## DCPI 227/2013

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 227 OF 2013

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##### BETWEEN

WONG CHAU WAN (黃秋雲) Plaintiff

### and

INCORPORATED OWNERS OF NOS 11-12

CANAL ROAD WEST, HONG KONG Defendant ----------------------

Before: HH Judge Levy in Chambers

Date of Hearing: 11 March 2015

Date of Judgment: 30 April 2015

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J U D G M E N T

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1. This is an appeal by the plaintiff, Mdm Wong, against the decision of a master on 23 January 2015 in granting leave to the defendant, the incorporated owners of Nos 11-12 Canal Road West, to amend its Amended Defence and Counterclaim (“**ADAC**”) . At the conclusion of the hearing, judgment was reserved which I now give.

*Background*

1. The defendant’s application to re-amend the ADAC was premised upon the order of Deputy Judge Winnie Tsui on 13 November 2014, by which the Deputy Judge directed, amongst other things, (i) the striking out of §10(a) to (n) and §11(a) of the ADAC and the whole of the Amended Counterclaim and, (ii) the issuance by the defendant, on an unless basis, of a summons for leave to amend the ADAC.
2. The background of these proceedings have been set out in great detail in §§2-14 of the judgment (“**Judgment**”) of the Deputy Judge handed down on 13 November 2014, which background can be briefly summarized as follows:
3. The plaintiff allegedly sustained personal injuries on 27 March 2012 from an accident that allegedly took place on the ground floor of the residential building at Nos 11-12 Canal Road West, Wanchai (“ **Building**”). She claims against the defendant for negligence and breach of common duty of care.
4. At the time of the alleged accident, the plaintiff was a resident of the fourth floor of the Building (“**Premises**”) whereas the registered owner of the Premises was a company called Ka Wan (International) Properties Limited (“**Ka Wan**”). The plaintiff was an 80% shareholder and a director of Ka Wan.
5. In the ADAC, the defendant, apart from putting the plaintiff to strict proof and denying liability, and further alleging contributory negligence, pleads an additional defence in §10(a) to (n) of the ADAC (which additional defence was referred to in the striking out hearing as the “Insurance Defence” (“**Insurance Defence**”)), averring:
6. The erection by the plaintiff of an extension (“**Extended Signboard**”) to an existing advertisement signboard (“**Original Signboard**”) on the external wall of the Building. The Original Signboard had been approved by the Buildings Department but the Extended Signboard was not.
7. The plaintiff’s breach of the *Building Management Ordinance* and the Deed of Mutual Covenant (“**DMC**”) and other safety regulations as a result of the erection of the Extended Signboard, which rendered the defendant “totally incapable of securing an appropriate type of insurance policy” to cover the Building or to cover the plaintiff’s claim in this action.
8. The defendant pleaded in § 11(a) of the ADAC a defence of set off in respect of the plaintiff’s alleged wrongful acts and/or negligence in respect of the erection of the Extended Signboard.
9. The undisputed evidence showed that the plaintiff purchased the Premises in April 2009 and Ka Wan was incorporated in September of that year. In October 2010, the plaintiff sold the Premises to Ka Wan. After Ka Wan became the owner of the Premises, a number of legal proceedings in relation to the Extended Signboard were issued:
10. A summons by the Building Authority in September 2011 against the plaintiff which was later withdrawn.
11. The defendant commenced a lands tribunal action on 21 March 2012 against Ka Wan (and not the plaintiff) by alleging that Ka Wan had refused to pull down the Extended Signboard, and that the defendant was unable to secure insurance cover for the Building.
12. A notice on 16 July 2012 by the Buildings Department against the “owner” of the Extended Signboard, ordering its removal.
13. (i) In August 2012, the Buildings Department removed the Extended Signboard.

(ii) In December 2012, the defendant’s lands tribunal action against Ka Wan was concluded with no order having been made.

1. The learned Deputy Judge found, on the undisputed evidence, that the various wrongful acts in relation to the Extended Signboard had been alleged against Ka Wan and not the plaintiff personally, and concluded that the defendant’s Insurance Defence was obviously unsustainable and bound to fail.
2. The learned Deputy Judge however considered that the defence of set off as pleaded in 11(a) the ADAC was “potentially arguable” (that is, assuming that the plaintiff was the owner of the Extended Signboard) (see §§43 & 52 of the Judgment), and allowed the defendant to bring an application to re-amend the ADAC.

