## DCPI1652/2009

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1652 OF 2009

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BETWEEN

YAN KWOK JIMMY（殷國） Plaintiff

and

HOSPITAL AUTHORITY（醫院管理局） Defendant

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

Coram: Deputy District Judge Thomas Lee in Chambers

Date of Hearing: 14 June 2011

Date of Handing Down Judgment: 17 June 2011

DECISION

1. Before me is the Defendant’s application by Summons dated 1 April 2011 that the action herein be struck out on the grounds that it is scandalous, frivolous or vexatious, or is otherwise an abuse of the process of the court.
2. The basic thrust of the Defendant’s application is that the only admissible expert medical opinion in this case concludes that the medical treatment received by the Plaintiff, which is the subject of this action, was of an acceptable standard – and therefore the claim is hopeless and doomed to failure.
3. The Plaintiff was a container driver and suffered a fall from a container truck on 16 April 2006, sustaining injuries to his left knee and lower back.
4. He attended the Accident & Emergency Department of Princess Margaret Hospital (“AED”) on numerous occasions and was eventually referred to the Orthopaedics & Traumatology Department of the United Christian Hospital (“O&T”).
5. The Plaintiff’s complaint is that there was a over-long period of treatment by the Defendant’s doctors at A&E and an inexcusable delay in referring the case to O&T, thereby causing damage.
6. A doctor has a duty of care to his patient and a breach of such duty gives rise to a claim in damages for negligence. The “*Bolam* test” for determining whether there is a relevant breach of duty is whether a medical practitioner has acted in accordance with a practice accepted as proper by a reasonable body of medical men skilled *in that particular act*. It is therefore necessary for the Plaintiff in this action to establish that the AED doctors treating him did not act as a reasonable doctor, skilled in that particular specialty, would have done.
7. The opinion on which this claim was supported was originally given by Professor L.K. Hung, who stated, in a report dated 15 September 2009, that the length of time and numbers of visits that elapsed before the referral to O&T “*was not acceptable and had fallen below the reasonable standard acceptable by the Medical Profession*”.
8. By letter dated 25 January 2010, the solicitors for the Defendant raised a number of objections to Professor Hung’s report, including the fact that Professor Hung was an expert in orthopaedic surgery, but was not an expert in accident & emergency medicine.
9. The Defendant also raised an objection to Professor Hung as an appropriate expert during the checklist hearing before Master J. Chow on 30 July 2010.
10. It was expressly (and properly) accepted by Mr Henry Chung, appearing on behalf of the Plaintiff, that accident & emergency medicine is a recognized specialty and that Professor Hung is not an expert in that specialty.
11. By consent summons filed on 7 September 2010, the Plaintiff was given leave to file and serve an expert report on liability satisfying the requirements laid down in Practice Direction 18.1.
12. In compliance with this, the Plaintiff’s solicitors obtained an expert report from Dr Peter Thomas dated 30 December 2010 and filed and served this on 18 February 2011.
13. Dr Thomas is a consultant at the Accident & Emergency Department of Milton Keynes Hospital NHS Trust. It is common ground that his opinion represents the opinion of a reasonable body of medical men skilled in that particular act.
14. At para. 28 (entitled “Conclusion”) on p. 20 of his expert report, Dr Thomas stated as follows:

“I have reviewed the Emergency Medicine Records. From the information contained within these records, I believe that the management within the Emergency Department by the A&E doctors was of an acceptable standard.”

1. I am therefore unable to avoid the conclusion that, on the only appropriately qualified medical opinion evidence supplied by the Plaintiff, the Plaintiff’s claim on breach of duty will fail.
2. The commentary at para. 18/19/8 of *Hong Kong Civil Procedure 2011* states that a proceeding is frivolous when it is not capable of reasoned argument, without foundation or where it cannot possibly succeed.
3. On the basis of Dr Thomas’s report, and on footing that Professor Hung’s report is inadmissible or (at very least), I am driven to conclude that the claim is frivolous and should be struck out.
4. I order accordingly.
5. I further make a costs order *nisi* that the costs of and incidental to this application be to the Defendant.

( Thomas W.M. Lee )

Deputy District Judge

Mr Henry Chung of Messrs Yip, Tse & Tang for the Plaintiff.

Mr Harold Leong of Messrs Mayer Brown JSM for the Defendant.