

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE

ACTION NO 2337 OF 2016

BETWEEN

KOO MING KOWN

Plaintiff

and

REV. MR. MOK KONG TING

1st Defendant

(PRESIDENT OF THE BAPTIST CONVENTION
OF HONG KONG)

REV. MR. LAM SAU KWONG

2nd Defendant
(Dismissed)

CHAN CHI MONG, HOPKINS

3rd Defendant

THE BAPTIST CONVENTION OF HONG KONG

4th Defendant

Before: Deputy High Court Judge Le Pichon in Chambers

Date of Hearing: 26 May 2020

Date of Decision: 3 June 2020

DECISION

1. This is an appeal by Koo Ming Kown (“the plaintiff”) from the decision of Master Vincent Lung dated 29 April 2019 (1) allowing the application of Chan Chi Mong Hopkins (“D3”) to strike out the plaintiff’s re-amended statement of claim (“RASOC”); (2) dismissing the plaintiff’s

summons for further and better particulars of D3's defence; and
(3) dismissing the plaintiff's summons for discovery.

I. BACKGROUND

2. The relevant background appears in the Decision of
DHCJ To ("the judge") dated 4 May 2018 ("the 2018 Decision") at §§6-8
(set out below) which I gratefully adopt:

"6. The relevant background of this case can be gleaned from
the following paragraph of the pleadings filed by [The Baptist
Convention of Hong Kong] BCHK in HCA 946/2003 (on
appeal to the Court of Appeal in CACV 2/2007) concerning the
trademark '培正' [2]:

'For over a century, not only has the 1st Plaintiff [Pei
Zheng Middle School (the Guangzhou predecessor the
Pui Ching Schools in Hong Kong)] been in the service as
a provider of quality education to numerous students, but
the 1st Plaintiff has also, through the members of its
school board and with the assistance of its alumni,
established and/or advised, assisted and supervised in the
establishment and/or administration of other primary and
secondary schools under and by reference to the name
"培正" and the red and blue insignia of "培正"
throughout southern China, including Hong Kong and
Macau.'

7. At the heart of this case is the plaintiff's fight for the
good name and reputation of the Schools by ensuring that the
Primary School is not subject to the control of [D3], whose
integrity the plaintiff considered highly questionable. On the
plaintiff's case, [D3], who was previously appointed by BCHK
as the supervisor of both the Primary School and the Middle
School and who still continues to serve as the supervisor of the
Primary School, is not a 'fit and proper person' for that
appointment in that:

- (1) [D3] represented to the Hong Kong Christian Council that
he has the qualification of 'Ph.D., M.B.A., B.Sc (Eng)';
- (2) [D3] has claimed on a number of occasions that his Ph.D.
degree was obtained in 2007 from The European
University of Ireland;
- (3) on 25 February 2000, it was reported that The European
University of Ireland was operating without official
sanction;

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- (4) on 14 November 2005, the scandal of bogus degrees awarded by The European University of Ireland was exposed;
- (5) on 24 September 2011, it was reported that The Higher Education Authority had expressed concern about the unlicensed operation of The European University of Ireland;
- (6) the plaintiff has taken steps to confirm that the Ph. D. degree purportedly granted by The European University of Ireland is not a valid degree granted by an accredited degree-awarding authority; and
- (7) it was further confirmed that The European University of Ireland was a limited company registered in Ireland which ceased to exist since 2010.

8. The plaintiff's complaint to BCHK against [D3]'s integrity, his misrepresentation of his doctorate qualification, and his fitness as supervisor of the Primary School was met with a public notice dated 18 December 2015 issued by BCHK defending [D3]. BCHK purported to justify [D3]'s continuation in the office of supervisor by saying that 'the educational qualification of the nominee is not a requirement for the appointment'. The plaintiff considered BCHK's approach irresponsible and unsatisfactory. He thought BCHK should have investigated [D3] and his academic qualification and provided an account of the serious matter. But despite his repeated complaints from December 2015 to August 2016 that it was wrong for BCHK to defend [D3] and to have allowed him to stay in his position as supervisor without resolving the issue of his integrity, [D1] and BCHK failed and/or refused to carry out any investigation or to take any appropriate action. This led the plaintiff to commence the present action against [D1] and [D2] and further to seek to amend the amended writ of summons and amended statement of claim to join D3 and BCHK as necessary parties."

