DCPI 1665/2011

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION** PERSONAL INJURIES ACTION NO 1665 OF 2011

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###### BETWEEN

LEE CHUI YING 1st Plaintiff

(Discontinued)

CHEUNG MAN KOK 2nd Plaintiff

### and

CHAN YEE LING ELAINE (陳綺玲) Defendant

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Before: Deputy District Judge Kam K. L. Cheung in Court

Dates of Hearing: 13, 14 and 17 June 2016

Date of Judgment: 17 August 2016

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JUDGMENT

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1. This action arose out of a scuffle in the form of a tug of war between two solicitors that happened at the office of Messrs. Christine M. Koo & Yip (“**the Firm**”) on 30th July 2011. The 2nd Plaintiff alleges that she was assaulted, or alternatively negligently injured by the Defendant, and in turn, the Defendant alleges that she was assaulted and falsely imprisoned by the 2nd Plaintiff. The issue central to this case is which of the two diametrically opposed versions of the incident should be accepted.

*The Parties*

1. The 2nd Plaintiff is and was at the relevant times the principal partner of the Firm. The 1st Plaintiff, who has discontinued her action against the Defendant, used to be a secretary to Mr. Victor Yau (“**Mr. Yau**”), a partner of the Firm. The Defendant was an “associate” of the Firm. The capacity in which the Defendant was engaged is an issue that the parties have been vigorously debating since 2011, and is pending adjudication by the Labour Tribunal.

*The 2nd Plaintiff’s Case on Liability*

1. The parties tell two different stories. The following is a summary of the 2nd Plaintiff’s.
2. According to the 2nd Plaintiff, the Defendant, held out as an “associate” though, was not an employee but an independent contractor of the Firm who was remunerated by commission. On 25th July 2011, the Defendant’s engagement under the letter of appointment dated 17th January 2011 (“**the Letter of Appointment**”) was terminated by mutual agreement.

1. On 30th July 2011 at around 10:00 a.m., the Defendant attended the office of the Firm. She was brought to a conference room and told to wait there. After a while, the 2nd Plaintiff and an accounting clerk called Ah Man joined the Defendant in the conference room. Ah Man gave the Defendant 4 cheques, each of which was accompanied by a voucher, and a commission table. The Defendant took issue with the commissions for the months of July, August and September and told the 2nd Plaintiff that she wanted to see Mr. Yau, another partner of the Firm who was supposed to have better knowledge of the matters relating to the Defendant’s commissions. However, Mr. Yau was not in the office on that day. Attempts were made to contact him but to no avail. The 2nd Plaintiff asked the Defendant to sign the documents that she had just been provided. The Defendant refused. Instead, she took pictures of the documents with her mobile phone. After taking pictures of the cheques, vouchers and commission table, the Defendant put them into a black recycle bag (“**the Bag**”). The 2nd Plaintiff asked for the return of the vouchers and commission table but the Defendant refused. She claimed that she wanted to take the documents to the Inland Revenue Department because she believed that they contained incriminating evidence against the Firm. The 2nd Plaintiff offered to provide the Defendant with copies of the documents and asked her to return the originals. The Defendant insisted that the documents belonged to her and refused to return any of them.
2. The 2nd Plaintiff then instructed her staff to make a report to the police and seek help from the security office. The Defendant was at that moment busy making telephone calls. Apparently, she was trying to reach Mr. Yau. She also appeared to have made a report of theft to the police. The Defendant finally managed to get Mr. Yau on the phone. The 2nd Plaintiff did not know what was being discussed but heard that the Defendant was yelling at the phone. The 2nd Plaintiff told Mr. Arthur Chan (“**Arthur Chan**”), a para-legal who was also there, to try to talk to the Defendant. As it was very noisy, Arthur Chan did not appear to have noticed what the 2nd Plaintiff was talking to him. The 2nd Plaintiff then decided to resort to self-help and grabbed the Bag, which was lying on the conference table. On seeing that, the Defendant grabbed the Bag from across the table. A tug of war and scuffle ensued. In the scuffle, the Defendant extended her arm to scratch or poke or punch the 2nd Plaintiff in her face, causing her injuries in the nose and inside of the month. The 1st Plaintiff, who was trying to calm them down, was bitten in the right forearm by the Defendant.
3. The Defendant managed to get the Bag back. She then sat on a chair, took out her phone, and reported a case of false imprisonment. The police arrived after a moment and took over the scene.

