IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 182 OF 2001

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| BETWEEN | Mak Sau-fun | Plaintiff |
|  | And |  |
|  | Kwok Pui Chun Estates Limited  Yee Choi-ha also known as Yee Choi-ha de Joa  Ambition Limited  Chan Miu-ling, the personal representative of Cheng Pou-lum alias Chen Sing-tat deceased  The Faith Company (Hong Kong) Limited  Law Wai-tim  Yeung Choy-him  Sun Wen-ting  Singapore Bong Hiptsun Association Limited  Hadi Tjitrokumo  Cambo Enterprises Limited  Choy Chat-lam  Choy Chat-ming  Choy Chak-ling  Ng Shau-men  Yeung Chi-sai  Chu Shun-yee  Chik Yuet-king  Lam Koon-cheung  Happy Ally (Hong Kong) Trading Company Limited  Wong Ming-wah  Ho Tit-sing  Chan Leung-ping | 1st Defendant  2nd Defendant  3rd Defendant  4th Defendant  5th Defendant  6th Defendant  7th Defendant  8th Defendant  9th Defendant  10th Defendant  11th Defendant  12th Defendant  13th Defendant  14th Defendant  15th Defendant  16th Defendant  17th Defendant  18th Defendant  19th Defendant  20th Defendant  21st Defendant  22nd Defendant  23rd Defendant |

Coram: H H Judge Carlson in Court

Date of Hearing: 28 May 2002

Present: Ms Hung S W, of Messrs Ip Kwan & Co., for Plaintiff

Mr John Ip, of Messrs John Ip & Co., for D1-D10,

D12‑D14, D16-D21

Ms Chan C C, of Messrs So & Co., for D11

D15 in Person, absent

Ms Y Lam, of Messrs Ivan Tang & Co., for D22

D23 in Person, absent

Date of Ruling: 29 May 2002

Present: Ms Hung S W, of Messrs Ip Kwan & Co., for Plaintiff

Mr John Ip, of Messrs John Ip & Co., for D1-D10,

D12-14, D16-D21

Ms Chan C C, of Messrs So & Co., for D11

D15 in Person, absent

Ms Y Lam, of Messrs Ivan Tang & Co., for D22

D23 in person, absent

R U L I N G

1. In this matter, the plaintiff has sued 23 defendants. They are the individual owners of the various units in a commercial building in Sheung Wan (“the building”).

2. On 2 October 1997, the plaintiff was walking past the building, which is situated at 72-76 Wing Lok Street, when a signboard measuring some 3 feet by 12 feet became detached from the outside wall of the building and fell on her. Fortunately, her injuries were not as severe as they might have been. She sustained a fractured collar-bone which healed, having been treated conservatively at Queen Mary Hospital. She complains of residual problems which should benefit from a course of physiotherapy. There is also a claim for loss of earnings and other items of special damage.

3. The action was started in the High Court, and after a number of interlocutory hearings, was transferred to this court by order of Master C.B. Chan on 15 June last year. The claim is based on negligence and breach of statutory duty by all the defendants, who are said to be jointly and severally liable for the plaintiff’s injuries and consequential losses.

4. On 16 October 2000, interlocutory judgment in default of defence was entered against the 15th and 23rd defendants, both of whom have never appeared, nor have they been represented. On 26 April 2001, the 22nd defendant admitted liability and Master Leung entered judgment against it, with damages to be assessed. Thereafter, in June, Master Barbara Chan removed the action to this court when it appeared to be at an advanced state of readiness for trial.

5. In October, Judge Z E Li refused the plaintiff interrogatories. More recently, on 9 May, I refused the plaintiff’s application to call psychiatric evidence, and the following day I awarded her interim damages of $30,000 against the 22nd defendant, having taken into account the sum of $130,000 that she had already received from her employer as employee’s compensation, for which the 22nd defendant had reimbursed her employer under section 21(1)(b) of the Employees Compensation Ordinance.

6. From that brief outline, I can now turn to the matters that I am required to rule on. These relate to a summons dated 14 May taken out by Mr Ip, who appears for D1-D10, D12-D14, and D16 to D21. In essence, what he seeks is a direction that the court should now proceed to its assessment of the plaintiff’s damages against the 15th, 22nd and 23rd defendants, against which the defendant already has judgment, and that the action against the remaining defendants be stayed pending the outcome of this assessment.

7. From the court’s point of view, such a course has its attractions in the sense that it potentially brings to an end a 23 defendant action in which 20 of the defendants continue to deny liability. Mr Ip submits that no purpose can properly be served by the plaintiff wishing to go to trial on liability against these 20 when she already has her judgment against three; and that certainly in the case of the 22nd defendant there is every prospect of having the damages awarded in the assessment satisfied. It has already reimbursed the plaintiff’s employer $130,000 which he had paid her as employee’s compensation, and also paid out the interim award of damages. It is represented and is dealing with the litigation in an attentive and responsible manner.

8. Where the plaintiff is only entitled to one award of damages, she will thereby have obtained all that she is entitled to without the cost-intensive exercise of proceeding to trial against all 23 defendants. Mr Ip also points out that if she is allowed to proceed in this way by going against all 23, the court would also need to hear the contribution proceedings brought by his clients and the 11th defendant against the 22nd defendant, which would be heard at the same time or immediately following the main trial. This too would inevitably add to costs.

