# DCPI 3109/2020

[2021] HKDC 36

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

# PERSONAL INJURIES ACTION NO. 3109 OF 2020

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BETWEEN

LAU SHING FAI REX Plaintiff

and

LAU WING KA Defendant

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##### Before: His Honour Judge Andrew Li in Chambers (Open to public)

Date of Hearing: 12 October 2020

Date of Decision: 12 October 2020

Written submission on costs: 27 October 2020 & 10 November 2020 by plaintiff and 3 November 2020 by defendant

Date of handing down Reasons for Decision: 11 January 2021

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REASONS FOR DECISION

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*INTRODUCTION*

1. By an inter-parte summons dated 8 October 2020 (“the Summons”), the defendant has, on an urgent basis, applied for the vacating of a *lis pendens* against the property knows as 1/F including the balcony(ies) adjacent thereto Block A of Fu Ting Garden, 208 Fuk Hing Tsuen, S.A. of SS.1 of S.C of Lot No.1162 in DD 123, Yuen Long, New Territories (“D’s Property”).
2. At the end of the hearing of the Summons before me on 12 October 2020, after hearing submissions on both sides, I made the following order: -

“1. The registration by Memorial No.20092302540019 of the sealed copy Writ of Summons as a *lis pendens* against 1/F including the balcony(ies) adjacent thereto Block A of Fu Ting Garden, 208 Fuk Hing Tsuen, S.A. of SS.1 of S.C of Lot No.1162 in DD 123, Yuen Long be vacated forthwith;

2. Time for service of the Summons be abridged due to the urgent nature of the application;

3. The handling Solicitors for the Plaintiff, namely, the principal of Messrs. WT Law Offices, to explain by way of affidavit/affirmation to be filed within 14 days as to: -

1. what are the legal basis of which they saw fit to advise the Plaintiff to register the Writ against the Property in the first place;
2. why in the light of such clear existing authorities, they considered that it was appropriate for them to do so, even if they were instructed by their client to do so;

(c) show to the Court why this matter should not be referred to The Hong Kong Law Society for their investigation for any potential breach of professional conduct.

4. The Plaintiff’s Solicitors, do within 14 days to show cause as to why they should not be personally liable for the indemnity costs incurred by the Defendant in this action, including the Summons;

5. The Defendant’s Solicitors, do within 7 days thereafter on paragraph 4 above make written submissions, and to include any without prejudice correspondence on such issues exchanged between the parties before today’s hearing as they wish, together with a statement of costs, stating the amount of which they are now claiming on an indemnity basis. Such documents to be lodged with the clerk of this Court with copies to the Plaintiff’s Solicitors; and

6. The Plaintiff’s Solicitors, do within 7 days thereafter lodge a reply submission as well as a list of objections, if any, with the clerk of this Court with copies to the Defendant’s Solicitors.”

