#### DCPI 1960/2011

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO 1960 OF 2011

BETWEEN

YUEN PUI MAN ELLEN Plaintiff

and

MAJESTIC FURNITURE & Defendant

INTERIOR DESIGN LIMITED

##### Before: Deputy District Judge D Ho in Chambers (Open to public)

Date of Hearing: 14 March 2016

Date of Decision: 14 March 2016

## D E C I S I O N

1. I have before me an application by the defendant herein for setting aside my judgment given after trial on 15 January 2016.
2. The summons was taken out by Messrs Lim & Lok, the solicitors on record, on 29 January 2016. I say solicitors on record because on the trial date, that is 12 January 2016, Messrs Lim & Lok applied to me for leave to cease to act for the defendant on the ground that just a day before the trial commenced, the defendant had by a letter terminated the retainer to Messrs Lim & Lok. In the circumstances, Messrs Lim & Lok’s application to cease to act was granted and the trial proceeded in the absence of either the defendant’s solicitors on record or any representatives from the defendant itself.
3. Under Order 67 rule 6, Rules of the District Court, an order granting leave to a solicitor to cease to act for a party in an action would not take effect until, inter alia, the solicitor leaving at the Registry a certificate confirming the service of the order on the party concerned. In the present case, such a certificate was not left at the Registry as required until 19 February 2016. Therefore, technically speaking, as at 29 January 2016, Messrs Lim & Lok were still solicitors on record.
4. Today is the return date of that summons, and Mr Lok of Messrs Lim & Lok appeared before me but only to inform this court that Messrs Lim & Lok do not in fact have instructions to pursue the application on behalf of the defendant. To set the record straight, Messrs Lim & Lok as at today are again solicitors on record for the defendant because Messrs Lim & Lok filed in court a fresh notice to act for the defendant herein without qualification on 11 March 2016.
5. Given the fact that when the summons for setting aside my judgment was taken out on 29 January 2016, no supporting affirmation by the defendant or any affirmation by the solicitors on record accompanied the same summons, I have no idea as to the grounds for taking out the application or why the solicitors on record would somehow take out such a summons for a party who had just a short while ago terminated their retainer.
6. There are no hard and fast rules in this respect, but I reckon that solicitors following a respectable practice and as officers of the court would have seen fit to at least explain by way of an affirmation of themselves the circumstances in which they make an application on behalf of a party at the time when an order for them to cease to act for the same party has been granted pending compliance with Order 67 rule 6 in order for that order to take effect.
7. Today, despite Mr Lok’s appearance before me, I have no way to understand what happened in the past two months after my judgment was handed down because whatever communication that might have gone between Messrs Lim & Lok and the defendant would be privileged, and I am not prepared to make Mr Lok divulge privileged information. So all I am left with is an impression that the defendant is nothing but a tortfeasor who is running away from its liability to the plaintiff and who is taking every step to delay the enforcement by the plaintiff of her rightful claim against the defendant.
8. In the circumstances, I am dismissing the summons and I am awarding indemnity costs against the defendant, to be taxed if not agreed.

(Discussion on costs)

1. So, there will also be an order for legal aid taxation and of course a certificate for counsel despite the fact that I have not required Mr Ng’s assistance.

# (D Ho)

Deputy District Judge

Mr Stanley Ng, instructed by Liu, Chan & Lam, for the plaintiff

Mr Lok Tze-bong, of Lim & Lok, for the defendant