## DCPI 2441/2011

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 2441 OF 2011

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##### BETWEEN

MOHAMMED SHAKEEL Plaintiff

### and

WONG KIN YU 1st Defendant

KUT CHEONG GARMENT FACTORY 2nd Defendant

LIMITED

EMPLOYEES COMPENSATION 3rd Defendant

ASSISTANCE FUND BOARD

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Before : Deputy District Judge W Y Ho in Chambers (Open to Public)

Dates of Hearing : 5 November 2015

Date of Decision : 5 November 2015

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DECISION

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1. This is the plaintiff’s application to vary the cost order nisi made on 27 August 2015.
2. The 3rd defendant does not dispute that the plaintiff should have his costs in accordance with the legal aid regulations. However the defendant disputes the plaintiff is entitled to limit their entitlement to costs from that of 3 June 2013 onwards.
3. I have considered the submissions of both parties and the authorities cited.
4. With all due respect to the plaintiff’s solicitors, I find the plaintiff’s application to be misconceived.
5. According to Order 62 rule 3 Rules of District Court (Cap 336H), if the court sees fit to make an order for costs of and incidental to any proceedings, the court shall order the costs follow the event. This is exactly what this court has done.
6. Mr Massie argues that the 3rd defendant should not be entitled to costs of be action incurred prior to having been joined as a party to the proceedings. Yet Mr Massie concedes that the 3rd defendant should be entitled to the costs incidental to the joinder application, which may include work done in preparation for the application, and hence before he actual order for joinder.
7. It seems to me the real concern of the plaintiff is that the 3rd defendant may seek to recover costs prior to the order of joinder which are not solely attributable to the costs of the joinder application. However I see no reason why the 3rd defendant cannot, in principle, be entitled to costs incurred which are incidental to the proceedings, which may include costs prior to the order joining them as a party. Once the Employees’ Compensation Assistant Fund Board joins as a party, it steps into the shoes of the employer and has all the rights in conducting the litigation as if it were the natural person. Although Mr Massie cites the case of *Kwan Kam Pui* ***v. 馮文 and others* [2014] 6 HKC 361** in support of his argument to say that if the 3rd defendant may not be liable to pay costs to the plaintiff, the reverse should be true, I am in agreement with defense counsel that the case is distinguishable from our present case. I am of the view that if, as in the present case, the plaintiff is liable to pay the costs of the 3rd defendant, there is no reason why, in principle, the 3rd defendant is not entitled to cost of and incidental to the proceedings, which may cover costs prior to the joinder order.
8. If the plaintiff has any objections the 3rd defendant’s entitlement to the items of costs that may pre-date the joinder order, that is a matter for the taxing Master to decide. The taxing Master shall decide whether the item of costs is “of and incidental” to the proceedings and whether it was “necessarily and properly” incurred. It is not for this court to embark on a mini taxation or “pre-taxation” exercise to determine what costs may or may not be of and incidental to the proceedings by limiting the costs that could be recovered to a specific date, in this case, the date when the affirmation for the joinder application was filed.
9. In short, I am in agreement with the submissions made by defense counsel.
10. I therefore dismiss the plaintiff’s application to vary the costs order nisi as per paragraph 1(a) of the plaintiff’s summons.
11. I make the following orders:-
    1. Order in terms of paragraph 1(b) of the plaintiff’s summons dated 10 September 2015. Costs order nisi made on 27 August 2015 be varied to the extent of paragraph 1(b).
    2. Paragraph 1(a) of the plaintiff’s summons be dismissed.
    3. The costs order nisi made on 27 August 2015 as varied be made absolute.
    4. Costs of this application be to the 3rd defendant with certificate for counsel to be taxed if not agreed.
    5. The plaintiff’s own costs to be taxed in accordance with legal aid regulations.

( W Y Ho )

Deputy District Judge

Mr John Massie, of Massie & Clement, for the plaintiff

Mr Clark Wang, of Gallant Y T Ho & Co, for the 3rd defendant