1. I said I would give the reasons for my decision above in due course. Here are my reasons.

*BACKGROUND*

1. On 21 September 2020, the plaintiff in this case one Mr Lau Shing Fai Rex issued a general indorsement of claim in the present personal injury proceedings, alleging that he had “slipped and fell” while walking on a common staircase situated at D’s Property.
2. There was no statement of claim, no medical reports, no police statements attached or disclosed to the defendant at the time of issuing the general indorsement of claim.
3. Then 2 days later, on 23 September 2020, without any notice to the defendant, the plaintiff, presumably on the advice of his solicitors, registered the writ herein against the title of D’s Property.
4. The defendant only found out about the registration from his solicitors, ie the same firm of solicitors who are acting for him in this action on 30 September 2020, because in the course of investigating into the titles for the conveyancing of D’s Property, of which a sales and purchase agreement dated 24 July 2020 had been signed between the defendant as vendor and an unrelated third party as purchaser, the defendant’s solicitors have incidentally come across the registration. The completion of the transaction was originally scheduled to take place on 12 October 2020, ie date of the hearing of the Summons. However, it was postponed to 19 October 2020, with the consent of the purchaser, due to an unrelated cause.
5. The defendant’s solicitors discovered that the writ herein had been lodged for registration on 23 September 2020 under Memorial no 20092302540019 and approved in the “Deeds Pending Registration” section thereof with the remarks of “registration withheld” at the date of the hearing.
6. The plaintiff pleaded under §§2 & 3 of the indorsement of claim that his claim is for damages for alleged personal injury arising out of a “slip and fall” incident allegedly happened on 18 May 2020 at around 11:00 pm at the staircase of D’s Property when he “suddenly slipped and fell down as the surface of the steps of the staircase was not properly and securely covered with protection boards.” The plaintiff was and is the owner / occupier of the 2nd floor of the same premises which is a village house. They share the same common staircase. The plaintiff was allegedly using the staircase on the 1st floor when he was returning to his own premises situated on the 2nd floor.
7. Upon the defendant discovering of the registration, the defendant immediately wrote to the plaintiff on 30 September 2020, stating their strong objection and their “firm view” that the same is “plainly not registrable as *lis pendens*” and asked the defendant to remove and vacate the registration. They gave a deadline to the plaintiff to do so on or before the close of business on 5 October 2020.
8. The plaintiff took his time to reply. On 5 October 2020, which was the date of the deadline imposed by the defendant, the plaintiff’s solicitors wrote back and stated that “we need a little bit more time to investigate (sic) the matter and to take instructions from our client.”
9. On the same day, the defendant’s solicitors wrote to the plaintiff stating that they are “at a loss for what is required to be investigated, unless such registration is not done by your firm/your client”. The deadline was extended to one more day to 5:00 pm on 6 October 2020.
10. On 8 October 2020, the defendant took out the Summons.

*The defendant’s submissions*

1. At the hearing before me on 12 October 2020, Mr Chua for the defendant submits that the writ is not registrable and is liable to be vacated, as the writ by nature plainly does not affect land.
2. The relevant law, which is well-established, has been succinctly summarized in the judgment in *Luen Ford Industrial Co Ltd v Woo Ming Han Juliana*, unreported, HCMP 1715/2015 (Deputy High Court Judge Kwok SC; 10 December 2015). Briefly stated, it is only where an instrument may create some interest legal or equitable in the parcel of ground that the instrument can be the subject of registration under the Land Registration Ordinance, Cap 128.
3. The defendant submits that the writ in this case is plainly not such an instrument.
4. In fact, the learned Deputy High Court Judge particularly remarked at the last paragraph of the judgment in *Luen Ford* by way of a postscript to state that:

“36. Registration of a *lis pendens* is a clog on the owner’s title. Those who act in concert to procure registration of a lis which does not affect land should beware of possible liability.”

1. In *Shing Shu Lung (成樹龍) v Shing Kam Chuen (成錦泉 )*, unreported, HCA 2067/2013 (Deputy High Court Judge Kwok SC; 7 July 2017) the learned Deputy High Court Judge dealt with exactly the same kind of application again and stated that “*it should be plain and obvious to any competent solicitor that the Amended Writ of Summons did not affect land and was not registrable*”, and while indemnity costs were ordered, the solicitor was ordered to show cause why he should not personally pay such costs (see §§32 - 39).
2. In respect of our present case, the defendant submits that the registration of the writ as a *lis pendens* by the plaintiff is bad in law and unarguable and such registration should be removed and vacated forthwith with indemnity costs.

*The plaintiff’s submissions*

1. On 9 October 2020, the plaintiff wrote to the defendant in an open letter stating that they were “surprised” that the defendant would take out a summons when “the parties are actively in the course of negotiation for settlement”. The plaintiff proposed to adjourn the Summons for arguments with parties given time to file further affirmations and for them to “take Counsel advice.”
2. The defendant submits that §2 of that letter is not accurate, if not misleading. Subject to the plaintiff’s consent, the defendant has no objection to waive the privilege and to produce those without prejudice letters between the parties for the court’s perusal.
3. Second, the defendant submits that those directions proposed by the plaintiff have reinforced what the defendant stated at §12 in his affirmation, ie the plaintiff’s lack of good faith and has overtly indicated his intention to bring about a standstill in the proposed sale of D’s Property by the defendant.
4. What troubles me the most about this case is the fact that when I enquired at the hearing what was the legal basis for the plaintiff to register the writ against D’s Property, Ms Chung who represented the plaintiff stated that “I am afraid I cannot give the court any legal basis.” Her instructions from the plaintiff was that the defendant would dissipate the money from the sale in order to evade any judgment obtained in this case. When asked by the court what was the evidence she or her client had to form such belief, Ms Chung said that they did not have any evidence *before* they helped the plaintiff to register the writ against the title of D’s Property.