*The Defendant’s Case on Liability*

1. The Defendant’s case is that she was a solicitor employed by the Firm. On 25th July 2011, out of disagreement with the Firm’s practice, she gave two months’ notice to terminate her employment. At around 10:00 a.m. on 30th July 2011, she returned to the office of the Firm. However, she was denied access to her room and was told to wait in the conference room. After a while, the 2nd Plaintiff and Ah Man came with some cheques, vouchers and a commission table. Although she disagreed with the amounts payable to her, she put the cheques, vouchers and commission table into the Bag and decided to leave. The 2nd Plaintiff asked for the return of the vouchers and commission table, the Defendant refused. The Defendant then stood up and left. As she was walking out of the conference room, she said to the 2nd Plaintiff that she would make a report to the Labour Department. Upon hearing that, the 2nd Plaintiff rushed to her and grabbed the Bag, which was on the Defendant’s right shoulder. The 2nd Plaintiff grabbed the Bag with such force that the Defendant was caused to sprain her shoulder and lose balance. Her glasses were also thrown to the ground.
2. The 2nd Plaintiff then asked Arthur Chan to block the door. The 2nd Plaintiff also asked the 1st Plaintiff to help retrieve the documents from the Bag. A bi-parte tug of war turned into a tri-parte one. After some pulling and screaming the 2nd Plaintiff pulled the Defendant to a chair and put her neck in an arm lock. In the midst of the chaos, the 1st Plaintiff’s forearm came into contact with the month of the Defendant. The contact was, according to the Defendant, purely accidental and not due to any intention on her part to bite the 1st Plaintiff.
3. The tug of war came to an end with the Defendant succeeding in defending the Bag. While the parties were waiting for the police, the 2nd Plaintiff expressly instructed the 1st Plaintiff to tell the police that the Defendant had bitten her deliberately. The 2nd Plaintiff also instructed Arthur Chan not to tell the police that they had prevented the Defendant from leaving.

*The Law*

1. As the disputes are purely factual in nature and the legal principles are not dispute, the law can be stated briefly.
2. Battery is the direct imposition of any unwanted physical contact on another person, while assault is an act which causes another person to apprehend the infliction of immediate, unlawful force on his person. To constitute assault, the defendant’s act must be coupled with the intention to carry the battery into effect: *Clerk & Lindsell on Torts* (21st ed.) at §15-09 & §15-12.
3. False imprisonment is committed when a claimant has suffered a complete deprivation of liberty for any amount of time, however short, without lawful cause, and in the absence of any lawful authority on the part of the defendant to justify such imprisonment. The claimant must also show that the defendant had the necessary intention as well as the ability to detain the claimant: *Clerk & Lindsel on Torts* (21st ed.) at §15-23 & 15-27.

*Creditability of Witnesses*

1. No doubt this case will turn on the credibility of the 2nd Plaintiff and the Defendant. The relevant principles in assessing the creditability of witnesses are summarised by Chu J. in *Ip Fung Kuen* HCA 1897/2009 (unreported, date of judgment: 6th April 2016) at §65-67:

“65. The relevant principles in assessing a witness’s evidence have been set out by Poon J (as he then was) in Big Island Construction (HK) Ltd v Wu Yi Development Co Ltd (unreported) HCA 1957/2005, 28 July 2011; and DHCJ Eugene Fung SC in Hui Cheung Fai v Daiwa Development Ltd (unreported) HCA 1734/2009, 8 April 2014.

66. In Big Island Construction (HK) Ltd, the then Poon J had explained as follows:

“24. In assessing credibility, the court takes into account, among other things, the inherent probabilities or improbabilities of one’s testimony, the contemporaneous documents or any evidence, which is undisputed or indisputable, tending to support or contradict one account or the other and the overall impression of the characters and motivations of the witnesses: see *In re B (Children)*, *supra*, *per*Baroness Hale at para 31 at p.24, applied by this court in *Standard Chartered Bank v Li Wai Ping & others*, HCA10587/2000 & HCA3575/2003, 17 February 2011, unreported, at para 19. Where there exists a wealth of contemporaneous documents, credibility is to be tested by reference most particularly to them : see *Esquire (Electronics) Ltd v Hong Kong & Shanghai Banking Corp. Ltd* [2007] 3 HKLRD 439, *per* Stock JA (as he then was) at para.158 at p.494”

67. In Hui Cheung Fai, DHCJ Eugene Fung SC has said:

“76.   In making my findings of fact in this case, I am guided by a number of general principles which judges apply as to fact finding and the assessment of credibility.

