**DCPI1697/2008**

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1697 of 2008

**\_\_\_\_\_\_**

Between

LEE TZE TAT STANLEY Plaintiff

and

LEUNG KA CHUN 1st Defendant

CHAN CHUN YU 2nd Defendant

\_\_\_\_\_\_

Coram: Deputy District Judge Frederick HF Chan in Chambers (Open to public)

Date of hearing: 2nd September 2008

Date of Ruling: 2nd September 2008

**RULING**

1. This is my ruling on a summons to join as an additional defendant in a personal injury action. The background may be sketched as follows. On 4th August 2008, the Plaintiff (Mr. Stanley Chan) issued a Writ of Summons against the 1st Defendant (Leung Ka Chun) and the 2nd Defendant (Chan Chun Yu) in DCPI1697/2008 to claim for damages for personal injuries.
2. The Writ of Summons was issued together with a general endorsement which reads:

“The Plaintiff’s claim for damages, together with interest thereon and costs, personal injury, loss and damages sustained in a traffic accident, caused by the negligence and/or failure to take reasonable care to the traffic condition by the 1st and 2nd Defendants at eastbound carriageway of Argyle Street, outside Kowloon Hospital, near lamp-post no. E6270 on 15th July 2007”.

1. The Plaintiff has not filed and served a statement of claim. I, therefore, do not have the benefits of reading the detailed pleadings on liability and quantum of damages.
2. On 15th August 2008, the Motor Insurers’ Bureau of Hong Kong (“***MIB***”) issued an *inter parte* summons under O. 15 r. 6(2)(b) RDC for leave to be joined in DCPI1697/2008 as the 3rd Defendant (“***the Joinder Summons***”).
3. The Joinder Summons was supported by the affirmation evidence filed by MIB.
4. The first affidavit was by Mr. Michael Turnbull (a solicitor from Messrs. Deacons, the solicitors of MIB) filed on 15th August 2008. The second one was made by Mr. Eric Lee (a clerk with Messrs. Deacons) filed on 20th August 2008.
5. The material parts of O. 15 r. 6(2) RDC read:

“Subject to this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and … on application –

…

(b) order any of the following persons to be added as a party, namely –

…

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter”.

1. From the affirmation evidence filed by MIB, it is clear that:
2. On 18th February 2008, the Plaintiff’s solicitors (Messrs. K. Y. Woo) informed the MIB, among others, that the 1st and 2nd Defendants had been convicted of driving without third party insurance at the time of the accident;
3. The Plaintiff would seek assistance from the MIB once the Plaintiff obtains a judgment against the 1st and 2nd Defendants;
4. As a result of that letter from Messrs. K. Y. Woo, the MIB was galvanized into action and had tried to contact the 1st and 2nd Defendants but to no avail;
5. Letters were issued by Messrs. Deacons to the 1st and 2nd Defendants’ respective residential addresses but no reply was received;
6. Messrs. Deacons served the Joinder Summons on the 1st and 2nd Defendants respectively by ordinary posts.
7. The Plaintiff’s solicitors raise no objection to the joinder summons and by a letter dated 19th August 2008 asked to be excused from the hearing of the Joinder Summons. The 1st and 2nd Defendants did not turn up at the hearing of the Joinder Summons. I am satisfied that the Joinder Summons was properly served on the 1st and 2nd Defendants respectively.

**MIB’s stance**

1. Under the Joinder Summons, MIB submits that the MIB has a direct interest in DCPI1697/2008 in that once the Plaintiff obtains a judgment against the 1st and 2nd Defendants, by virtue of section 2 of the First Fund Agreement entered between the MIB and the HKSAR Government, the MIB will likely be required in law to meet the judgment sum. In other words, any judgment by the Plaintiff against the 1st and 2nd Defendants would be translated into a legal obligation on the part of the MIB to pay the judgment sums to the Plaintiff.
2. The MIB have not exhibited the First Fund Agreement yet I am satisfied that for the purpose of determining the Joinder Summons, its tenor and legal effect has been succinctly summarized by Mr. Turnbull in his affidavit.
3. It is also submitted that the joinder of the MIB will ensure all relevant issues (including those on liability, quantum of damages and contributory negligence) and matters be determined by the Court in DCPI1697/2008. I agree with these submissions made by the MIB.