*The court’s findings*

1. I agree with Mr Chua’s submissions and echo with DHCJ Kwok’s comments in *Shing Shu Lung, supra* that this is a “juvenile tactical move” on the part of the plaintiff or his solicitors to bring a standstill in the sale of D’s Property in this case by the defendant. In my judgment, what the plaintiff and his solicitors did was simply try to make use of the land registration system as a “tactical tool” to force the defendant to come to the negotiation table when they had not even filed the statement of claim in the case yet, let alone knowing the strengths or weaknesses of the plaintiff’s purported personal injury claim against the defendant.
2. Based on the above reasons and authorities cited by the defendant, I have no hesitation to remove and vacate that registration sought for by the defendant under §1 of the Summons. Hence, I ordered that the registration referred to in §1 of the Summons to be vacated forthwith on the date of the hearing.
3. I also allowed §2 of the Summons for the service to be abridged due to the urgent nature of the application.

*Who should bear the costs of the Summons and the registration?*

1. For the costs of this application mentioned in §3 of the Summons, it is clear that this would have to be borne either by the plaintiff or the plaintiff’s solicitors on an indemnity basis as I had found the *lis pendens* was an abuse of our land registration system in this case.
2. As such, before I decided on that issue, I had given the plaintiff’s solicitor who handled this case, namely, the principal of the firm, to explain by way of an affidavit or affirmation to be filed within 14 days from the date of the hearing as to (i) what are the legal basis of which they saw fit to advise the plaintiff to register the writ against D’s Property in the first place; (ii) why in the light of such clear existing authorities, they considered that it was appropriate for them to do so, even if they were instructed by the plaintiff; and (iii) to show to the court why this matter should not be referred to The Hong Kong Law Society for their investigation for any potential breach of professional conduct.
3. I also gave the plaintiff’s solicitors 14 days to show cause as to why they should not be personally liable for the indemnity costs incurred by the defendant in this action, including the costs of the Summons.
4. On the issue of costs, I had invited the defendant’s solicitors to make written submissions and to include any without prejudice correspondence on such issues exchanged between the parties before the hearing on 12 October 2020 as they wish, together with a statement of costs, stating the amount of which they are now claiming on an indemnity basis, such document to be lodged with the court within 7 days thereafter on the above, with copies to the plaintiff. At the same time, I allowed the plaintiff to lodge a reply submission, as well as a list of objections’, if any, with the clerk of this court, with copies to the defendant, within 7 days thereafter.

*The court’s decision on costs*

1. Pursuant to my order above, the principal of the plaintiff’s firm of solicitors has filed 2 separate affirmations both on 27 October 2020 on the matter. The plaintiff also filed a short affirmation on the same day to confirm that instructions to register the writ against the defendant in fact had come from him after receiving advice from the plaintiff’s solicitors.