*The proposed re-Amendments*

1. The gist of the defendant’s averments in the recast Insurance Defence in §10(a) to (s) of the Re-Amended Defence and Counterclaim (“**RADAC**”) are almost identical to those pleaded in §10(a) to (n) of the ADAC except that the allegations concerning the Extended Signboard are now directed against Ka Wan instead of against the plaintiff. Thus, in the RADAC, the defendant now pleads that Ka Wan was the owner of the Extended Signboard, and that the various wrongs and breaches that the defendant had earlier particularized in the ADAC concerning the Extended Signboard were carried out (with the exception of an allegation against the plaintiff in §10 (e) to be discussed in § 10(3) below) by Ka Wan. The various legal proceedings and their disposals that I have summarized in §3(5) and (6) above are also identically pleaded in § 10 (h) to (m) and (q) of the RADAC.
2. Similarly, the earlier allegations in the ADAC of the defendant’s inability to secure insurance are also pleaded in § 10(n) of the RADAC but are now further elaborated by additionally asserting in § 10(p) to (p) that the defendant’s attempts to secure an insurance policy to cover third party liability were rejected and it was only able to secure insurance cover for the Building at the end of November 2012, three months after the Extended Signboard had been removed.
3. What is entirely new in the RADAC is the raising by the defendant for the first time a new plea of the lifting of the corporate veil, which was undisputedly done with a view to cure the defect in the ADAC that led to the striking out of the relevant paragraphs in the ADAC.
4. The defendant’s new plea of the lifting of the corporate veil is based on a number of factual assertions concerning the plaintiff’s relationship with Ka Wan as pleaded in §10(a) to (f) of the RADAC. The circumstances for the lifting of the corporate veil are specifically set out in §10(r) and (s) of the RADAC.
5. It appears to be the defendant’s case that the relationship between the plaintiff and Ka Wan particularized in §10(a) to (f) of the RADAC, to be set out below, forms its basis for making the plaintiff personally liable for, by the lifting of the corporate veil, the wrongdoings committed by Ka Wan. The defendant thus avers to :
6. The plaintiff’s shareholder and director relationship with Ka Wan (§10 (a) & (b);
7. The plaintiff being the former owner of the Premises before she sold it to Ka Wan (which was thus the owner at the material times) (§10(c) to (d)); and
8. The erection of the Extended Signboard by the plaintiff and Ka Wan, which owned the Extended Signboard (§ 10 (e) to (f)).
9. The specific allegations of the plea of the lifting of the corporate veil are set out in §10(r) and (s) of the RADAC, in which the defendant alleges in §10(r) that the plaintiff had used Ka Wan to conceal the fact that she was the real actor behind Ka Wan to perform the illegal or improper conduct (in relation to the Extended Signboard) and had, in §10 (s) abused Ka Wan’s separate legal entity to perform the illegal and/or improper conduct.
10. The remedies of set off against the plaintiff are pleaded in §11(a) and the indemnity against the plaintiff and/or Ka Wan is counterclaimed in §§12 and 13 of the RADAC.
11. In spite of a specific allegation in §10 (e) of the RADAC that the plaintiff “erected” the Extended Signboard, there is no dispute however that the alleged “erection” was only based on the plaintiff’s association with Ka Wan. Thus, it would appear that the defendant’s proposed re-amendments against the plaintiff in respect of the re-amended Insurance Defence in §10, the set off in §11(a) and the re-amended counterclaim in §§12 to 13 are dependent upon the viability of the defendant’s new plea of the lifting of the corporate veil.

