## 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 Eric Tam in Chambers

Dates of Hearing : 19 April 2016

Date of Decision : 5 May 2016

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DECISION

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1. This is the appeal by the Official Receiver (“OR”) against the directions in the 2nd Checklist Review Order of Master Chow dated 27 November 2015 (“the Order”).
2. By the Order, the Master gave case management directions for the progress of the action.
3. The issue in the appeal is: whether the plaintiff, now a bankrupt, should be allowed to conduct his personal injury action or such claim should be vested in the OR.
4. On 30 September 2014, a creditor’s bankruptcy petition was presented against the plaintiff on the basis of a judgment debt in the sum of HK$202,967.74.
5. By a Writ of Summons dated 7 October 2014, the plaintiff commenced the personal injury action herein (“the Action”) against his landlord for injuries caused by the collapse of the ceiling in the bathroom of the rental property. According to the Statement of Claim and the Statement of Special Damages, the plaintiff claims the sums of HK$500,000 for pain and suffering and HK$192,000 for loss of earnings.
6. On 16 February 2015, the plaintiff was adjudged bankrupt.
7. On 27 May 2015, the OR was appointed as the trustee-in-bankruptcy of the plaintiff’s estate.
8. As a result, all the property of the plaintiff vested in the trustee.
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.
10. In *ORD v Upton* [2000] Ch 352, it is held that for hybrid claims, that is, claims partly personal and partly relating to property, the cause of action vested in the trustee.
11. It is not in dispute that the Action is a hybrid claim, as the plaintiff claims loss of earnings as well.
12. The plaintiff only contended that he intended to amend the claim so as to delete the claim for loss of earnings. He also submitted that he was advised that he should not claim the loss of earnings as he had no ground to do so.
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.
15. It seems that the Master’s directions were given on the basis that the plaintiff still had the liberty to conduct the Action.
16. In view of the OR’s stance that she does not support the continuation of the claims, I do not think that the directions made by the Master on 27 November 2015 are appropriate. As a matter of discretion exercised afresh, I therefore set aside the relevant first to the fourth directions and order that a Checklist Review hearing be arranged within 8 weeks from the date hereof.
17. As the trustee of the Action, OR may take positive steps to dispose the Action before the next hearing.
18. Mr Ho asked for costs of the appeal. The plaintiff opposed the appeal. Costs should follow the event. I order that the costs of the appeal be paid by the plaintiff to the OR, summarily assessed at HK$45,000.

( Eric Tam )

Deputy District Judge

The plaintiff was not represented and appeared in person.

Mr Justin Ho, instructed by and appeared for the Official Receiver.

Attendance of the 1st and 2nd defendants were excused.