3. The hearing before the judge was an appeal by D1 and D2 from the decision of Master Ho dated 17 July 2017 allowing D3 to be joined as a party.

4. On 4 May 2018, the judge dismissed D1 and D2's application for striking out, granted the plaintiff leave to join D3 and BCHK ("D4") as parties, and granted the plaintiff leave to amend the

A statement of claim. The RASOC was filed on 1 September 2017 and
B served on D3.

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D 5. On 30 October 2018, D3 issued a strikeout summons which
E came before Master Vincent Lung whose decision is the subject matter of
F the present appeal.

G *II. CHRONOLOGY*

H 6. D3 held the positions of supervisor of the Primary School
I and of the Middle School (collectively “the Schools”) as from
J 1 September 2010 and thereafter was renewed annually.

K 7. The plaintiff commenced this action on 9 September 2016
L against the Rev Mr Mok Kong Ting (President of BCHK) (“D1”) and the
M Rev Mr Lam Sau Kwong (“D2”) when, after making numerous
N complaints from late 2015 to BCHK that D3 was not a fit and proper
O person to be supervisor of the schools, D1 and D4 failed to take any
P appropriate remedial action.

Q 8. D3 ceased to be supervisor of the Middle School on 30 April
R 2017 but remained as supervisor of the Primary School until 31 August
S 2018.

T 9. As earlier noted, Master Ho allowed the plaintiff’s
U application to join D3 as a party on 17 July 2017.

V 10. The RASOC dated 1 September 2017 was served on D3.

11. D3's defence was eventually filed on 15 August 2018, several months after the date of the 2018 Decision.

12. On 30 October 2018, D3 took out the present strikeout summons.

13. On 29 April 2019, Master Lung allowed the application and struck out the RASOC against D3. He also dismissed the plaintiff's summonses for further and better particulars and for discovery.

III. THIS APPEAL

14. The plaintiff's claim is for a declaration that D3 is not a fit and proper person to serve or continue to serve as the supervisor of the Primary School. The further and/or alternative declaration (that the appointment of D3 as supervisor of the Primary School be revoked with immediate effect) is no longer sought.

15. D3's summons was issued pursuant to RHC O 18, r 19 for an order that the RASOC is against D3 be struck out on the ground that:

- (a) it discloses no reasonable cause of action; or
- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the court.

(A) D3's striking out application

(1) Abuse of process

16. Mr Kelvin Leung, counsel for the plaintiff submitted that D3's strikeout application is an abuse of process and D3 should not be allowed to re-litigate the same issues which have already been decided by the judge. The thrust of the plaintiff's submission was that D3 had been served with the order of Master Ho. He did not apply to stay Master Ho's order and took no action to challenge that joinder.

17. In November 2017 when the judge heard the appeal by the D1 and D2 from Master Ho's order, D3 was already a party to the action as he had already been served. The plaintiff submitted that in those circumstances, the question whether the plaintiff has a case against D3 as well as whether the plaintiff is entitled to declaratory relief should not be re-litigated.

18. But D3 was not a party to the summons before the judge (which was an appeal brought by D1 and D2): that summons was not served on him. While he did not seek to intervene, and thus did not appear before the judge, he was not asked to participate at the appeal hearing either. In those circumstances, I do not agree that he *must* be bound by the Decision.

19. While professing not to be relying on issue estoppel or *res judicata*, Mr Leung nonetheless sought to draw analogies with those doctrines. That approach might have been prompted by the realisation

A that they cannot be shown to apply in the circumstances of this case as
B will be explained below.