*Applicable legal principles*

1. The hearing of this appeal is by way of an actual rehearing: see *Hong Kong Civil Procedure 2015* (Vol 1) (“***HKCP***”) §58/1/2.
2. An amendment of pleadings is governed by O.20 r.8 of the Rules of the District Court, which, according to sub-r (1), is to be carried out for the purpose of determining the real question in controversy between the parties, or of correcting any defect or error.
3. The Civil Justice Reform has added a new sub-r (1A), which provides that the court shall not order “a pleading to be amended unless it is of the opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.”
4. Generally, the Court needs to be satisfied as to the truth and substance of the proposed amendment if either party seeks to amend his pleading, by introducing for the first time an allegation of fraud, or misrepresentation, or other such serious allegations : *HKCP* §20/8/10.
5. Leave will not be given to amend a defence by adding a plea which is no answer to the action, nor to add an unnecessary counterclaim, nor to make any other amendment raising a case which must fail:*HKCP* §20/8/24 ).
6. A court will not allow amendments which have no prospects of success as a matter of law or on the evidence: *C & A Consultants Limited & Anor v Hong Kong Airlines Limited (formerly known as CR Airways Limited****)***, HCA279/2007, unreported, 17 August 2010.
7. With these principles in mind, I will next consider the plaintiff’s objections to this application before deciding whether the court should allow the defendant’s proposed re-amendments.

*Do the re-amendments have any prospects of success*

*The parties’ contentions*

1. Since the striking out application, no fresh evidence has been filed, and the only new matter is the issuance by the defendant on 6 February 2015 of a Third Party Notice against Ka Wan for indemnity or contribution for the wrongful or negligent erection of the Extended Signboard.
2. Notwithstanding the undisputed facts that the allegations concerning the Extended Signboard are now being made against Ka Wan, Mr Poon (who was also counsel for the defendant in the striking out application) on behalf of the defendant submitted ( at §§13 & 15 of his written skeleton) that the defendant’s plea of lifting the corporate veil is sustainable as the proposed amendments in the RADAC and the evidence are able to show that the plaintiff had, “under the disguise of Ka Wan”, “used Ka Wan to evade limitations on her conduct by law, or to commit crimes”, which conduct, Mr Poon submitted, is “sufficient impropriety or wrongdoing to lift its (meaning Ka Wan’s) corporate veil” (words in brackets are added).
3. As a matter of law, Mr Poon further submitted, a corporate veil would be lifted if “impropriety, wrongdoing, concealment, sham or fraud” were involved (*Harvest Industrial (HK) Company Ltd v Ng Yeung & Anor,* DCCJ 175/2010, unreported, 15 November 2010 at §7); or “where a defendant had used the corporate structure as a device or facade to conceal his criminal activities” (*Re H and others (restraint order: realisable property)* [1996] 2 All ER 391 at 391h) or “where a defendant by the device of a corporate structure to attempts to evade (i) limitations imposed on his conduct by law..." (*Re H* [1996] 2 All ER 391 at 401j, quoting *Adams v Cape Industries plc* [1991] 1 All ER 929 at 1026).
4. Counsel for the plaintiff, Mr Shum (who did not appear before the Deputy Judge in the striking out application) however contended that the defendant’s pleaded case against the plaintiff in the re-amendments, in spite of the allegations having been re-modified by way of a new plea of the lifting of the corporate veil, was doomed to fail.
5. Mr Shum further submitted that Mr Poon’s reliance on the above-mentioned authorities; in particular the case of *Re H*, to support the defendant’s plea for the lifting of the corporate veil, was misconceived and fundamentally erroneous in law. *Re H,* Mr Shum suggested, was not an authority establishing that the court would lift the corporate veil whenever a company had engaged in criminal activities. It should be noted, Mr Shum submitted, that the facts in *Re H* that led to the court’s decision to lift the corporate structure in fact involved a criminal prosecution against three defendants who owned 100% of the shares of the company, which facts were wholly distinguishable from the present case.
6. The correct test, it was submitted, to be applied is found in *C & A Consultants Limited & Anor. v Hong Kong Airlines Limited (formerly known as CR Airways Limited)*, HCA279/2007, unreported, 17 August 2010*; Dransfield Holdings Limited (in Liquidation) v Pearl Oriental Oil Limited (formerly known as Pearly Oriental Innovation Limited*, HCMP 1392/2011, unreported, 29 May 2012, and *Lee Thai Lai v Wong Chung Kai & Anor*, HCLA 64/2003, unreported, 8th December 2003. Particularly instructive is a passage Mr Shum quoted from *Lee Thai Lai* (at §7):

