## DCPI 1665/2011

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 1665 OF 2011

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##### BETWEEN

LEE CHUI YING 1st Plaintiff

(discontinued)

CHEUNG MAN KOK 2nd Plaintiff

### And

CHAN YEE LING ELAINE (陳綺玲) Defendant

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Before: Master J Chow in Chambers (Open to public)

Date of Hearing: 19 June 2015

Date of Decision: 23 June 2015

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DECISION

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*Introduction*

1. The defendant applies for leave to adduce psychiatric expert evidence at trial of this action by way of a summons filed on 3February 2015. The 2nd plaintiff opposed.

*Background*

1. The action was brought about from a scuffle in the office of a solicitors’ firm, Messrs Christine M Koo & Ip (“the Firm”). The 1st and 2nd plaintiffs are respectively its employee and the principal partner; the defendant is its consultant.
2. On 25July 2011, the Firm served a notice on the defendant to terminate her consultancy contract. On 30July 2011, the defendant went to the Firm to collect commission which were due and owing. The 1st and 2nd plaintiffs alleged the defendant seizing documents belonged to the Firm by putting them into her recycle bag. The scuffle occurred while the 2nd plaintiff attempted to retrieve those documents from the hands of the defendant. Both the 2nd plaintiff and the defendant hold onto the recycle bag by pulling it towards themselves repeatedly. The defendant punched the 2nd plaintiff’s mouth and bit the 1st plaintiff’s right wrist. The defendant complained of shoulder pain after the incident (“the Incident”).

*The proceedings*

1. The 1st and 2nd plaintiffs claimed and the defendant counterclaimed for damages. The 1st plaintiff discontinued her personal injury claim against the defendant on 12July 2012.
2. The 2nd plaintiff claims the defendant damages under the head of pain, sufferings and loss of amenities in sum of $100,000.
3. In the defendant’s Revised Statement of Damages filed on 5 November 2013, the defendant counterclaimed the 2nd plaintiff over $1 million damages, she abandoned her claim beyond the District Court jurisdiction.
4. As there are quite a number of interlocutory applications since the 1st Checklist Review hearing on 26January 2012, the action has not been set down for trial. It is worth noting that the defendant changed her representation four times since the commencement of this action.
5. The relevant Checklist Review orders relating to adducing medical expert evidence are as follows:-
6. In the Order dated 21August 2013, I directed “no medical expert evidence shall be adduced at trial of this action”.
7. In the Order dated 27November 2013, I directed “the 2nd plaintiff and the defendant elect not to adduce expert evidence on liability and medical expert evidence on quantum at trial of this action”.

*Analysis*

1. The defendant applies for leave to adduce psychiatric expert evidence because she claimed to have suffered from psychiatric injury after the incident.
2. The defendant first relied on a psychiatric report by her treating doctor, Dr. Li Derek Seung Yau, dated 16 September 2014 in her first affirmation. Dr. Li said the defendant first came to see him on 22 March 2014. Dr. Li stated the defendant’s psychological problems started as early as October 2011, after an alleged attack by her employer at work. Dr. Li said the defendant complained of poor concentration and poor memory. She suffered cognitive impairment and could not perform her duties as a lawyer. The defendant complained she was “in fear when going near Admiralty” (where the Firm’s office was located). The defendant was seen with depressive symptoms, namely, insomnia, nightmares, low mood, loss of appetite, loss of interest in leisure activity and desire to work. Dr. Li diagnosed the defendant was suffered from post traumatic stress disorder and depressive disorder (moderate to severe). The defendant was administered with antidepressant and was given psychological treatments. Dr. Li concluded the defendant was in need of further treatment.
3. The defendant then relied on other medical notes and reports in her second affirmation. She disclosed medical notes of Violet Peel General Out-Patient Clinic (“Violet Peel”) where she had paid visits from August to September 2011. She further relied on a psychiatric report dated 17 February 2015 from another treating doctor, Dr. Jenny Tsang where she had paid four visits from 4October 2011 to 7 March 2012. The defendant added a medical report from her psychologist, Dr. Rhoda Yuen dated 14 January 2014. She paid three visits since 4 April 2012.
4. The defendant deposed in her third affirmation, after the Incident, she was charged and was convicted with one count of assault occasioning actual bodily harm. On an appeal, her conviction was quashed by the Court of Appeal.
5. The test of adducing medical expert evidence is whether such expert evidence is necessary, relevant, and with probative value. In applications for leave to adduce psychiatric expert evidence, the party who applies for leave bears the burden to demonstrate there is casual link between the physical injury and the psychiatric injury sustained arising from the accident.
6. In this application, the issues are (i) whether the defendant can demonstrate a casual link between her psychiatric symptoms and her physical injury arising from the Incident; (ii) should leave be granted to adduce psychiatric expert evidence in light of her late application and checklist review orders; and if so, (iii) whether the defendant can satisfy the test of necessity, relevance, and probative value.
7. It is also an important concern of the court to take into account the underlying objectives of the Civil Justice Reform. (see Order 1A of the Rules of District Court, Cap 366H). Even there is a prima facie case leave should be granted, the court has to satisfy such exercise is proportionate and costs effective. The legal principles in adducing psychiatric expert evidence after the implementation of the CJR are well laid down by Bharwaney J in *Fung Chun Man v. Hospital Authority* *and another* (HCPI 1113/2006).