1. Generally speaking, contemporaneous written documents and documents which came into existence before the problems in questionemerged are of the greatest importance in assessing credibility: *Onassis v Vergottis* [1968] 2 Lloyd’s Rep 403 at 431 (Lord Pearce). …
2. In deciding whether to accept a witness’ account, importance should also be attached to the inherent likelihood or unlikelihood of an event having happened, or the apparent logic of events: eg *Lam Rogerio Sou Fung v Tan Soon Gin George* (unreported, HCA 2576/2005, 5 May 2011) §39 (Chu J).
3. In determining a witness’s credibility, I have also attached importance to the consistency of the witness’ evidence with undisputed or indisputable evidence, and the internal consistency of the witness’ evidence.  The latter type of consistency is often tested by a comparison between the witness’ oral testimony and his or her witness statement.
4. I have cautioned myself against the dangers of too readily drawing conclusions about truthfulness and reliability solely or mainly from the appearance of witnesses (*Ting Kwok Keung v Tam Dick Yuen* (2002) 5 HKCFAR 336 at §§36-37 (Bokhary PJ)), or from the assessment of the witnesses’ character (*Esquire (Electronics) Ltd v HSBC* [2007] 3 HKLRD 439 at §135 (Stock JA)).
5. The practical approach to assessing credibility of witnesses in a case such as the present may have best been summarised by the words of Robert Goff LJ, as he then was, in *The Ocean Frost* [1985] 1 Lloyd’s Rep 1 at 57:

‘Speaking from my experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses’ motives, and to the overall probabilities, can be of very great assistance to a judge in ascertaining the truth.’

1. Whilst these words were spoken in the context of a fraud case, I believe they are applicable to any case where a witness’ credibility features prominently in the court’s determination.  They are particularly apposite in a case like the present where very serious allegations (akin to allegations of fraud) have been made by the Son against the defendants.”

*Criminal Proceedings*

1. In 2012, the Defendant was convicted after trial for two charges of assault occasioning actual bodily harm to the 1st and 2nd Plaintiffs. On appeal, the convictions were quashed.

*Witnesses*

1. Apart from the 2nd Plaintiff and the Defendant, none of the parties involved in the incident was called as a witness. Thus, I have to decide this case purely on the evidence of the 2nd Plaintiff and the Defendant without the benefit of evidence of independent witnesses.

*Collateral Issues Relevant to Credibility*

1. The parties have raised quite a number of collateral issues, such as the relationship between the parties, the Firm’s mode of operation, the Defendant’s attitude towards other partners of the Firm, the way in which the Defendant’s service was brought to an end, and so forth. Strictly speaking, those issues are not directly relevant to the issues to be decided. However, as the parties’ evidence on the collateral matters is relevant to their general credibility, both counsel submit and I agree that I should proceed to deal with them. Having said that, given that the employee/independent contractor issue is to be resolved in the Labour Tribunal, I shall refrain from making any finding on the Defendant’s status while with the Firm.
2. I shall deal with the case of the Defendant first as most of the collateral issues are raised by her.
3. Much has been made of the status of the Defendant. The 2nd Plaintiff’s case is that she was an independent contractor of the Firm held out in the name of an “associate”. Her package comprised an advance commission of $10,000 per month, which would be set off against the actual commission earned by her. On the other hand, the Defendant’s case is that she was an employee of the Firm earning a basic salary of $10,000 per month. In addition to her basic salary, she was remunerated by way of commission for the work she actually undertook.
4. Mr. Pang for the 2nd Plaintiff submits that the Defendant’s case is inconsistent with the Letter of Appointment and the contemporaneous emails between the Defendant and Mr. Yau. In so far as the Appointment Letter is concerned, I agree with Mr. Pang that the Defendant’s case is inconsistent with some of the terms of the Letter of Appointment. For instance, the Letter of Appointment provided:

“Clause 2: The Defendant will be paid an advance commission at the rate of HK$10,000 per month which will be set off against commission earned;

Clause 6: The Defendant shall be responsible for her own CPD and MPF and practicing certificate while the Firm will be responsible for the Defendant’s professional indemnity insurance premium;

Clause 8: It is mutually agreed that there is no employer/employee relationship between the Firm and the Defendant.”