*“ …The general rule of company law is that a company is a separate legal entity from its controlling shareholders and directors: Salomon v Salmon & Co. [1897] AC 22, even in a one-man company situation. The company is neither an agent nor a trustee of its shareholders in respect of the company’s assets, business and affairs. The corporate veil may only be lifted in very limited circumstances. The relevant legal principles have been discussed in Gower and Davies’ Principles of Modern Company Law (7th ed.) 184 et seq; Gore-Browne on Companies (44th ed.) paras 1.3.1 and 1.3.2. Without seeking to be exhaustive,* ***the normal circumstances for lifting the corporate veil are the prevention of the corporate form from being used for the purposes of fraud, or as a device to evade a contractual or other legal obligation. On the other hand, using a corporate structure to avoid the incurring of any legal obligation in the first place is not objectionable; the court’s power to lift the corporate veil does not exist for the purpose of reversing such avoidance so as to create legal obligations****: China Ocean Shipping Co. v Mitrans Shipping Co. Ltd [1995] 3 HKC 123.* ***The court cannot lift the veil merely because it considers that justice so requires****: China Ocean Shipping Co. at page 128B/C to F/G (per Nazareth VP). ”* (the emphasis is that of the plaintiff’s)

1. The lifting of the corporate veil, according to these authorities, is confined to, Mr Shum suggests, limited circumstances, which need to involve a serious case of misconduct by a defendant who has hidden behind the corporate veil of a company which the defendant controls (*C & A Consultants Limited & Anor.* at §7) and it will not be lifted by the mere fact that it was wholly owned by the defendant (*Dransfield Holdings Limited (in Liquidation)* at §50).
2. Applying the test to this case, Mr Shum argued that the re-amendments had no chance of success as the new plea of the lifting of the corporate veil lacked particulars. The allegations in §10(r) and (s) of the RADAC that the plaintiff had concealed ‘the fact that she was the real actor behind Ka Wan” and had “abused Ka Wan’s separate legal entity” to perform illegal and/improper conduct were no more than bare assertions.
3. The new averments presently pleaded in the RADAC Mr Shum further suggested, even taken to the highest, only went to the extent of showing the plaintiff’s relationship with Ka Wan in the recast §10 of the RADAC. None of the averments however contained any assertions showing how the plaintiff had allegedly “concealed” the fact of or “abused” Ka Wan’s separate legal entity. The assertions in §10(b) that the plaintiff was the director and an 80% shareholder of Ka Wan at the material times, and in §10 (d) that the plaintiff sold the Premises to Ka Wan (which sale, according to the land search record, was shown to have been a genuine sale with the plaintiff having made a profit from the sale) only showed her link with the Premises. The remaining averments such as those set out in §10 (a) about the status of Ka Wan; in §10 (c) the plaintiff being the original owner of the Premises; and in §10 (e) the erection of the Extended Signboard, Mr Shum further contended, were not even matters concerning the plaintiff’s relationship with Ka Wan.
4. Apart from the proposed amendments lacking particulars to support the defendant’s new plea for the lifting of the corporate veil, Mr Shum further contended that the evidence in this case was also insufficient to support a case for the lifting of the corporate veil.
5. The undisputed evidence, Mr Shum submitted, only showed that the plaintiff was involved in the erection of the Extended Signboard as Ka Wan’s “employee”. Mr Shum argued that mere directorship or the holding of shares or control, according to the authorities he referred to in the above, would not be sufficient for the court to lift the corporate veil. The undisputed evidence that Mr Shum relied on is as follows:
6. The plaintiff had represented to Ka Wan in one of the owners meetings in June 2011 (as referred to in § 27 the judgment of the Deputy Judge) that the plaintiff was the majority shareholder of Ka Wan;
7. The plaintiff was the director performing the duty of negotiating deals for Ka Wan in respect of its business of tenancy management and property development; and
8. The plaintiff was employed as Ka Wan’s managing director (as stated in the affirmation of Fung Kit Ying of the defendant in opposition to the striking out application).
9. Pertinently, Mr Shum further suggested, the evidence showed that Ka Wan had been formed as a property holding company for profit rather than having been formed for any unlawful purpose. More importantly was also, Mr Shum argued, the plaintiff’s undisputed realization of a profit from the sale of the Premises to Ka Wan, which fact, Mr Shum suggested, would have militated strongly against any inference that the plaintiff had used Ka Wan as a device to evade existing contractual or legal obligations owed by the plaintiff.

