#### DCPI 2255/2014

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO 2255 OF 2014

BETWEEN

CHAN PO CHU Plaintiff

and

B.S.C. INTERIOR CONTRACT 1st Defendant

AND ENGINEERING COMPANY

LIMITED

BRIGHT LINK 2nd Defendant

ENGINEERING LIMITED

##### Before: His Honour Judge Edmond Lee in Chambers

Date of Hearing: 16 June 2017

Date of Decision: 16 June 2017

## DECISION

1. I have considered the matters and there are in essence two applications. The first one is a proposed amendment of the statement of claim to include a new basis of claim, namely, an exposure claim, and the second application is one for filing of a supplemental statement of the plaintiff.
2. These two applications, if not part and parcel to each other, are at least inter-related, as the proposed supplemental statement is, to a certain extent, to support the proposed new basis of claim.
3. The defendants object to both applications on three grounds.
4. The first ground is one of delay. As can be seen from the record, which is undisputed, the statement of claim was filed on 10 October 2014 and there were several checklist review hearings in 2017, the last one on 24 March 2017. In all these hearings, the plaintiff never indicated any proposed amendment of pleadings nor any proposed filing of witness statements.
5. The only explanation offered by the plaintiff at this stage is that the proposed amendment of the statement of claim and the filing of supplemental statement of the plaintiff were due to late receipt of counsel’s advice which was only available on 28 March 2017. That is after the last checklist review hearing on 24 March 2017.
6. I do not consider that a reasonable explanation, as I was told, counsel was assigned by the Director of Legal Aid as early as on 23 January 2017 and, in my view, the plaintiff could have obtained the counsel’s advice much earlier than 28 March 2017 or could have indicated much earlier any potential amendment of pleadings and filing of supplemental statement or at least put the matter on hold instead of proceeding with having the pre-trial review and the trial dates fixed.
7. In any event, I fail to see that late receipt of counsel’s advice being an exceptional circumstance to justify the bad delay in this case.
8. The second ground of objection is prejudice and the third ground of objection is the effect on milestone dates. They can be conveniently dealt with together.
9. It is the plaintiff’s argument that the defendants can answer the new basis of claim and reply to the proposed supplemental statements, if both allowed, with their existing defence witnesses or, even if there are new witnesses to come, they can be done relatively soon and therefore would not badly affect the milestone dates.
10. I do not agree. I am in agreement with the defence argument on the suggestion of prejudice and effect on milestone dates.
11. The date of incident took place as early as on 21 August 2013 and if the plaintiff is permitted to add at this stage the alternative basis of exposure claim, the relevant period will be extended to three months prior to August 2013. The construction work and the construction site in question were long completed and closed in the end of 2013. As such, there would be genuine difficulty for the defendants to locate the relevant records, the potential witnesses who were mainly casual workers and, last but not least, to have those witnesses to recall that incident which took place close to four years ago.
12. Not only that exercise, if possible at all, would take time, but it could also possibly involve further interlocutory applications, for example, for request of further and better particulars, for other specific discovery of documents, and for further witness statements and/or supplemental expert reports. It is therefore very likely to disturb the milestone dates which are all within the next two or three months.
13. In view of all the circumstances, I refuse both applications for amendment of the statement of claim and for filing of the draft supplemental witness statement of the plaintiff.
14. Costs of and incidental to these applications be to the 1st and the 2nd defendants, in any event.
15. Costs of the plaintiff be taxed in accordance with the Legal Aid Regulations.

# ( Edmond Lee )

District Judge

Mr Wilson Hui, instructed by Tung, Ng, Tse & Heung, assigned by the Director of Legal Aid, for the plaintiff

Mr C Cheung, of William Lee & Associates, for the 1st and 2nd defendants