#### DCPI1706/2009

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 1706 OF 2009

BETWEEN

TING SIU WING Plaintiff

and

CHAN KWOK BUN Defendant

Formerly trading as

PERFECT CLEAN MOBILE CARE

##### Before: H H Judge Chow in Chambers (Open to public)

Date of Hearing: 12 July 2011

Date of Decision: 12 July 2011

## D E C I S I O N

1. This is the defendant’s appeal against Master J Chow’s ruling made on 11 May 2011.
2. Today, the defendant’s counsel argued that the interlocutory judgment entered against the defendant is an irregular one because the endorsement on the plaintiff’s writ did not comply with Order 6, rule 2, which provides that a writ must be endorsed with a concise statement of the nature of claim made. The plaintiff’s endorsement did not state the place of occurrence of the alleged tort or its duration or continuous nature.
3. The endorsement of claim reads as follows:

“The plaintiff’s claim against the defendant is for damages, for personal injuries sustained by him as a result of an incapacity happened in or about February 2004, arising out of and in the course of his employment with the defendant, which was caused by the negligence and/or breach of contract of employment and/or breach of statutory duty and/or breach of common duty of care on the part of the defendant, their servants and agents.”

1. Quite clearly, the writ was endorsed with a concise statement of the nature of claim made. There is no requirement that the place of occurrence of the alleged tort must be set out. It is only the nature of the claim which must be set out. Now, it is implied in the endorsement of claim that the place where the alleged tort occurred took place where the plaintiff did the work under the employment for the defendant. About the duration, in my judgment, it is not required under Order 6, rule 2 and there is no requirement relating to the continuous nature.
2. What is required under Order 6, rule 2 is a concise statement, not a full statement, of the nature of the claim made. The nature of the claim is whether it is contractual in nature or whether it is tortious in nature. In my judgment, the endorsement gives sufficient information to the defendant to understand the nature of the claim he has to meet. Therefore, the ground relating to the non-compliance with Order 6, rule 2 cannot stand.
3. The next issue I have to consider is whether the defendant has a real prospect of success if his case goes to trial. Defence counsel cited passages of affirmations from the defendant’s witnesses. The citation is quite extensive. His case is that the plaintiff was employed by the defendant as an apprentice. Within the first few months when its business commenced on 3 December 2003, his workload was not physically demanding. In the first few months after its commencement of business, there was insufficient work to do. He never made any complaint to the defendant, the boss of the defendant, or another employee, Mr Ng, about any pain at all. Hence, he ought not have suffered any pain from his job as early as February 2004. The defendant is asking me to draw inference from such evidence that the plaintiff did not suffer any injury in the course of his employment with the defendant.
4. The plaintiff’s case is supported by medical expert evidence while there is no medical expert evidence from the defendant. According to the medical report compiled by Dr Peter Ko, dated 31 January 2011, I have come to the conclusion that the opinions set out there are reasonable and accepted by me. Anyway, there is no opinion adduced by the defendant to the contrary.
5. Dr Ko refers to other medical reports, for example, the medical report prepared by Dr Cheng Ka-wa dated 13 May 2009. On page 180 of the trial bundle, there is the paragraph beginning with “Opinion”:

“As osteoarthritis is mainly a disease of degeneration in old people, osteoarthritis in young patients is very uncommon unless it is a consequence of trauma or overuse. With consideration of the time relationship between the job and the onset of the illness, the nature of the job and by excluding acute trauma and other inflammatory conditions, it is believed that Mr Ting’s right knee problem is directly occupational. This is the opinion of Dr Cheng.”

1. Then, on page 185 of the trial bundle, based on the above information, Dr Ko opines that it is obvious that from the literature and also clinical experience the cause for patello-femoral arthritis in Mr Ting’s condition is highly likely to be multifactorial, including intrinsic and extrinsic factors:

“Considering his age, general health status, body build, physique, past health, premorbid activities and sports, etc., he does not have any high risk factor for developing patello-femoral arthritis. The extrinsic factors - his job as a garage apprentice in an automobile cleaning service company requiring frequent squatting, kneeling, lifting of heavy objects, heavy weights - with the possible intrinsic factors of weak quadriceps muscles, his chance of developing patello-femoral excessive wear and tear is very high, which results in his symptoms typical of patello-femoral arthritis.”

1. The defence counsel says that Dr Ko’s opinion is based on wrong facts, because he made a mistake relating to the time factor, as set out on page 176 of the trial bundle. At the time of the injury, he had been working as a garage apprentice at the automobile cleaning services company for about one year. Defence counsel submits that that cannot be right because according to the information, he had not served for about one year, but only for a few months. Now, the important thing is: what is the meaning of “at the time of the injury”? Dr Ko made no explanation relating to that, but on page 174 of the trial bundle, he states that:

“Mr Ting gives history that he sustained injury on duty in the period from February to October 2004 when he was working as a garage apprentice, so the time of injury spread out through February to October 2004”.

1. Now, if he was referring to October 2004 when he said “at the time of the injury”, then of course, he did not make any mistake. We have no idea what the meaning of the phrase “at the time of the injury” is, but then, if the defence counsel submits that he is wrong, then it is for the defendant to point out that that is a mistake of fact. But then, this is unclear because we also have to consider paragraph 5.1 of the report.
2. The defendant has failed to do so, to say that Dr Ko was clearly wrong. The defendant’s witnesses are not medical experts.
3. The plaintiff’s medical expert cannot and has not been challenged, so I cannot see how the defendant can have a real prospect of success if the matter goes to trial.

Contributory negligence

1. The defence submits that there were adequate supervision and proper equipment provided. The defendant’s failure to use proper equipment should give rise to contributory negligence.
2. That is a mere statement; it is not supported by any facts or evidence. So this ground must fail.
3. About the limitation period, it is quite clear that the plaintiff came to know about his situation, namely, the injury was caused in the course of his employment after consulting Dr Cheng in February 2009, and then he shortly thereafter, within a period of three years, he commenced the present action. So the limitation period barred him from making a claim. This submission also failed. So I dismiss the defendant’s application today and I dismiss the entire summons taken out by the defendant.

(Discussion re costs)

1. The defendant is to pay the plaintiff costs of this application, to be taxed if not agreed, with certificate for counsel. The plaintiff’s own costs to be taxed in accordance with Legal Aid regulations. The defendant’s own costs to be taxed in accordance with Legal Aid regulations.

# (Chow)

District Court Judge

Mr Damian Wong, instructed by, Szwina Pang, Edward Li & Co., for the Plaintiff

Mr Tommy Lo, instructed by Messrs Tang, Wong & Chow, for the Defendant