*My view*

1. The defendant’s Insurance Defence against the plaintiff, or the proposed amendments of the RADAC for that matter - as has been noted in §18 of the Judgment : “ he (Mr Poon) submitted that even though Ka Wan might have officially owned the Extended Signboard, the corporate veil should be lifted or pierced to the effect that the plaintiff should be treated as the owner of being responsible for the Extended Signboard” - is entirely based on the plea of the lifting of the corporate veil, without which plea, the defendant’s case against the plaintiff in the proposed amendments of the RADAC is frivolous.
2. Although the defendant in §10(e) of the RADAC has made one specific allegation against the plaintiff by alleging that she (and Ka Wan) had erected the Extended Signboard, the defendant’s case against her was not based on any personal involvement but was principally premised on the plaintiff’s directorship of and 80% shareholding in Ka Wan (see §§27 &29 of the defendant’s written skeleton before the master, which skeleton Mr Poon also relied on in this appeal). It was Mr Poon’s submission that the plaintiff, by virtue of her employment with Ka Wan, would have likely been “involved” in the erection of the Extended Signboard.
3. Mr Poon further argued that although the defendant’s case against the plaintiff is not based on the actual and direct wrongdoings, there was nonetheless sufficient evidence to support a claim for the lifting of the corporate veil. He has further urged this court not to, in the interlocutory stage, undergo extensive fact-finding but should leave that to the trial.
4. Whilst I agree with Mr Poon that it is not suitable for the court to conduct a fact-finding exercise in relation to the evidence for the purpose of this application, I consider that after the Civil Justice Reform the court needs to take a more robust approach when considering whether any amendments to a pleading should be allowed, and that they should only be allowed if the amendments are “necessary either for disposing fairly of the cause or matter, or for saving costs.” See: O.20 r.8 (1A), Rules of the District Court.
5. It is further noted that counsel have no dispute that a court is entitled to examine the evidence and form a view as to whether the proposed amendments have any prospects of success. Amendments that have no prospects of success will be refused (*C & A Consultants Limited* §§27 & 28).
6. In my judgment, the defendant’s new plea of the lifting of the corporate veil as set out in §10(r) and (s) of the RADAC seems to have also encountered similar deficiencies to those noted by the Deputy Judge in the striking out application, vis-a-vis, an absence of particulars in the pleadings or evidence to support the plea of the lifting of the corporate veil.
7. I am in respectful agreement with Mr Shum’s contention regarding the lack of particulars as well as the insufficiency of the evidence in this case outlined above.
8. Broadly, the evidence the defendant seeks to rely on to support its claim for the lifting of the corporate veil, is, to a large extent, based on the plaintiff’s directorship of and shareholding in Ka Wan, and to a lesser extent, on the plaintiff’s involvement through her employment with Ka Wan by, for example, representing the latter in matters concerning the Extended Signboard.
9. None of the above-mentioned evidence the defendant relies on however comes anywhere near showing that Ka Wan was incorporated otherwise than for the purpose of conducting its business of tenancy and property development. The plaintiff’s association with Ka Wan, according to the undisputed facts, is none other than, through her shareholding in and acting as a director and employee of Ka Wan, for genuine business purposes.
10. It is trite that there is nothing objectionable to individuals forming a company for the purpose of holding or managing properties or for conducting commercial businesses for the avoidance of incurring personal legal obligations. The lifting of the corporate veil requires, as the authorities establish, circumstances showing that a company has been used as the “alter ego” by a defendant for the purpose of fraud, or as a device or sham to commit impropriety or wrongdoing, which circumstances, as Mr Shum has suggested, are absent in this case.
11. It is however argued on the defendant’s behalf that the erection of the Extended Signboard constituted crimes under the *Buildings Ordinance* and the *Public Health and Municipal Services Ordinance*, which facts; it was argued, showed sufficient impropriety or wrongdoing enabling a court to pierce the corporate veil.
12. The facts of *Re H* are concerned with corporate structures being used (as the UK Court of Appeal has found) by individual shareholders who controlled the companies to commit fraud (evasion of excise duty) (*Re H* at 391h-j). It would thus appear that before a court will lift the corporate veil, it needs to be satisfied as to the existence of a nexus between the intentional use by an individual of a corporate structure (as a façade) and the unlawful purpose (criminal activities) for which it is used.
13. It has been established from the authorities discussed above that the court will only pierce the corporate veil in limited circumstances, which are confined to situations where a corporate structure has been used for the purpose of committing fraud or wrongdoing. The mere fact that a company has committed a wrongdoing without linking its wrongdoing with the purpose for which the corporate structure has been used will be insufficient.
14. The “crimes” in this case, according to the authorities, including the case of *Re H*, which Mr Poon has heavily relied on, do not, in my judgment, support his contention that they amount to the types of wrongdoings that would lead to the lifting of the corporate veil.
15. Pertinently, the undisputed facts, in my judgment, do not show that the plaintiff had used Ka Wan as a corporate vehicle for the purpose of and as a façade to conceal the alleged unlawful act of erecting the Extended Signboard. Although the defendant has now rectified the earlier defect in having failed to plead the plaintiff’s shareholding and directorship in Ka Wan in the ADAC by having it so pleaded in the RADAC, its plea on the lifting of the corporate veil in §10(r) and (s), in my view, still faces the same hurdle as that identified in §30 of the Judgment by the Deputy Judge in the striking out application, which states:

