## DCPI 2230/2014

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO 2230 OF 2014

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BETWEEN

THOMAS VINCENT Plaintiff

and

CHEUNG LAI SHUEN 1st Defendant

HON WING HOI 2nd Defendant

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Before: Deputy District Judge Thomas Leung in Chambers (Open to Public)

Date of Hearing: 24 February 2017

Date of Decision: 5 April 2017

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DECISION

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1. This is the appeal by the plaintiff (“plaintiff’s Appeal”) against the order made by Master Rita So dated 13 December 2016, in which she ordered that the summons taken out by the plaintiff dated 2 August 2016 to amend his statement of claim (“plaintiff’s Summons”) be dismissed, with no order as to costs; and the plaintiff’s action (“Action”) be dismissed, with no order as to costs. The plaintiff’s Appeal is a hearing *de novo* andI am in no way bound by Master’s decision.
2. In this appeal which was made out of time, the plaintiff seeks the following orders:-
3. To reinstate the Action; on the grounds that “the plaintiff has a meritorious claim in that Master So erred by ruling that the Official Receiver had the vested interest in this case.”
4. For the plaintiff’s Summons to be heard so that the plaintiff’s claim “be allowed to show that the [Action] is not a hybrid claim and hence does not fall under the jurisdiction of the Official Receiver.”
5. The history and background of this action are set out below:-
6. On 7 October 2014 the plaintiff commenced this action against the then landlords for personal injury damages, which includes pain, suffering and loss of amenities as well as loss of earnings.
7. On 16 February 2015, the plaintiff was adjudged bankrupt.
8. On 27 May 2015, the Official Receiver (“OR”) was appointed as the trustee-in-bankruptcy of the plaintiff’s estate.
9. On 27 November 2015, Master J Chow gave directions in the checklist review hearing on further conduct of the case.
10. On 5 May 2016, on hearing the appeal by the OR against the order by Master J Chow, Deputy District Judge Eric Tam handed down his decision (“Decision”) in which it was held, *inter alia*, that:-
11. the present claim in the Action involved both pain and suffering and loss of earnings and it was therefore a hybrid claim. The conduct of this claim vested in the OR.
12. The plaintiff did not have any *locus standi* to make any amendments to the claim.
13. Master J Chow’s directions, which was given on the basis that the plaintiff still had the conduct of the Action, should be set aside.
14. The Decision was never appealed against by any of the parties.
15. The Action was since adjourned a few times in the further checklist review hearings.
16. On 13 December 2016, after hearing the parties, Master Rita So made the order:-
17. dismissing the plaintiff’s Summons:

(ii) dismissing the Action herein, with no order as to costs.

1. The plaintiff brought the appeal against Master Rita So’s Order and hence this hearing.
2. In his submissions the plaintiff placed reliance on §§9 and 17 of the Decision, which provides that:-

“……

9. The exceptions are actions relating to the bankrupt’s personal injuries, personal inconvenience or damage to reputation, which do not vest in the OR.

…….

17. As the trustee of the Action, OR may take positive steps to dispose the Action before the next hearing.”

1. The plaintiff argued that he would rely on these two paragraphs and he applied for an Order in the plaintiff’s Summons, so that he may withdraw his claim for loss of earnings, and his claim would no longer be a hybrid claim.
2. To take out two paragraphs from the Decision and rely on them without reading the whole judgment in context could be misleading. §§13-14 of the Decision provides that:-

“13. Mr Ho submitted that when the bankruptcy order was made on 16 February 2015, the Action vested on the OR and the plaintiff no longer had any locus standi to make any amendment to the claim.

