DCPI 1505/2007

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1505 OF 2007

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

BETWEEN

FAZAL DAD Plaintiff

and

FEDERAL SECURITIES LIMITED Defendant

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

Coram: His Hon Judge Leung in chambers (open to public)

Date of hearing: 4 February 2009

Date of decision: 4 February 2009

**DECISION**

1. This action was last stayed pending the outcome of Dad (the Plaintiff)’s appeal from the related employees’ compensation case against Federal Securities (the Defendant). The appeal was over. Now Federal Securities applies to lift the stay and to dismiss the action.
2. Dad’s legal aid certificate was discharged upon the dismissal of his appeal. He is absent today. I accept the affirmation of service of the summons and supporting affirmation by the solicitors for Federal Securities. I am satisfied that today’s hearing could proceed. The stay is lifted.
3. On the basis of injury from an alleged accident happened around midnight on 14 May 2005 at a residential site in Tuen Mun in the course of his employment as security guard, Dad claimed against Federal Securities for employees’ compensation, i.e., DCEC 288/2006, and common law damages, i.e., the present action.
4. After trial, the court in DCEC 288/2006 rejected Dad’s case that he was at the site at the alleged time and found that he could not have sustained any injury there at that juncture. His claim was dismissed. Dad appealed and the present action was stayed by consent pending the outcome of the appeal. As said above, the appeal was dismissed in CACV 111/2008 last December. The court of appeal affirmed the ruling below.
5. Dad is bound by the fact findings which was affirmed on appeal and is therefore estopped from pursuing his claim on the basis of the same alleged accident as pleaded in the present action.
6. I notice that there was discussion in the court of appeal of the possibility of Dad returning to the site during another interim on the day of the accident. However, as the court of appeal observed, no such alternative case has ever been suggested either in the DCEC trial below or during the appeal. Such possibility remains very much a matter of speculation having no place in that claim or the present action.
7. I am therefore also satisfied that the situation cannot be cured by an amendment now to introduce an alternative time of the accident. My reason is the principle of issue estoppel in the broad sense, namely, that Dad is estopped from putting forward a case that he must have already put forward before, had there really been such a case.
8. As such, the statement of claim as it now stands is liable to be struck out for being frivolous, vexatious and abusive of legal process. It follows that the action has to be dismissed. Costs of the action, including any costs reserved, shall be to Federal Securities to be taxed if not agreed.

Simon Leung

District Judge

Plaintiff, in person, absent

Ms L Cheng of Messrs K B Chau & Co for the Defendant