9. He also relies on the fact that the 22nd defendant has not served a contribution notice against the other defendants. It accepts, and indeed avers, that the signboard was attached to the wall outside its unit, and that it is therefore solely responsible as between itself and the other defendants for the plaintiff’s damage. This course is supported by the 11th defendant and the 22nd defendant.

10. Looking beyond that, Mr Ip then says that once, as he anticipates, the award is satisfied by the 22nd defendant, the plaintiff can discontinue the action against the remaining defendants who are denying liability, leaving over the question of costs between those defendants and the plaintiff to be argued about. The issue, presumably, will be whether the plaintiff should pay the remaining defendants’ costs and recover those costs from the 22nd defendant or some other order, having regard to the overall justice of the matter.

11. There is no question that the issue on costs will come to dominate the outcome of the action where, relatively speaking, the plaintiff’s damages, even on her most optimistic basis, are modest, and the case itself has already a substantial and cost-productive interlocutory history before trial.

12. Miss Kwan for the plaintiff opposes such a course. She starts from the general proposition that her client has brought this action against all 23, and she should be entitled to proceed against all of them at the same time and hopefully obtain judgment and orders for costs against all. She has shown me early pre-writ correspondence when she was trying to establish whether she might be able to sue only one defendant in a representative capacity, but on the facts of this matter this did not prove possible. Consequently, the action was brought in this form.

13. She also draws to my attention that I should not be overly impressed by what Mr Ip says about 23 defendants. In fact, two have played no part; one, the 22nd, has admitted liability; and the remainder are represented by two firms of solicitors where it would appear that the issues are common to all the defendants, and so she says that a conventional trial against these 20 defendants need not be as daunting a prospect as Mr Ip is suggesting.

14. More substantively, she fears that if forced to proceed in the way suggested by Mr Ip, there is a real risk that the 22nd defendant - and indeed the other two defendants against whom judgment has been entered - may not be good for the damages. Mr Ip has suggested that execution might be levied against the properties. Miss Kwan has some evidence to suggest that the value of these properties may not be sufficient to satisfy the judgment, and that the properties owned by the 15th and the 23rd defendants have orders registered against them from the Building Department which make them unsaleable until the works required under the orders have been carried out.

15. Miss Kwan fears that if she cannot get satisfaction of her judgment, she will have to go to the further expense and delay of having to revive the action against the others in the hope of succeeding and making up the shortfall in damages from them. She therefore faces the real risk of two trials, one a fruitless or, at best, partly effective assessment of damages against the three defendants who have already admitted liability, and another on liability and quantum.

16. Added to this factor, she is not at all anxious to face a situation where, having got everything that she is entitled to in terms of damages on the assessment, she would be in the position of having to withdraw against 20 defendants and face the argument that she should now pay their costs and try to obtain those costs from the 15th, 22nd and 23rd defendants. She much prefers being in the position of getting home on liability against the remaining 20 and consequently being on much firmer ground on the question of costs.

17. Those are the arguments that matter. How should I rule? When I heard Mr Ip’s attractively presented submission in support of his summons, it seemed to me that there was probably no answer to it, because it would have the likely result of resolving the whole action with, at most, a one-day assessment. The alternative is likely to be a three to four-day trial. But as Miss Kwan addressed me, my mind began to waver, and now that I have had the opportunity of reflecting further on the alternatives and the possible consequences of each, I am satisfied that Miss Kwan is right.

18. This action must be left to proceed in a conventional way. Ultimately, this has been a balancing exercise. Whilst a court will always seek to manage cases so as to bring them on for trial expeditiously and as economically as possible, it should not do so in such a way that would do a party an injustice.

19. Here, the plaintiff has brought these proceedings perfectly properly. Her case is a highly meritorious one. Although the defendant most closely connected to this signboard has submitted to judgment, her case against the other defendants is also, *prima facie*, compelling as between her and those remaining defendants. If she proceeds in the way that Mr Ip suggests, she may be left with a hollow judgment and obliged to come again against the remainder. If she gets what is ordered against the 22nd defendant, she then runs the risk on costs against the others because she will have to discontinue against defendants who, in the event of a trial, would have been at real risk of also going down on liability.

20. An order of this type would risk an injustice to the plaintiff which she should not have to face. I am also mindful that a conventional trial which, at the outside, would last four days, is not so significantly longer than a one-day assessment of damages that it ought to make a difference in the balancing exercise that I have to perform.

21. Lastly, I am bound to say that where Mr Ip could have made this application 11 months ago when the 22nd defendant admitted liability, the delay is also something that I am prepared to have regard to. It sounds against him in the discretion.

22. For all these matters, I refuse Mr Ip’s application, and I will now give directions so as to have the action set down for trial.

(Discussion re court diary)

23. (1) Adjourned for trial for four days, on a date to be fixed in consultation with counsel’s diaries.

(2) That the trial judge to decide whether to hear the assessment of damages before the issue of liability.

(3) And that he also decide as to when to hear the third party proceedings.

24. Costs of these directions be costs in the cause.

Ian Carlson

District Court Judge