#### DCPI 2567/2012

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO 2567 OF 2012

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BETWEEN

SIU MAN HAI Plaintiff

and

THE LINK MANAGEMENT LIMITED 1st Defendant

SYNERGIS MANAGEMENT SERVICES

LIMITED 2nd Defendant

ISS HONG KONG SERVICES LIMITED 3rd Defendant

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##### Before: Deputy District Judge Lawrence Hui in Chambers (Open to Public)

Date of Hearing: 23 September 2016

Date of Decision: 3 October 2016

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DECISION

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*Introduction*

1. On 30 May 2016, the plaintiff filed a summons for leave to appeal against my judgment dated 11 April 2016 (hereinafter referred to as “the judgment”), wherein I dismissed the plaintiff’s claim.
2. The case arose out of a traffic accident. The plaintiff injured himself when he was riding his motorcycle in a car park. He asserted that he slipped and fell due to the existence of sand on a downward slope. He alleged that the defendants were negligent in the maintenance of the car park.
3. The 1st defendant was the owner of the car park. The 2nd defendant was the management company of the car park. The 3rd defendant was the cleaning company of the car park. All defendants denied liability.

*Grounds of appeal of the plaintiff*

1. The plaintiff appeals against my findings of fact and exercise of discretion.
2. In regard to the appeal, many of the points relied upon by the plaintiff could be said to be overlapping. The points could be conveniently summarized and grouped as follows:-
3. Erring in rejecting the evidence of the plaintiff and in holding that the plaintiff’s account was inherently implausible, improbable and absurd (hereinafter referred to as “Ground 1”),
4. Misapprehending the evidence of the plaintiff (hereinafter referred to as “Ground 2”)
5. Erring in holding that the presence of the sand was not an unusual event (hereinafter referred to as “Ground 3”), and
6. Erring in finding contributory negligence on the plaintiff’s part of 75% (if the defendants were to be found liable) (hereinafter referred to as “Ground 4”).
7. Just for the avoidance of doubt, no grounds were advanced by the plaintiff in relation to the calculation of the quantum (ie Issue Four of the judgment).

*Legal principles for granting leave*

1. Under section 63 of the District Court Ordinance, Cap 336, an appeal to the Court of Appeal from a judgment, order or decision of a District Judge in any civil cause or matter may only be made with leave. Section 63A(2) provides that leave to appeal shall not be granted unless the judge or the Court of Appeal hearing the application is satisfied that the appeal has a reasonable prospect of success or there is some other reason in the interests of justice why the appeal should be heard.
2. It is established that leave to appeal under section 63A(2) should not lightly granted. A reasonable prospect of success means that the prospects of succeeding must be reasonable and therefore more than fanciful, without having to be probable: see *SMSE v KL* [2009] 4 HKLRD 125; see also *Yuen Oi Yee Lisa v Charoen Sirivadhanabhakdi & Others* (unreported, HCMP 3305/2015, 16 March 2016).
3. Insofar as the grounds of appeal are about the findings of fact, the plaintiff has a high burden to discharge. The appeal court should only intervene if it was satisfied that the trial judge’s conclusion on the facts was “plainly wrong”: see *Ting Kwok Keung v Tam Dick Yuen* [2002] 5 HKCFAR 336.

*Consideration of the grounds of appeal*

1. In the judgment, from paragraphs 33 to 89, I had summarized the evidence of both the plaintiff’s witnesses and defendants’ witnesses.
2. In the judgment, at paragraphs 90 and 91, I had in mind the legal principles in assessing the credibility of witnesses.
3. I have carefully considered the written and oral submissions, cases and authorities of both parties before I reach the present decision.
4. I shall now deal with the grounds of appeal.
5. Ground 1: In gist, the plaintiff protested that I made speculations and that I made findings of facts without expert evidence. I disagree. Although the court may seek assistance by way of expert evidence, the task of fact-finding is ultimately vested in the court. The causation of the skidding is a matter to be assessed by the court. A judge is entitled to use his or her common sense to approach the question in the same way as a juror. See *Lee Kin Kai v Ocean Tramping Co Ltd* [1991] 2 HKLR 232 and *Cho Kam Chuen v Tse Chi Hung* (unreported, HCPI 170 of 2000, 25 October 2000). Furthermore, I have stated my reasons for not accepting the case and the evidence of the plaintiff in paragraphs 94 to 102 of the judgment.
6. Ground 2: I have carefully reviewed the whole judgment and the transcript of the trial in the hearing bundle. The plaintiff complained that I had misapprehended the location and quantity of the sand. However, it is trite that I was alive to these very matters at paragraphs 43, 44 and 52 of the judgment. I had also considered the photographs of the sand in paragraphs 99(b), 100 and 110 of the judgment. I do not find the complaints of the plaintiff valid. The court is not bound to accept any assertions for the sole reason that the evidence tendered was undisputed. The plaintiff must still prove his case on a balance of probabilities. I do not find that the plaintiff discharged the “plainly wrong” test.
7. Ground 3: I have provided my analysis in holding that the presence of the sand was not an unusual event in paragraphs 110 to 115 of the judgment. I do not think my reasons were erroneous.
8. Ground 4: I have stated my analysis for the plaintiff’s contributory negligence in paragraphs 121 to 125. I do not find the criticism against my exercise of discretion and ruling reasonable. See section 21 of the Law Amendment and Reform Consolidation Ordinance, Cap 23. See also *National Coal Board v England* [1954] AC 403 and *Hsu Li Yun (the administratrix of the estate of Lee On, the deceased) v The Incorporated Owners of Yuen Fat Building* [2000] 1 HKLRD 900.

*Conclusion*

1. Based on the above, the plaintiff’s proposed grounds of appeal, whether taken individually or cumulatively, do not give rise to any reasonable prospect of success. See *Yeung Cheung Chun v Wing Shing Caisson & Foundation Limited and Another* (unreported, CACV 39 of 2015, 25 April 2016) and *Tin Kwong International Enterprise Company Limited & Ors v San Tung & Anor* [2006] 2 HKLRD 185. Furthermore, I cannot see any reason in the interests of justice that the appeal should be heard.
2. In the circumstances, the plaintiff’s application for leave to appeal is dismissed.
3. Following the common consensus of both parties that costs should follow the event, I make an order nisi that the plaintiff is to pay the defendant’s costs of the summons, with counsel certificate, to be taxed if not agreed and that the plaintiff’s own costs to be taxed in accordance with the Legal Aid Regulations.
4. Lastly, I thank Mr Sham and Mr Gidwani for their helpful submissions.

( Lawrence Hui )

Deputy District Judge

Mr Walker Sham, instructed by WK To & Co, assigned by the Director of Legal Aid, for the plaintiff

Mr Victor Gidwani, instructed by WH Chik & Co, for the 1st and 2nd defendants

Mr Victor Gidwani, instructed by Leung & Lau, for the 3rd defendant