#### DCPI 2647/2007

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 2647 OF 2007

BETWEEN

TAM WAI CHUN Plaintiff

and

CHOI SUI KWONG Defendant

##### Before: Deputy District Judge Frederick Chan in Court

Date of Hearing: 2 October 2008

Date of Ruling: 2 October 2008

## R U L I N G

1. This is my ruling on the plaintiff’s application for recusal. This morning, I provided a number of cases for counsel’s attention, including, No. 1, DCPI1127/2006. The plaintiff in that case was Master Lai Ho-chuen. It was decided on 30 April 2008 by his Honour Judge C M Leung.
2. The second case which I provided to the parties was *Moore v Poyner* [1975] RTR 127. The third case which I provided to the parties was *Stupple v Royal Insurance Limited* [1971] QB 50 decided by the English Court of Appeal. And the fourth case I provided to both parties was the DCPI32/2003 decided on 15 December 2003 by his Honour Judge Louis Chan. The fifth case I provided to the parties was this. The DCPI32/2003 was subsequently set aside by the Court of Appeal comprising Cheung, Yuen JJA. and Andrew Chung JJ by a majority and Peter Cheung JA dissenting, and that case had the name CACV59/2004 and was handed down on 10 December 2004.
3. As I said this morning, Mr Lam applied to me that by providing those cases for parties’ consideration, there is a risk of an apparent bias on my part, namely, I may at the end of the trial make findings of fact to tally with the facts of those cases. Mr Lam also provided a written opening to me just now for my consideration. He said he did not have time to do legal research and therefore he had no cases to cite to me. He knew under the practice directions that he as counsel for the plaintiff was duty-bound to provide a list of authorities for the court to consider before the trial starts. This he did not do. However, he had no qualms about the general principles laid down in those cases I provided to the parties, namely, the test laid down in the English Court of Appeal case of *Moore v Poyner* where Buckley LJ. stated the apparent risk test in a running-down action.
4. Mr Lam argued that when applying that test, additional factors in a particular case should be considered. In opposing the application to recuse the court, Mr Gidwani for the defendant pointed out that this morning he had provided a list of authorities to the court and Mr Lam to consider. The list of cases provided by the defendant contained all Hong Kong cases and some made express references to the English Court of Appeal case of *Moore v Poyner* and all the Hong Kong cases were decided on different factual circumstances.
5. Mr Gidwani submitted that the case law submitted by the court to the parties and the cases he cited in his list of authorities were all aimed to show the applicable general principles, especially the application of the *Moore v Poyner* test in different factual circumstances. He said there cannot be any risk of apparent bias.
6. In reply, Mr Lam cannot cite any case law to vouchsafe a case scenario where the court drew parties’ attention to some relevant cases and on that ground alone together with the submission that the court, having read those cases, might make findings of fact to follow those cases. And in that kind of scenario, the court had recused itself.
7. I find Mr Lam’s submissions unsound and reject them firmly. In my view, the court is entitled to direct the parties to focus directly on the relevant legal issues and the mere fact that the court drew parties’ attention to relevant authorities cannot be a valid ground of recusal on the ground of apparent bias. It is trite that an allegation of apparent bias on the part of the court should only be made when there are cogent and compelling grounds. In fact, I have not made any ruling of findings of fact. I did not have the benefit of reading Mr Lam’s written opening when he stood up to make the serious allegation of apparent bias on my part.
8. In all, I hold that a reasonable bystander who is aware of the circumstances of the present case, namely, the court of own volition referred the parties to a number of relevant cases would not form the objective view that there are risks of apparent bias. A reasonable bystander would reject that notion of apparent bias.
9. As I pointed out to Mr Lam, I have not heard evidence and I harbour no prejudice against any of the parties before me. In all, this application is dismissed. This application is wholly without any foundation, legal and factual.

# (Frederick Chan)

# Deputy District Judge

Mr Simon Lam, instructed by Andrew Chan & Co., for the Plaintiff

Mr Victor Gidwani, instructed by Messrs Deacons, for the Defendant