**Discussion**

1. At the hearing of the Joinder Summons on 2nd September 2008, I drew the attention of Ms. Jocelyn Chow of Messrs. Deacons to the English Court of Appeal’s decision of **Gurtner v. Circuit & Another** [1968] 2 QB 587 which seems to fortify the MIB’s submissions. She confirmed this was indeed the authority which formed the basis of the Joinder Summons.
2. There, a Mr. Frederick Gurtner was injured in a running-down case. The defendant, a Mr. John Christopher Circuit, was driving his motor-vehicle when he knocked down the plaintiff. A police officer (who arrived on the scene) obtained the defendant’s name, address and details contained in the defendant’s certificate of insurance. However, the name of the insurance company did not appear in the certificate of insurance.
3. By the time that the plaintiff obtained legal aid and engaged solicitors to sue the defendant for damages for personal injuries, the defendant had left England and emigrated to Canada. The plaintiff’s solicitors wrote to the English Motor Insurers’ Bureau and asked for their assistance to trace the defendant’s insurers. The Motor Insurers’ Bureau tried to locate the defendant and his insurer but all the enquiries drew a blank.
4. Subsequently, the Motor Insurers’ Bureau applied by a summons to be added as an additional defendant in the personal injury action of the plaintiff against the defendant pursuant to the English RSC Order 15 rule 6(2)(b). At first instance, Master Ritchie granted the application on their undertaking to satisfy any damages awarded to the plaintiff in respect of the defendant’s negligence but without prejudice to their being able to raise any defence on the question of their liability to satisfy any judgment sum.
5. The plaintiff’s appeal against Master Ritchie’s order was allowed by Chapman J. The Motor Insurers’ Bureau took the case to the English Court of Appeal.
6. The English Court of Appeal (Lord Denning, M.R., Diplock and Salmon LJJ.) restated Master Ritchie’s order and set aside Chapman J.’s judgment.
7. In a reserved judgment, Lord Denning (the Master of Rolls), reviewed the case law and concluded thus at pp. 595-596:

“It seems to me that when two parties are in dispute in an action at law, and the determination of that dispute will directly affect a third person in his legal rights or in his pocket, in that he will be bound to foot the bill, then the court in its discretion may allow him to be joined as a party on such terms as it thinks fit. By so doing, the court achieves the object of the rule. It enables all matter in dispute to “be effectually and completely determined and adjudicated upon” between all those directly concerned in the outcome ...

It is thus apparent that the Motor Insurers’ Bureau are vitally concerned in the outcome of the action. They are directly affected, not only in their legal rights, but also in their pocket. They ought to be allowed to come in as defendants. It would be most unjust if they were bound to stand idly by watching the plaintiff get judgment against the defendant without saying a word when they are the people who have to foot the bill …

In my opinion we should make an order allowing the Motor Insurers’ Bureau to be added as defendants. They are prepared to undertake to pay any damages that may be awarded. This undertaking should be embodied in the order. On being added, they should be entitled to defend the action and to exercise all the rights of the defendant Circuit therein”.

1. Diplock LJ. (as he then was), however, rested his reasoning on the specific contract dated 17th June 1946 entered between the Motor Insurers’ Bureau and the Minister of Transport whereby the latter assumed liability to satisfy judgments against defendants covered by a valid policy of insurance and held at pp. 599-600:

“Cleary the bureau have a lively interest, at any rate commercial, in seeing that all proper defences in that action as respects liability are raised and that all relevant material which tends to reduce the quantum of damages recoverable is adduced to the court …

The bureau is plainly not “a person who ought to have been joined as a party”. The action is perfectly well constituted without it. The question is whether, within the meaning of the rule, the bureau is “a person … whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon”. …

I think, therefore, that the bureau is entitled to be added as a party to the present action and to this extent, at any rate, this appeal should be allowed ...

I desire to emphasize that my judgment in the present case is based upon the special position of the bureau under its contract with the Minister”.

1. Lord Justice Salmon agreed with both judgments.

**Order**

1. By parity of the same reasoning, I am satisfied that in the instant case the discretion of the Court under O. 15 r. 6(2)(b)(ii) RDC should be applied in a similar manner to allow the MIB to be joined as an additional defendant to DCPI1697/2008 and I therefore make an order in terms of the Joinder Summons, namely:
2. The MIB be added as the 3rd Defendant in this action;
3. The Writ of Summons herein and all subsequent pleadings do stand and be deemed as amended to include the MIB as the 3rd Defendant accordingly;
4. The MIB do have leave to defend this action including the issue of liability and quantum on its own behalf and shall have the same right to defend as if the MIB were the 1st and 2nd Defendants and shall be entitled to exercise all the same rights as those available to the 1st and 2nd Defendants;
5. The MIB as the 3rd Defendant do have leave to file an Acknowledgment of Service of the Writ of Summons within 28 days from the date of the order to be made herein;
6. The costs of this application be in the cause.

Frederick HF Chan

Deputy District Judge

Ms. Jocelyn Chow of Messrs. Deacons for the Motor Insurers’ Bureau of Hong Kong

Messrs. K. Y. Woo (whose attendance was excused)

1st and 2nd Defendants were absent.