1. The Defendant’s answer in her witness statement and in court is that the Letter of Appointment produced by the 2nd Plaintiff is a forged document. The allegation is no doubt a very serious one. Having been a litigation lawyer for many years, the Defendant must be fully aware of the seriousness of the allegations and the heavy burden on her to prove such allegation. However, she has made no attempt to prove what she alleges. Her readiness to make a serious allegation against another professional without bothering to prove it casts doubt on her general credibility and is a matter that I have to take into account in assessing her evidence.
2. Also for the emails between the Defendant and Mr. Yau, Mr. Pang submits that the Defendant was so rude in her emails that she did not act like an employee. Whilst I agree that the Defendant might appear to be rude, I do not think the apparent lack of respect for Mr. Yau or other partners of the Firm is necessarily conclusive of the Defendant’s status. What concerns me is not the Defendant’s attitude generally but the fact that she considered that she had the right not to follow instructions. The following emails of her to Mr. Yau are telling:

(1) 7th April 2011: “*For the avoidance of doubt, please note that I am not prepared to send you the progress report on a regular basis.*”

(2) 8th April 2011: “*Please do not mix up the matter and waste my time to do any non-paid work*.”

(3) 27th April 2011: “*Let’s discuss the matter AFTER you received costs on account from client.*”

(4) 19th July 2011: “*1. I am a professional charging at a hourly rate. Hence, I am not going to do anything for you not to get paid. 2. If you are so concerned the progress of DLA files, it is better for you to handle them independently, then you know the progress direct…*”

(5) 21st July 2011: “*I am not going to spend extra hours for non-chargeable thing (i.e. to communicate with you and spend extra time to concldue the matter) … I consider that I do have the right to say “NO”. Be remember, I am not your staff.*”

1. The Defendant’s evidence under cross-examination is that she had never seen any of these emails before she was served a copy of the 2nd Plaintiff’s supplementary witness statement. During cross-examination, she said she suspected that the emails produced by the 2nd Plaintiff had been edited. She even tried to blame her secretary for writing and sending some of the emails. I find the Defendant’s evidence wholly incredible. Given her background, had she been confronted with emails that had been edited or otherwise tampered with, she would have disputed their authenticity, sought inspection of the originals and if necessary instructed an expert to examine them. It is inconceivable that she would choose to wait until trial to disown them. On the collateral issues, it is my view that the Defendant is economical with the truth and has shown a tendency to make groundless allegations.
2. Before leaving the collateral matters, given that the issue whether the Defendant was an employee or independent contractor is an issue to be resolved in the Labour Tribunal, I shall make it clear that there is no finding by this court on the issue.

*The Defendant’s Claim for Assault and False Imprisonment*

1. As I have been dealing with the Defendant’s creditability, I shall start with her case.
2. To recap, the Defendant’s case is that the 2nd Plaintiff instructed Arthur Chan to guard the door to prevent her from leaving, forcibly grabbed the Bag from her shoulder, pulled her to a chair and put her neck in an arm-lock.

1. Notably, the Defendant’s only complaints to the police were that the money that she had kept in her office had gone missing and that she had been prevented from leaving the office. There was no complaint that she had been assaulted. Her evidence in the criminal proceedings also contrasts most starkly with her present complaint of assault. When cross-examined during the criminal trial, she said:

問： 你同唔同意你喺現場同警察報告呢件事嘅時候，冇投訴畀人毆打架？

答： 我冇投訴畀人毆打，係。

問： 點解呀？

答： 佢哋都冇呀，我唔覺得呢係毆打囉。

問： 即係嗰個…….

官： 等等先，等等先下。佢哋有冇一件事喇，你係話你唔覺

得呢個係毆打，係咪呀？係咪呀？

答： 我當其時第一個minds呢，就覺得佢哋係搶我嘢同埋唔畀我走。

1. It is of importance to note that the Defendant herself did not consider that she had been assaulted. There was also no mention of her being pulled to a chair and wrapped around the neck.
2. As for the Defendant’s allegation that the 2nd Plaintiff had instructed the 1st Plaintiff to tell the police that she had been bitten by the Defendant and warned Arthur Chan that he should not tell anyone that they had prevented her from leaving, such serious allegation of perverting the course of justice was never raised until the Defendant gave evidence at the trial of this action. The absence of any previous complaint is in my view strong evidence that the allegation is nothing but yet another groundless allegation she causally made. I have no hesitation in rejecting her evidence.
3. On the whole, I find the Defendant an unreliable witness and am not satisfied that the 2nd Plaintiff had inflicted any force that was sufficient to amount to an assault on her. Nor am I satisfied that she had been falsely imprisoned by the 2nd Plaintiff.

