial and the agreement was for the sum of $160,000 to be inclusive of interests. There is, therefore, in my view, no further room for any argument whether the agreed sum should carry further interests from the date of the sanction offer or from the date of the writ.
3. Any claim for interests from the date of writ or the sanction offer cannot be a valid one. I therefore order the costs of the action to be taxed on a common fund basis.
4. The costs of today’s hearing be to the defendant, to be taxed if not agreed, with certificate for counsel. The Plaintiff’s own costs to be taxed in accordance with Legal Aid Regulations.

# (H C Wong)

# District Court Judge

Ms Alison Liu, of Bough & Co., assigned by Director of Legal Aid for the Plaintiff

Mr Andrew S Y Li, instructed by W K To & Co., for the Defendant