#### DCPI 2142/2016

[2018] HKDC 753

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO 2142 OF 2016

BETWEEN

WONG WAI FUNG DONG Plaintiff

and

HO CHIU FUNG Defendant

##### Before: His Honour Judge Ko in Chambers (Open to the public)

Date of Hearing: 15 June 2018

Date of Decision: 15 June 2018

## D E C I S I O N

1. This is the return date of the Mareva injunction granted by a District Judge on 11 June 2018 on the ex parte application of the plaintiff.
2. By way of background, the plaintiff was injured on 21 January 2014 when she and her dog were attacked by the dogs kept by the defendant. On 16 September 2015, the defendant was convicted of “Bites by Part II animals”, contrary to the Rabies Ordinance, Cap 421.
3. The plaintiff commenced this personal injuries action to claim damages for the pain, loss and damage she suffered as a result of the incident. After the defendant had acknowledged service of the writ through her former solicitors, she passed away on 31 August 2017 and her former solicitors obtained an order to cease to act for her.
4. Letter of administration of the defendant’s estate was granted to her husband, Yip Yuk Tong (“Mr Yip”), in January 2018 but no step was taken in furtherance of the defence.
5. It is common ground that the defendant was the owner of the property known as 1/F and portion of land on G/F level of Lot No. 1642 in DD 165 in Tai Po, New Territories (“the defendant’s property”). In April 2018, the plaintiff’s solicitors noticed that a provisional agreement for sale and purchase dated 20 February 2018 had been registered against the defendant’s property. Completion of the sale was set to be on or before 26 June 2018. The plaintiff’s solicitors also discovered that Mr Yip has similarly contracted to sell his property on the ground floor of the same building.
6. The plaintiff’s solicitors made an application under Order 15, rule 7 to continue these proceedings as against Mr Yip as the administrator of the defendant’s estate, but the same was subject to the requisitions of the Master. The plaintiff then took out an ex parte application and obtained a Mareva injunction against Mr Yip restraining him from disposing of the defendant’s property unless he pays $700,000 into court, and the injunction was supplemented by a disclosure order.
7. Today, Ms Ma appears for Mr Yip and applies to discharge the Mareva injunction on the strength of Mr Yip’s affirmation. The plaintiff has elected not to file further evidence and I proceeded with the argument.
8. To start with, Mr Yip is agreeable to be made a party in his capacity as the administrator of the defendant’s estate. His affirmation generally answered the requisitions raised by the Master. Pursuant to Order 15, rule 7, I make an order in terms of para 1 of the Master’s requisition. The plaintiff’s solicitors should attend to the consequential procedure.
9. The law applicable to an application for domestic Mareva injunction is well settled. The applicant is required to show, amongst other things, that there is a “real” risk of dissipation of assets or removal of assets from the jurisdiction that would render any judgment of no effect: see *Hong Kong Civil Procedure 2018,* paragraph 29/1/65.
10. The main thrust of Ms Ma’s argument is that there is no risk of dissipation of assets. Apart from the defendant’s property, defendant’s estate also comprises:
11. the so-called “Sham Tseng property” with an estimated unencumbered value of over HK$7 million;
12. 50% shareholdings in a private company that owned the entire block of House 59 in the same residential development of the defendant’s property. The remaining 50% of the shareholdings belong to Mr Yip; and
13. a Porsche motor vehicle with an estimated unencumbered value of over HK$2 million.
14. These assets are included in the schedule of assets attached to the letter of administration.
15. Mr Yip deposed to in his affirmation that House 59 is being used as family residence and the Porsche is their family car. There is no plan of selling any of the above properties.
16. Mr Yip explained that since moving into House 59, the family had been using his property in the adjacent House 60 as dining area and the defendant’s property on the 1/F as storage space. Mr Yip and the defendant had planned to sell their properties even before this action was commenced. He stressed that the sale is genuine and makes commercial sense and not for the purpose of defeating the plaintiff’s claim or otherwise improper. Although there are separate contracts for the sale of his and the defendant’s properties, the buyers are in fact a married couple. He had recently been diagnosed with lung cancer and underwent surgery, and that explains why he had not followed up with these proceedings diligently.
17. Despite Mr Poon’s effort, the plaintiff has not succeeded in challenging Mr Yip’s evidence which I accept.
18. In the present case, Mr Yip does not contest liability in respect of the plaintiff’s claim against the estate. I accept Ms Ma’s contention that there will be sufficient assets left in the defendant’s estate even after the sale of the defendant’s property to satisfy the claim (estimated by the plaintiff to be in the region of $700,000 inclusive of costs).
19. Mimmie Chan J recently explained in *Chan Fai Cheung v Ho Chi Wing trading as Hanson Engineering Company* [2018] HKCFI 399 at paragraph 5 that:

*“……the mere fact that the conduct of a defendant is likely to deplete his assets available for judgment is not sufficient. A defendant is entitled to incur expenses in going about his ordinary life or business, repay his genuine debts as they fall due, and to spend money in defending himself against the plaintiff’s claim. It has never been the purpose of a Mareva injunction to give a plaintiff security over a defendant’s assets in priority to other creditors. Something more than a real risk that the judgment will go unsatisfied is required. (See TTMI Ltd of England v ASM Shipping Ltd of India* [2006] 1 Lloyd’s Rep 401*.)”*

1. With the additional information disclosed in Mr Yip’s affirmation, I am not satisfied that there is a real risk of dissipation of the defendant’s assets and I discharge the ex parte Mareva injunction.
2. Mr Yip succeeded in discharging the injunction on the strength of his affirmation which was only filed yesterday. The information contained in his affirmation cast a new light to the steps taken by him in disposing of the defendant’s property. In those circumstances, I would order the costs of the application for the Mareva injunction, including the costs of the ex parte application, to be in the cause, with certificate for counsel.

# (Justin Ko)

# Acting Chief District Judge

Mr Ryan Poon, instructed by C M Chow & Company, for the plaintiff

Ms Chelsea Ma, instructed by Tsang, Chan & Woo, for the defendant