*The 2nd Plaintiff’s Claim for Assault and Negligence*

1. I shall now turn to the case of the 2nd Plaintiff.

1. The 2nd Plaintiff was extensively cross-examined as to why she insisted on getting back the vouchers and commission tables, both of which could be easily recompiled from the primary materials. Her explanation was that she saw no reason why her staff should be troubled with the task of recompiling them. I am not satisfied with the 2nd Plaintiff’s explanation. After all, the documents are not documents of any real importance and can be easily recompiled. Judging from the 2nd Plaintiff’s manner of giving evidence, it seems to me that it was out of frustration over the Defendant’s repeated refusals to return the documents or her desire to reassert authority over the Defendant that she insisted on getting back the documents.
2. The 2nd Plaintiff was also cross-examined as to why she chose to grab the Bag and start the tug of war instead of waiting for the police and security guards, both expected to arrive very soon. The 2nd Plaintiff’s explanation was that she did not really want to have police and security guards in the office of the Firm. I do not find her explanation a satisfactory one. Given that the Defendant had also made a report to the police, the 2nd Plaintiff must have known that the police were coming and would have come in any event whether or not she was to succeed in retrieving the documents. In the absence of any convincing explanation for her taking the matter in her own hands, I am of the view that it was due to frustration or anger on her part that she went ahead to grab the Bag.
3. In any event, whatever the reason for the 2nd Plaintiff’s deciding to start the tug of war, it remains necessary to resolve whether she was assaulted or negligently injured in her mouth and nose. In the 2nd Plaintiff’s statement to the police, she said she was accidentally injured in the nose. There was no complaint of assault and nothing was said about the injury in the mouth. In this respect, I agree with the Defendant’s counsel that the 2nd Plaintiff did not, at least at the time of the incident or shortly after it, consider that she had been assaulted by the Defendant.
4. More importantly, it should be noted that it is the evidence of the 2nd Plaintiff at the trial that the injury in her nose was the result of an accident. I find it hard to understand how a person in the position of the 2nd Plaintiff can tell that one of the two injuries, both inflicted in the midst of complete chaos, was the result of an accident and the other was due to an intentional assault. No doubt the sticking of the Defendant’s finger into the 2nd Plaintiff’s month left a deep impression in the mind of the 2nd Plaintiff (she vividly described the Defendant’s finger as “chicken feet”). Yet, I see no reliable basis to conclude that one of the two wounds was inflicted accidentally and the other intentionally. In fact, the 2nd Plaintiff did not seem able to describe how the injury in her month was inflicted. A variety of words like punch, poke and scratch were used when the 2nd Plaintiff gave evidence. On the evidence, it is my view that the 2nd Plaintiff has failed to establish that she was assaulted in the month by the Defendant.
5. In so far as the negligence claim is concerned, the particulars pleaded in the Amended Statement of Claim are:

(1) using excessive force in attempting to pull the recycled bag from the 2nd Plaintiff’ grasp;

(2) failing to have due regard to the 2nd Plaintiff’s safety when attempting to pull the recycled bag from the 2nd Plaintiff’s grasp.

1. The only act or omission on the part of the Defendant that Mr. Pang relied on in his closing submission is the Defendant’s failure to stop pulling and let go of the Bag. While I can understand how a party in a tug of war may cause injury to his opponent by suddenly letting go of the rope and causing his opponent to fall onto the ground, I cannot see how it can be said that a party in a tug of war is under a duty to stop pulling. Also, if the Defendant was under a duty to stop pulling, why should the 2nd Plaintiff, who started the tug of war in the first place, not also stop pulling? With respect to Mr. Pang, I reject his contention that there was a duty on the Defendant’s part to stop pulling and let go of the Bag.
2. Furthermore, I do not see any causation between the act or omission complained of and the injuries to the 2nd Plaintiff. Even if the Defendant was under a duty to let the 2nd Plaintiff have the Bag, her failure to do so did not cause the injuries to the 2nd Plaintiff. There being no causation, the 2nd Plaintiff’s negligence claim must fail.