1. Having read the affirmations of the principal of the plaintiff’s solicitors, I am not convinced at all that the plaintiff’s solicitors had any sound legal basis to advise the plaintiff to cause the writ to be registered against D’s Property at all. No legal authorities were provided. No legal principles were explained. No attempts were made to refute the principles laid down by DHCJ Kwok SC in the 2 cases referred to by the defendant. The only “connection” the plaintiff’s solicitors claim the case had with the “land” was that the alleged “slip and fall” accident took place at D’s Property. The plaintiff’s solicitor in his 1st affirmation simply claimed that “this accident and the personal injuries caused to the (P)laintiff may affect the Property. Hence, there is not any abuse of legal process…”.
2. In my view, this is a pathetic excuse as both the plaintiff and his solicitors must realize that this is not a land case and the dispute does not touch upon the land at all. Just because the alleged accident happened on D’s Property does not mean that the plaintiff is entitled to register his “interest” against D’s property. If that is the case, the land registry will be a very busy place in Hong Kong as potentially hundreds of the personal injury cases “touching upon land” (according to the definition of the plaintiff’s solicitors) could be used to register against a defendant’s property once the writ is issued. This cannot be right.
3. In my judgment, it is quite apparent what the plaintiff and his solicitors tried to do was to attempt to put maximum pressure for the defendant to settle the personal injury claim brought by the plaintiff before he even served the statement of claim or disclosed any medical reports to support his claim. Judging from the without prejudice correspondence exchanged between them before the defendant took out the Summons, they had almost succeeded. However, that cannot be right as the plaintiff had never even received the letter before action allegedly sent by the plaintiff’s solicitors to him on 10 August 2020.
4. According to the without prejudice letter dated 6 October 2020, the plaintiff purported reason of registering the writ against D’s Property is that “our client (the plaintiff) is concerned about the possibility of your client’s (the defendant’s) dissipation of his assets in order to avoid paying the judgment.” They asked for “security for costs” in the sum of $500,000 to be paid into court at that stage.
5. After the defendant’s solicitors agreed “on an entirely prejudice basis and solely for the purpose of saving time and costs but not otherwise” on the next day ie on 6 October 2020 that the defendant would deposit $200,000 with the defendant’s firm to be “stakeheld by us” pending the resolution of the proceedings in return that the plaintiff would withdraw the registration of the writ against D’s Property, the plaintiff’s solicitors changed their tactic the next day and asked for $480,000 to be payable to the plaintiff directly instead, without mentioning that they were to be held as “security for costs” anymore. To me, such highhanded tactics is totally inappropriate and must be condemned.
6. In my judgment, there was completely no basis for the plaintiff to register the writ against D’s Property in this case. As stated by DHCJ Kwok SC in *Shing Shu Lung*, *supra* at §32, this was a “juvenile tactical move to bring about a standstill in the sale of the (land lots listed).” As stated by the learned judge in that case, this is like the plaintiff effectively trying to obtain an injunction but without being vetted by the court. What the plaintiff and his solicitors tried to do was to prevent the sale of D’s Property but without seeking judicial approval to achieve that goal. In short, what they did, like in *Shing Shu Lung*, was to abuse our land registration system.
7. In my judgment, this is very different from a case where the plaintiff has already obtained a judgment in his favour and when there is strong evidence that the defendant may try to defeat the judgment by dissipating the money by selling the property he owns. Under those circumstances, I can understand why a plaintiff may have to take steps to protect himself. However, it is not like that at all in our case. The plaintiff in the present case had only taken a “baby step” by issuing a general indorsement of claim only before he registered the writ against D’s Property 2 days later. The defendant did not know the details of the accident the plaintiff allegedly to have met with and the injuries he allegedly had sustained in the accident. Without even a proper medical report at hand, let alone disclosed to the defendant, the plaintiff and his solicitors chose to register the writ against D’s Property.

1. I agree that the defendant’s solicitor’s submission that the court should send a clear signal to both litigants and their legal advisers that such appalling behaviour should be met with strongest condemnation from the court. They should be made to pay the defendant’s costs and expenses resulting from the totally unwarranted registration on an indemnity basis.
2. Despite the plaintiff tries to say in his affirmation that all these were done with his specific instructions to his solicitors, I do not consider that the plaintiff’s solicitors were innocent in this matter at all. Had they done their legal research properly they would have easily able to discover the 2 authorities relied on by the defendant at the hearing. They would have been able to advise the plaintiff as to why he was not entitled to register the writ against D’s Property under such circumstances. In my view, the plaintiff’s solicitors are principally to blame in this whole saga.
3. I would therefore order the plaintiff’s solicitor be held personally responsible for paying the defendant’s costs on an indemnity basis.
4. Having studied the statement of costs lodged by the defendant’s solicitors on 3 November 2020 and the list of objections lodged by the plaintiff’s solicitors on 10 November 2020, I hereby summarily assess the defendant’s costs at HK$45,000, such costs to be paid by the plaintiff’s solicitors forthwith, ie within 7 days after the handing down of this reasons for decision.
5. I also would direct my clerk to send a copy of this reasons for decision together with a set of papers and submissions of this case to the Law Society of Hong Kong for them to look into if there might have been any breaches of rules or codes of professional conduct on the part of the plaintiff’s solicitors in this case.

( Andrew SY Li )

District Judge

Miss C Chung of Messrs WT Law Offices for the plaintiff

Mr Chua Siu Wang of Messrs Pansy Leung Tang & Chua for the defendant