*The casual link*

1. Mr. Sakhrani submitted the defendant had failed to establish the casual link / causation of her psychiatric symptoms with her physical injury. The causation of the psychiatric injury may be unrelated to the Incident. He argued, it might be a result of anxiety and concern on the part of the defendant when she was being prosecuted with a criminal charge. Be it plausible, Dr. Jenny Tsang mentioned the defendant was suffering from shoulder pain after the Incident. The possibility that the psychiatric symptoms accompanied by the physical injuries could not be displayed.
2. I accept, neither did Dr. Li Derek Seung Yau nor Dr. Rhoda Yuen mentioned in their respective medical reports that the defendant has suffered from psychiatric symptoms accompanied by her shoulder pain. The remarks that the defendant was suffered from post-traumatic stress in medical notes from Violet Peel is not be a good pointer because the treating doctor in an out-patient clinic might not possess requisite expertise in this field. Yet, considering all medical evidence from the defendant’s treating doctors, I cannot conclude a casual link does not exist.

*Late application & discretion to vary previous checklist review orders*

1. Having said that, I am not satisfied leave should be granted to the defendant to adduce psychiatric expert evidence.
2. Firstly, the defendant’s present application was taken out at a late stage of the proceedings, which was more than one year from the filing of the defendant’s Revised Statement of Damages on counterclaim. The reports of Dr. Jenny Tsang and Dr. Rhoda Yuen were well pleaded therein where she was diagnosed to have suffered from, inter alia, depression / depressive disorder. At time of filing, the defendant’s injury and quantum of her counterclaim should be crystallized.
3. Secondly, in the Order dated 27th November 2013, I directed when sitting as a PI Master in the Checklist Review hearing, upon election of parties, “the 2nd plaintiff and the defendant elect not to adduce expert evidence on liability and medical expert evidence on quantum at trial of this action”.
4. The defendant explained her late application and her change of stance because her psychiatric symptoms were only lessoned in recent months, she was then capable to take out the present application. Her explanation was not believable. The reason being, the defendant is a practicing solicitor at all times, and was represented by Messrs. Szwina Pang, Edward Li & Co. during the checklist review when such order was given.
5. Albeit the defendant has psychiatric symptoms, her cognitive function, as at November 2013, was not impaired. Although Dr. Derek Li mentioned impairment of her cognitive function in his report, it was irrelevant because the defendant only started to see Dr. Li from March 2014.
6. Although Dr. Rhoda Yuen mentioned “the long term symptoms and disturbance created much distress and impairment in her occupational, emotional and social functioning” in her report. I am not satisfied the defendant lacks the ability to give instructions to her formal solicitors for directions in Checklist Review hearing on 23rd November 2013. Should it be the case, I expect her formal solicitors should have raised this issue at the said Checklist Review hearing.
7. It was also pleaded in her Revised Statement of Damages on counterclaim that she was working as a part time solicitor with Messrs. Fongs. It would be unpersuasive that she lacks the ability to instruct her former solicitors to take out the present application at that particular time.
8. I find the defendant must have the ability to decide whether to take out an application for leave to adduce psychiatric expert evidence as at the Checklist Review hearing on 27 November 2013. The defendant’s change of stance to apply for leave to adduce psychiatric expert evidence is not justified. The reason put forward by the defendant is far from sufficient for me to exercise discretion to order otherwise.

*Necessary, relevant and with probative value*

1. Looking at this action in its perspective, I find the psychiatric expert evidence could not assist the trial judge. The defendant has adduced three psychiatric / psychological reports from Dr. Li Derek Seung Yau, Dr. Jenny Tsang and Dr. Rhoda Yuen. All three treating doctors reached similar opinion on the defendant has been suffering from some psychiatric / psychological symptoms. Dr. Rhoda Yuen had suggested a treatment plan on the defendant. I am confident with the aid of the three comprehensive medical reports and the medial notes of Violet Peel, the trial judge would be able to make decision on both causation and quantum of the defendant’s counterclaim.
2. Psychiatric expert evidence is not necessary, irrelevant and without probative value. It could not add anything further to the existing medical evidence from her treating doctors. An order to allow the defendant to adduce psychiatric expert evidence would be in contravention to the underlying objectives of the CJR, it is disproportionate, not costs effective and would further prolong this action when the parties are already at the verge of setting down this case for trial.

*Conclusion*

1. The defendant’s application for leave to adduce psychiatric expert evidence be refused. I dismiss the defendant’s summons filed on 3rd February 2015 with costs to the 2nd plaintiff, with certificate for counsel, to be taxed if not agreed.

( J Chow )

Master

Mr. Ashok Sakhrani, instructed by Christine M Koo & Ip, for the 2nd plaintiff.

Mr. Jacky Chan, instructed by Fongs, for the defendant.