*Conclusion on Liability*

1. I find that neither the 2nd Plaintiff nor the Defendant has managed to prove her case. Thus, both the Plaintiff’s claim and the Defendant’s counterclaim are dismissed.

*Quantum*

1. For completeness sake and in case I am wrong in my judgment on liability, I shall deal with quantum briefly.

*Quantum – the 2nd Plaintiff’s Claim*

1. The 2nd Plaintiff’s only claim is for damages for pain, suffering and loss of amenities.

1. After the incident, she attended Canossa Hospital for treatment. Examination showed an ulcer over the right side of the upper lip and a 1 cm abrasion over the left side of the nose. She was given a course of antibiotics and discharged. The abrasion healed well and there was no visible scar.
2. Mr. Pang for the 2nd Plaintiff suggests that the appropriate award should be $50,000. On the other hand, Mr. Gidwani suggests that the award should not exceed $5,000.
3. Taking the following minor injury cases into account, I award $15,000 for pain, suffering and loss of amenities suffered by the 2nd Plaintiff:

(1) *Fong Wai Mui v Cheung Fung Lan* DCCJ 24639/1998 (date of judgment: 18 December 2000) – the defendant punched the plaintiff in the face and on the chest, causing the plaintiff to fall to the ground. The plaintiff suffered a cut lip which was stitched. The plaintiff was awarded $13,000 for PSLA.

(2) *Wong Shing Kam v Leung Ming Kwong* DCPI 171/2005 (date of judgment: 24 January 2006) – the plaintiff suffered a 1 cm laceration over the lower gum region, right elbow bruising, swelling in the right face and bleeding of the mouth following a traffic accident. He was awarded $25,000 for PSLA.

(3) *Yip Chun Nam v Chan Kang & Anor* DCPI 183/2002 (date of judgment: 24 March 2003) – the plaintiff was assaulted by the defendants and sustained mild swelling in the chest because of 3 punches. Damages for PSLA was assessed at 17,500.

1. There will be interest on the award at 2% per annum from the date of the writ of summons.

*Quantum – the Defendant’s Claim*

1. The Defendant sought medical treatment on 1st August 2011, i.e. two days after the incident. Her explanation for not seeking medical treatment immediately after the accident was that she thought the pain in the neck and shoulder would go away. According to the medical report of Dr. Yio of Tang Shiu Kin Hospital dated 7th December 2011, no physical or neurological deficit was identified when she attended Tang Shiu Kin Hospital on 1st August 2001.
2. The Defendant was diagnosed of post-traumatic stress disorder and prescribed a course of anti-depressant in late October 2011. Subsequently, she was found to have mild to moderate depressive disorder. She then received psychiatric treatments and counselling services from psychiatrist and psychologist in the private sector.
3. All the psychiatrist and psychologists whom the Defendant has consulted and the psychiatric expert instructed by the Defendant are of the opinion that the Defendant’s conditions were due to the incident on 30th July 2011. In the light of the evidence before me, which is not subject to any challenge, I accept that the Defendant’s conditions were caused by what happened to her on 30th July 2011.
4. The Defendant received dental treatment for a fractured tooth some two months after the incident. In the absence of evidence that she got a fractured tooth as a result of the incident on 30th July 2011, I am not satisfied that the fractured tooth had anything to do with what happened at the office of the Firm.

*Damages for Pain, Suffering and Loss of Amenities*

1. In assessing damages for pain, suffering and loss of amenities, I have taken the following cases into account:

(1) *Chung La Ha v Ching Mei Yee* DCPI 2755/2012 (date of judgment: 20th January 2014) – the defendant entered the plaintiff’s office, locked the door and went on to assault the plaintiff on her back, chest and face. the plaintiff suffered abrasions, bruises and soft tissue injury. She developed post-traumatic stress disorder which was expected to last indefinitely. She was also prevented from continuing with her career which she had taken more than 30 years to develop. The plaintiff was awarded $300,000 for PSLA.

(2) *Wong Ka Wai Johnny v Lee Man Wai* DCPI 145/2010 (16th January 2012) – the defendant in that case scolded the plaintiff, a security guard, smashed 2 vases and a glass notice board at the service counter where the plaintiff worked and kicked the plaintiff. As a result, the plaintiff suffered slight injuries on his right leg and adjustment disorder with mixed anxiety and depressed modes and symptoms suggestive of post-traumatic stress disorder. The plaintiff was awarded $100,000 for PSLA.