“ Neither is the plaintiff’s intention to use Ka Wan to conceal her involvement in the Extended Signboard or make use of Ka Wan’s separate legal personality to evade liability referred to at all (have been pleaded or featured at all in the pleadings), let alone supporting particulars. ”

1. By merely averring a plea for the lifting of the corporate veil without any particulars or evidence showing that the plaintiff had an intention to use Ka Wan to conceal her involvement in the Extended Signboard or make use of Ka Wan’s separate legal personality to evade liability will not suffice.
2. In conclusion, I consider that there is no real question in controversy that needs to be decided in trial as Mr Poon has argued. I am in respectful agreement with Mr Shum that, in the absence of any allegations of impropriety or wrongdoing against the plaintiff, mere directorship, shareholding or employment are insufficient for the court to pierce the corporate veil, and the proposed re-amendments basing entirely on this new plea, are doomed to fail and should be refused.
3. Having ruled against the defendant on the first objection, I do not strictly need to deal with the plaintiff’s remaining two objections. For completeness, however, I will briefly deal with them below.

*Is the Insurance Defence related to the Extended Signboard*

1. It was contended by Mr Shum that the evidence, similar to that relating to the lifting of the corporate veil, also failed to support the defendant’s allegation in the RADAC that the defendant could not purchase insurance for the Premises due to the presence of the Extended Signboard.
2. First, as to the replies from the insurance companies (AXA Insurance Co Ltd and Blue Cross Insurance Co Ltd and China Ping An Insurance Co Ltd) to the inquiries by the defendant in connection with the purchase of the insurance, Mr Shum pointed out that the short replies from the insurance companies, apart from stating a preference to “abstain from quoting… because of the nature of risk” or “advise not refer to quote”, had made no mention at all of the Extended Signboard.
3. Second, in respect of the contents of the minutes of the meetings of the defendant from April to November 2012, Mr Shum suggested that they made no reference to the Extended Signboard as a reason for the defendant’s inability to purchase insurance for the Premises. Mr Shum surmised that the defendant’s inability to secure insurance might have been due to the presence of other advertisements signboards that were in breach of the BMO or even due to the lack of a management company providing professional management services.
4. Third, Mr Shum further referred to a “Special Exclusion” clause in the insurance that the defendant later purchased from Asia Insurance Limited in November 2012 after the removal of the Extended Signboard. Mr Shum further argued that since the insurance company in the said policy had been able to exclude liability “in respect of bodily injury arising from “unauthorized structure/works” within the common parts of the Building, it would have also been possible for the defendant to secure relevant insurance coverage by an insurance company inserting such a similar exclusion clause limiting liability by excluding areas with illegal structures such as the Extended Signboard, and by only covering, for example, certain parts of the Building, such as the internal staircase at which the plaintiff suffered personal injuries. It was therefore contended that the presence of the Extended Signboard would not have been the reason for the defendant’s alleged inability to secure the necessary insurance.
5. Mr Poon had sought to resist the plaintiff’s contentions on the relationship between the Insurance Defence and the presence of the Extended Signboard by arguing that due to a concession the plaintiff’s former counsel made at the striking out hearing that if the plaintiff was indeed the owner of the Extended Signboard, the defence of set off could stay, the plaintiff should be precluded from raising these arguments at the amendment application. I am unable to accept Mr Poon’s argument as the so-called concession that he referred to was before a different tribunal and was also concerned with a different type of application. I will thus broadly examine the evidence Mr Shum has referred to.
