## DCPI 2701/2014

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 2701 OF 2014

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##### BETWEEN

LEE YUET YUEN Plaintiff

and

HOSPITAL AUTHORITY Defendant

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Coram: Deputy District Judge Daniel Tang in chambers (open to public)

Date of hearing: 22 June 2016

Date of handing down decision: 14 July 2016

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DECISION

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*Background*

1. The defendant, Hospital Authority (“HA”) applies to strike out Madam Lee’s Writ of Summons and Endorsement dated 3 December 2014 and the Statement of Claim dated 18 December 2015, under Order 18, rule 19 of the Rules of the District Court and/or the inherent jurisdiction of the Court, on the ground that Madam Lee’s claim is beyond limitation period; and/or discloses no reasonable cause of action; and/or is scandalous, frivolous or vexatious; and/or amounts to an abuse of process [HB76][[1]](#footnote-1).

*Limitation Period*

1. HA argues that pursuant to s.27 of the Limitation Ordinance, Cap.347, the limitation period for Madam Lee’s action is 3 years. The HA avers that as the alleged accident happened on 22 October 2011, by the time Madam Lee issued her Writ of Summons on 3 December 2014, the limitation period had lapsed.
2. Paragraph 1 of the Defence [HB59] summarizes the HA’s position that:

“The Defendant avers that the alleged accident in relation to the Plaintiff’s claim herein happened on 22nd October 2011 instead of 21st December 2011 as alleged. Hence, the cause of action of the Plaintiff’s claim herein accrued more than 3 years before the date of issuance of the Writ of Summons on 3rd December 2014. Pursuant to Section 27 of the Limitation Ordinance (Cap.347), the Plaintiff’s claim herein should be dismissed.”

1. In fact, according to Madam Lee, the incidents happened between HA and her were more complicated and she suffered two injuries instead of one.
2. Madam Lee’s version is that:
   1. At the material time, she was employed by HA as an enrolled nurse. On or about 22 October 2011, she was injured at work (“First Incident”). Sick leave was granted and she resumed work on 28 December 2011. She lodged an employees’ compensation action, DCEC629 of 2013, against HA, which had been settled by consent on 2 July 2014 between the parties without trial [HB 276 – 280].
   2. However, Madam Lee alleges she suffers *another injury* after the First Incident.
   3. According to the medical certificate dated 21 December 2011, Madam Lee was suffering from left shoulder tendinitis and she was advised to avoid heavy physical duty for 4 weeks from the date of the certificate [HB106].
   4. Soon after Madam Lee resumed her duty, at around Lunar New Year in early 2011; despite she get medical recommendation, the HA failed to arrange light duty work tasks for her. She was required to carry out all normal work tasks, like bathing and dressing up the patients. Then, she worked with increasing pain at her left shoulder, which extended to the left aspect of her neck.
   5. She subsequently developed with Left Shoulder Rotation Cuff Torn/ Disorder which was revealed on or around 6 July 2013, after a Magnetic Resonance Imaging Examination.
   6. Madam Lee then complained that she was *re-injured* while working with HA after the First Incident (“Incident/Accident”) [HB35, §4].
   7. In Madam Lee’s Writ of Summons, she mentions that:

“The Plaintiff claims for damages … for personal injury, loss and damage sustained by her arising out of and in the course of employment with (HA) as a result of carrying out accommodated and/or modified work duties suggested and/or assigned by (HA) to her *since or around 21st December 2011 subsequent to the suffering of occupational injuries with her* which was caused by or contributed to the negligence … of (HA) …” [HB3].

* 1. In her Statement of Claim, she fames her case as follows:

“4. The incident/ accident *happened on or after 21.12.2011*:-

(1) when the Plaintiff was *re-injured* in the course of her work with the Defendant at the Workplace at (Wong Tai Sin Hospital):

(2) when she was instructed to work with accommodated and/or modified and/or light duty work tasks with the Plaintiff in doing patient-related healthcare work tasks including manually lift, deliver, transfer and/or carrying of heavy weight including the body-weight of patients at the (Ward Area and/or related area of Wong Tai Sin Hospital) in the course of her work with (HA) *in the period subsequent to her resuming of work with (HA) after any injury-on-duty accident happened on her in or around October 2011*, in which her injured and persistent painful left shoulder was reinjured and she was revealed suffering from left rotator cuff torn” [HB35, §4].

1. Accordingly, it is her case that she was re-injured after 21 December 2011 for the Second Incident, hence the Writ of Summons and the Statement of Claim are well within the limitation period.

*Madam Lee’s Claim as an Afterthought*

1. HA further argues that Madam Lee’s case is clearly an afterthought and could not have been genuine, which amounts to an abuse of process if the Court allows her claim to be tested at trial.
2. HA submits that Madam Lee has admitted that her claim was an afterthought in order to fit into the expert evidence; and she only reconstructed her claim after the Joint Medical Report was available [HB252, §5].
3. In paragraph 5 of Chan Siu Ching Cap’s affirmation [HB252], it mentions that after the Joint Medial Report reveals Madam Lee’s injury, she takes the view that her rotator cuff tendon tear of her left shoulder was developed after she had returned to work since 21 December 2011.
4. Accordingly, Madam Lee just explains why she raises the current action.
5. I am of the view that the central issue is if Madam Lee discloses a reasonable cause of action. Pursuant to §18/19/6 of the *Hong Kong Civil Procedure 2016*, “A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered. So long as the statement of claim or the particulars disclose some cause of action, or raise some question fit to be decided by a judge or jury, the mere fact that the case is weak, and not likely to succeed, is no ground for striking it out.”

*HA’s Other Argument*

1. HA further argues that Madam Lee’s claim lacks *bona fides*, and should be struck out as being an abuse of process of the court; there is no evidential basis to support her case; her case is simply frivolous and vexatious and should simply be struck out; or it should be struck out as simply being hopeless.
2. Pursuant to §18/19/4 of the *Hong Kong Civil Procedure 2016*, when the court is exercising its power under O.18, r. 19, “It is only in plain and obvious cases that the court should exercise its summary powers to strike out the indorsement on any writ or any pleading under this rule. There should be no trial upon affidavit. Disputed facts were to be taken in favour of the party sought to be struck out.”
3. Putting the HA’s argument to the highest, I am of the view that even Madam Lee might have a weak or a confusing case; it is not plain and obvious that it should be struck out.
4. The application of the defendant is therefore dismissed.

*Costs*

1. I accept Mr Cheng’s submission that Mr So fails to plead his case clearly. In the hearing, Mr So had made some effort and after certain exchange between him and the court, the court then had a better understanding of his case.
2. In this regard, I order costs be in the cause.
3. I grant counsel’s certificate and thank for both counsel’s assistance.

Daniel Tang

Deputy District Judge

Mr Johnny C M So, instructed by Cap Chan & Co for the plaintiff

Mr Alfred C P Cheng, instructed by Deacons for the defendant

1. HB = Hearing Bundle. [↑](#footnote-ref-1)