(3) *Lau Yuk Sim v Wong Yuk Chung* DCPI 107/2004 (date of judgment: 3rd September 2004) – the defendant assaulted the plaintiff by slapping her face, grabbing her by her hair, pulling her into the reception area of the defendant’s office and attacking her on the back of her head with a high heeled shoe for over 10 times. The plaintiff suffered mild physical injuries, adjustment disorder with anxiety and depression. She was awarded $180,000 for PSLA (reduced by 45% to $99,000 after deduction for pre-existing condition and poor drug compliance).

1. Taking all the factors into account, damages for PSLA is assessed at $150,000.

*Loss of Earnings*

1. According to the list of earnings of the Defendant filed in the related employees’ compensation proceedings (DCEC 1395/2011), the Defendant’s average monthly earning at the time of the incident was $27,761. The figure is in line with the MPF payment records and employer’s return filed with the Inland Revenue Department.
2. The Defendant claims that she used to earn $45,000 per month. In support of her allegation, she has produced several commission tables. The tables, which are self-serving documents, do not actually support her claim that she used to earn $45,000 a month. On the evidence, I adopt the figure of $27,761 as the Defendant’s earning at the time of the incident.
3. The Defendant joined another firm of solicitors in September 2011. Her monthly earning was ranging some $20,000 to $25,000 in the 3 years that followed. There was a drop in the Defendant’s earning in 2014-15, which was followed by a sharp rebound in 2015-2016. Neither the drop nor the rebound is accounted for. Doing the best I can, I shall simply adopt the figure of $22,500 (being [($20,000 + $25,000) ½]) as the Defendant’s monthly earning after the incident. The difference between the amount the Defendant used to earn at the time of the incident and the amount she was capable of earning after the incident was $5,261 (being $27,761-$22,500). Given that the Defendant’s conditions are not permanent in nature and will improve with treatments and counselling (in fact, there is no claim for future loss of earnings), I shall assess the Defendant’s loss of earnings on the basis that she would have suffered zero loss after 4 years. Thus, the Defendant’s pre-trial loss of earnings is assessed at $265,154 (being $5,261 x 48 x 1.05).

*Loss of Earning Capacity*

1. To succeed under this head, the Defendant will have to show that there is a real risk that she will lose her present job at some time before the estimated end of her working life as a result of the injury caused to her.

1. In this case, the Defendant lost her job sometime before the commencement of trial. During the cross-examination of the 2nd Plaintiff, Mr. Gidwani put it to her that it was due to her bad-mouthing the Defendant that the Defendant was caused to lose her job. Although the case put to the Defendant was finally withdrawn (it is not pleaded and never mentioned in the Defendant’s witness statement), Mr. Gidwani relies on the fact that the Defendant recently lost her job as evidence of her being disadvantaged in the labour market.
2. Judging from the medical evidence and the fact that the Defendant was able to resume work fairly quickly and to continue to work for some 4 to 5 years, I am not satisfied that the Defendant is disadvantaged in the labour market. Nor do I accept that the fact that she lost her job recently is relevant. The claim under this head is dismissed.

*Medical Expenses*

1. The Defendant’s claims include a claim for $17,600, being the cost of some yoga trainings. As there is no evidence that such trainings were either necessary or reasonable, the claim is disallowed. After deducting the cost of the yoga trainings and cost of dental treatment, I allow $11,600 under this head.

*Tonic Food*

1. There is no evidence as to what kind of tonic food was consumed and why it is said that it was necessary. The claim for tonic food is disallowed.

*Travelling Expenses*

1. The claim for $5,000, which is not particularised, appears to be excessive. I shall allow $1,000 under this head.

*Interest*

1. There will be interest on (a) damages for PSLA at 2% per annum from the date of the writ of summons and (b) special damages at 4% per annum from 30th July 2011.

*Disposal of the Action*

1. I make the following orders:

(1) Both the 2nd Plaintiff’s claim and the Defendant’s counterclaim are dismissed with no order as to costs;

(2) The above costs order being a costs order *nisi* will become absolute in the absence of application for variation within 14 days.

1. I thank counsel for their assistance.

Kam K. L. Cheung

(Deputy District Judge)

Mr. Robert Pang S.C. leading Ms. Fiona Chong, instructed by Messrs. Christine M. Koo & Ip for the 2nd Plaintiff.

Mr. Victor Gidwani leading Mr. Jason Smith, instructed by Messrs. Chow & Partners for the Defendant.