6. Insofar as the replies from the insurance companies were concerned, the replies were so brief that it is not, in my view, possible at this stage to draw any concluded view that the Extended Signboard was or was not the reason for the stance taken by those insurance companies.
7. Regarding the minutes of the defendant’s meetings, I have an impression that the presence of the Extended Signboard had been the defendant’s concern insofar as it had to take actions in respect of the Extended Signboard. At the interlocutory stage, it would not have been possible to form any concluded view as to whether the Extended Signboard was the reason for the defendant’s inability to purchase the necessary insurance.
8. Lastly, I also do not consider that the exclusion clause Mr Shum referred to is able to conclusively show that the defendant could have been able to, in spite of the presence of the Extended Signboard, obtain insurance coverage in respect of the other parts of the Building as Mr Shum had contended. Broadly viewed, I consider that there seems to have some evidence suggesting that the presence of the Extended Signboard might have caused problems, prior to the removal of the Extended Signboard, in the defendant’s attempts to secure the relevant insurance coverage for the Building.
9. Since it has been determined above that the defendant’s plea of the lifting of the corporate veil is unsustainable, and that the evidence shows that the wrongdoings concerning the Extended Signboard were committed by Ka Wan, it follows that the defendant’s proposed re-amendments in relation to the relationship between the defendant’s alleged inability to secure relevant insurance coverage and the Extended Signboard as well as the defence of set off are also unsustainable.

*Would the plaintiff be prejudiced*

1. Lateness is the plaintiff’s last objection in Mr Shum’s written submissions. It was contended that prejudice would have been caused to the plaintiff if the court were to allow the amendment as further amendments would have to be made to the parties’ pleadings, and the filing of further witness statements would have to be filed. At the hearing, Mr Shum did not seek to vigorously argue this point.
2. As a general rule, an amendment should be allowed however late the amendment if it would not prejudice the opponent party in some way that cannot be compensated for by costs or otherwise. The burden is on the party opposing the amendment to show prejudice. Given the limitation imposed by O.20 r8(1A), that the court needs to be satisfied that any proposed amendment to a pleading is necessary either to dispose fairly of the cause or matter or for saving costs, any proposed amendment to a pleading at an advanced stage of the proceedings will face more onerous hurdle : See *HKCP* §20/8/9.
3. Given the fact that this application is premised on the order of the Deputy Judge who had directed the defendant to issue an re-amendment application, and further that a case management conference has not yet been held, I’d be inclined to consider that any prejudice that may have been caused to the plaintiff could have been compensated by costs in this case had the plea of the lifting of the corporate veil had been found to have been sustainable.

*Conclusion*

1. For the reasons above, I conclude that all the proposed re-amendments, which are entirely dependent on the defendant’s successful plea of the lifting of the corporate veil, which proposed plea has been rejected, have no prospects of success, and I am therefore not inclined to allow the proposed amendments.
2. The plaintiff’s appeal is therefore allowed and the order of the master dated 23 January 2015 is set aside. The defendant’s summons dated 26 November 2014 is dismissed.
3. As for costs, I grant a costs order nisi that the costs of the appeal and the costs below be paid by the defendant, with certificate for counsel to be taxed if not agreed.
4. Lastly, I wish to thank counsel for their able assistance in this application.

(Katina Levy)

District Judge

Mr Erik Shum, instructed by Yip, Tse & Tang, for the plaintiff

Mr Jackson Poon, instructed by K Y Lo & Co, for the defendant