14. I accept the submission as such conclusion of the OR seems logical.”

1. As no parties brought any appeal against the Decision, Deputy Judge Eric Tam’s Decision shall continue to be binding. In my view, the Decision must be correct in that the plaintiff’s claim herein is a hybrid claim, and being a hybrid claim the conduct of this Action vested in the OR in the capacity as the plaintiff’s trustee-in-bankruptcy. The plaintiff shall have no right to conduct this case, including any application to amend his statement of claim.
2. The OR has made the decision that the plaintiff’s claim is without merits and the plaintiff has been so informed. According to Mr Ho, who appear as counsel for the OR, the plaintiff should have taken steps and make application to court under section 83 of the Bankruptcy Ordinance; Cap 6, if he is aggrieved by the act or decision made by the OR as the trustee-in-bankruptcy. However, the plaintiff did not take any steps in accordance with that section insofar as this claim is concerned.
3. The defendants have all along been acting in person and both of them were in court. The first named defendant submitted that the plaintiff still owed them rent. The whole incident was made up by the plaintiff, as the estate agent could confirm that on the alleged date of accident, the plaintiff was not injured. She further said that she has been troubled by court proceedings brought by the plaintiff for a long time, and she asked that the action be dismissed.
4. In the course of argument, Mr Ho refereed to *Selig v Lion* [1891] 1 QB 513, in which the headnote has effectively summarized the gist of the decision:-

“The plaintiff in an action became bankrupt; the defendant applied to the trustee in the bankruptcy to know whether he would continue the proceedings in the action; the trustee having replied that he did not see his way to continue them, the defendant obtained an unconditional order in chambers for a stay of proceedings; notice of this application was given to the trustee, who took no part in the proceedings. Subsequently the plaintiff, having obtained his discharge, purchased from the trustee all the assets in the bankruptcy, and applied in chambers to have the stay of proceedings removed:-

Held, that the plaintiff was in the same position as the trustee in bankruptcy, who in the absence of special circumstances would not have been entitled to have the stay of proceedings removed, and that the mere assignment of the cause of action by the trustee to the plaintiff was not a special circumstance entitling him to a removal of the stay of proceedings.”

1. In *Warder v Saunders and another* [1882] 10 QBD 114, the plaintiff commenced action against the defendant’s for damages. Six months later he was adjudicated bankrupt, and a trustee of his property was appointed one month later. The trustee formed the opinion that the action against the defendant was not a good cause of action. The defendant applied to dismiss the action. The judge ordered that the action be stayed until further order without costs. On appeal to rescind the order, the court held that the order of the learned judge must be affirmed.
2. In this hearing, the OR having the conduct of the plaintiff’s claim would not object to the defendants’ application to dismiss the action. Mr Ho has confirmed that the OR realised the defendants are acting in person and the OR would not insist on formal application to be put in place before the court shall consider the application for dismissal.
3. I consider that the plaintiff do not have *locus standi* to apply for the amendments to this claim. He could only do so through the OR. Accordingly, I accept Mr Ho’s submission that:-
4. the OR has the conduct of the plaintiff’s claim in this case;
5. the plaintiff shall have no right to take out the plaintiff’s Summons to amend the statement of claim.

1. The defendants applied for dismissal of this Action. Mr Ho, representing the OR having the conduct of this Action, confirmed that the OR will take a neutral stance. I make an Order that the plaintiff’s action be dismissed.
2. I have to consider the costs. All along, the OR did not make any application to join as a party in the Action. Mr Ho submitted that it would not be cost-effective for the OR to join the Action, simply for the purpose of applying discontinuance of this action. It seems that if the OR took that route, the inevitable consequence would be for the plaintiff to bear the defendants’ costs upon the order for discontinuance is made. The OR submitted the statement of costs for summary assessment. I do not think that it would be right for the OR in not taking part in the proceedings to join as a party, and yet successfully claiming costs against the plaintiff who is an undischarged bankrupt, or the defendants who are the successful party. Accordingly, I am not persuaded that the plaintiff shall bear the costs of the OR.
3. Insofar as costs between the plaintiff and the defendants are concerned, the defendants did not ask for an order on costs. All along they have been acting in person. Had they asked for an order on costs, the costs to be awarded on such basis would have been quite nominal. The plaintiff is an undischarged bankrupt and realistically the chance of recovering costs from him is remote. The proper order on costs made between the plaintiff and the defendants is no order as to costs.
4. I make the following order:-
5. the plaintiff’s Appeal be dismissed;
6. the Order by Master Rita So dated 13 December 2016 be affirmed; and
7. there be no order as to costs for the hearing herein and below.

( Thomas Leung )

Deputy District Judge

The plaintiff, appeared by Mr Justin Ho, of the Official Receiver, and the plaintiff in person

The 1st and 2nd defendants appeared in person