#### DCPI2177/2008

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 2177 OF 2008

BETWEEN

LAW YUK WAN Plaintiff

and

DR KWOK KWAN HO 1st Defendant

HONG KONG SANATORIUM & 2nd Defendant

HOSPITAL LIMITED

##### Before: Her Honour Judge H C Wong in Chambers (Open to public)

Date of Hearing: 4 November 2010

Date of Decision: 4 November 2010

## D E C I S I O N

1. The applicant applied by summons to the Master on 19 October 2010 for an extension of 3 months to serve the writ on the defendants, and also for the checklist review hearing to be vacated. The checklist review hearing was scheduled on 26 October 2010.
2. The Master did not vacate the hearing of the checklist review. By 26 October 2010, the writ had already expired, the Master refused to renew the writ at the checklist review hearing on that day. Because the plaintiff failed to obtain a renewal of the writ, the plaintiff decided to appeal to this court against the Master’s decision.
3. The plaintiff’s claim is a medical negligence claim against the doctor and the hospital where he had a surgery on his eye. The date of the surgery was 17 October 2005. The hospital is a private hospital and the doctor was in private practice.
4. The writ, described as a protective writ, was issued on 14 October 2008. The plaintiff was legally aided and the writ was in fact drafted and taken out by the Legal Aid counsel on 14 October 2008, three days short of 3 years since the date of the operation.
5. The writ has not been served up to now. It was extended on three occasions by the court on the plaintiff’s application. The dates of extension was 13 October 2009, 13 April 2010, and 22 July 2010. The Master refused to grant an extension on the fourth occasion. Consequently, the writ expired on 22 October this year.
6. The plaintiff’s application for extension of time was made ex parte was issued on 19 October 2010. However, no hearing was fixed for the hearing of the ex parte summons and the Master had in writing informed the parties that “the hearing of the checklist review on 26 October stands”, that order was made on 22 October. On the checklist review date, it was evident the writ had already expired on 22 October.
7. Considering this background, strictly speaking, the writ was not expired when the plaintiff made the ex parte application by summons for an extension of 3 months, therefore, I shall regard the application was made before the expiry of the writ even though on the date of the checklist review when the summons was heard before the Master, the writ had expired.
8. The reasons given for the delay in service of the writ by the plaintiff through his counsel, Mr Wong, were that the Medical Council had not completed its investigation and the expert opinion was inconclusive due to the insufficiency of information on the surgery in October 2005, it was mainly due to the illegible handwriting of the surgeon and the lack of information of discussion between the doctor and the patient before the operation. This was the opinion expressed by Professor Wong, the expert who gave an opinion in 2009, supplemented twice in 2010.
9. It is now over 5 years since the operation and treatments given to the plaintiff by the defendants. Limitation for this type of claim would have expired in October 2008 if the protective writ was not issued. The defendants have a right to know if they were being sued and the right to be protected under the Limitation Ordinance. Delay in service of the writ is generally not tolerated by the courts.
10. I have considered the complicated development of the plaintiff after the operation and the medical treatments received by the plaintiff since the operation. This background indicated that it may be difficult for the plaintiff to pursue a claim of medical negligence against the surgeon and the hospital that treated him in October 2005. Nevertheless, he had obtained numerous medical opinions, pursued his claim at the Medical Council, and persisted in his claim by requesting the Medical Council to reconsider and re-investigate his complaint.
11. Five years have elapsed and numerous medical opinions expressed, particularly in the last 2 years. Meanwhile, he had also received other treatments on his eye in the intervening period. By now, he should have a complete picture of what had happened 5 years ago and the decision of what he should do, whether he should pursue his claim against the doctor and the hospital or whether he would have any success should he lodge or pursue this claim further. No further delay will be tolerated.
12. Mr Wong has asked the court to give the plaintiff a last chance because the expiry of the writ means that he will have no further resort. Mr Chan further gave an undertaking to court that a decision will be made on whether the writ will be served within a short time. He asked for an extension of 7 days for the writ to be extended.
13. On this undertaking, I am prepared to grant an extension of 7 days from today, it will expire in 7 days, and should the writ be not served within the time, there will be no further extension.
14. Today’s costs and the costs of the application on the appeal will be borne by the plaintiff.

(Discussion re costs)

1. The plaintiff’s own costs to be taxed in accordance with Legal Aid Regulations.

# (H C Wong)

# District Court Judge

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