## DCPI 2623/2008

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 2623 OF 2008

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BETWEEN

WONG HIU CHING Plaintiff

and

LAM PUI LING Defendant

\_\_\_\_\_\_\_\_\_\_\_\_

Coram: H.H. Judge Chow

Date of Hearing: 29th May 2009

Date of handing down Decision: 12th June, 2009

DECISION

1. This is the Plaintiff’s application under section 30 of the Limitation Ordinance (“the Ordinance”) for leave to proceed with this action against the Defendant despite the expiration of the period specified in section 27 of the Ordinance.

The Claim

1. In the statement of claim, it is the Plaintiff’s allegation that on 14.7.2005 at about 0014 hours, the Plaintiff was a passenger inside a taxi which ran along Gascoigne Road. When it reached the junction with Jordan Road, the taxi collided with a private car driven by the Defendant, (“the Accident”). As a result, the Plaintiff suffered personal injuries.
2. In January 2007, the Plaintiff gave instructions to her former solicitors Messrs. Tam, Pun & Yipp (“TPY”) to institute a claim against the Defendant for damages for personal injuries she sustained as a result of the Accident.
3. In October 2007, the handling solicitor (a Mr. Chiu Che Kuen) of the case passed away without leaving any arrangement to TPY for the cases handled by him. These cases include the Plaintiff’s file. Then Mr. Paul Yau, a partner of TPY, instructed a litigation clerk to pass to him all the files hanled by Mr. Chiu Che Kuen, but due to inadvertence, the clerk failed to pass to Mr. Paul Yau the Plaintiff’s file. In December 2008, Mr. Paul Yau came to know the existence of the Plaintiff’s file.
4. On 5.12.2008 TPY issued the present writ for the Plaintiff against the Defendant. By then 3 years and 4 months and 20 days had elapsed since the Accident.

The Law

1. Section 27 of the Ordinance provides that subject to section 30 of the Ordinance, an action has to be brought within 3 years of the occurrence of the Accident. Section 30 confers upon this Court an unfettered discretion to disregard the 3 years’ limitation period if it would be equitable to allow the action to proceed. But in the exercise of this discretion, this Court has to pay regard to all the circumstances of the case, including in particular the factors listed out in section 30 (3) of the Ordinance.
2. In *Chuck Wai Man v. Asia Television Limited* (CACV 29/2008) the Hon. Tang V.P. stated:-

‘The correct approach is well settled. As Lord Hoffmann said in Horton v. Sadler [2007] 1AC 307 … … … …: -

“…… the practice of the courts has been regularly to exercise the discretion in favour of the plaintiff in all cases in which the defendant cannot show that he has been prejudiced by the delay.”

and that: -

“…… the plea of limitation which the statute confers upon the defendant is, in the absence of forensic prejudice, described as a windfall of which he can properly be deprived.”

1. In this case the delay is 4 months and 20 days. It is not a long delay. It was not caused by the Plaintiff. It was caused by the death of Mr. Chiu and subsequently by the litigation clerk of TPY. There is no evidence to show that the Defendant would suffer evidential or forensic prejudice if this Court disregards the limitation period. Hence it is equitable to allow the action to proceed. Being bound by the rule of law applied by the Court of Appeal in *Chuck Wai Man*, this Court will exercise the statutory discretion in faovur of the Plaintiff. The Defendant cited the case *of Ng Keung Lung v. Lam Chik Suen* HCPI 512/2004 as an authority to oppose the Plaintiff’s application. But in that case the rule of law adopted by *Chuck Wai Man* was not referred to. Hence that case offers no assistance as a guidance to this Court as to how to exercise its discretion towards the facts of this case. Furthermore, in that case, the Court held that:-

“… … there is nothing that could be said in favour of the Plaintiff. He could offer no reason for the delay. There was a total failure to take prompt action … … There is no equity that the Court should come to the aid of a party so guilty of dilatory conduct. … … On the facts of the case, it would not be equitable to allow the action to proceed.”

The facts of Ng Keung Lung are different from those of the present case, where there is a good reason for the delay to institute the claim. So the case of Ng Kung Lung should not be followed.

1. I therefore make an order in terms of the Plaintiff’s application.

Costs

1. I make an order nisi for cost, to be made absolute 14 days’ time, that the Plaintiff do pay the Defendant costs of this summons (including all the preparation work for done for this summons), but the Defendant do pay costs to the Plaintiff in respect of the hearing of this application, to be taxed, if not agreed, with certificate for Counsel.

( S. Chow )

District Judge

The Plaintiff: represented by Mr. Ernest Koo, instructed by Messrs.

Cheung & Liu Solicitors.

The Defendant: represented by Mr. Lam Chin Ching, Gary, instructed by Messrs. Chu & Lau, Solicitors.