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D 20. A decision in an interlocutory matter does not give rise to
any *res judicata*. As noted in HKCP 2020 at 18/19/10:

E “The basic rule assumes that the court has made a final
F determination on an issue in litigation. But where there is
G simply an exercise of discretion in an interlocutory proceeding,
there may be no final determination of an issue giving rise to a
res judicata: see *Re Mullen v Conoco Ltd* [1998] QB 382, at
390G-391B, 396F-G”

H 21. Issue estoppel is founded on an abuse of process. It is
I essential that the court can pinpoint an abuse that exists by virtue of the
J attempt to raise in subsequent proceedings claims or issues which could
K and should have been raised in earlier proceedings: *per* Ma CJ in *Ko
Ho Yu v Chiu Pik Yuk* (2012) 15 HKCFAR 72 at §83.

L 22. The onus is on the party alleging abuse to establish the
M subsequent litigation is an abuse: *Yifung Properties Ltd v James Nicholas
Barrie Smith* [2019] 1 HKLRD 36, at §18.

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O 23. In *Chu Hung Ching v Chan Kam Ming & others* [2001] 1
P HKC 396, the Court of Appeal referred with approval to the dicta in
Q *Pocklington Foods Inc v Alberta Provincial Treasurer* (1995) 123
R DLR (4th) 141 that the *raison d’etre* of the principle of *res judicata* or
issue estoppel lies in what is just and reasonable.

S 24. As Rogers VP explained in *Pei Zheng Middle School &
T another v China Pui Ching Educational Foundation Ltd & others*, unrep.,
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CACV 2/2007, 6 August 2007 after referring to *Chu Hung Ching* (at §12):

“if an issue has been distinctly raised and decided in one proceeding *where both parties were represented*, it would be unjust and unreasonable to permit the same issue to be litigated afresh between the same parties or persons claiming under them. There would be exceptions for example if the matter had not been decided on merits or there was a change of circumstances or new evidence.” (*Emphasis added*)

25. It will be noted that in the present case, D3 was not represented at the hearing before the judge. Moreover, there has been a material change of circumstances since the date of the 2018 Decision.

26. §5(2) of D3’s defence dated 15 August 2018 pleaded that his term of office “will expire on 31 August 2018”. §9 of D3’s affidavit dated 9 November 2018 stated that he “ceased” to be supervisor “since 1st September 2018”.

27. It transpires from §13 of D4’s defence dated 16 August 2018 that

- (i) on 11 May 2018, the management committee conducted an election of the supervisor for the 2018/2019 year and elected D3 to continue to become the supervisor for 2018/2019;
- (ii) [D4] caused the management committee to conduct a re-election as it would not approve D3’s election;
- (iii) a re-election was held on 15 June 2018 “and the final result was that [D3] would cease to be supervisor of the Primary School starting from 1 September 2018”.

28. The actual outcome of the re-election result was not revealed although one would expect that a new supervisor would have been elected for 2018/2019¹.

29. D4 also caused a public announcement to be published on 27 February 2019 stating, *inter alia*, that “[D4] is of the view that [D3] is not a fit and proper person to serve as the Supervisor of the Primary School”.

30. The matters referred to in §§26-27 and 29 above had not occurred when the matter was considered by the judge.

31. Leaving aside the fact that D3 was not represented at the hearing before the judge, the developments since the 2018 Decision are significant and material as they are precisely the situations envisaged in *Pocklington* and fall squarely within the exceptions mentioned by Rogers VP in the *Pei Zheng* case.

32. So, quite apart from the fact that the 2018 Decision is a decision in an interlocutory matter which does not give rise to any *res judicata*, the material change in circumstances and new evidence justify reconsideration by the Court for what is involved is not re-litigation of an identical issue of law or fact.

(2) *Declaratory relief requirements*

33. At §20 of the 2018 Decision, the judge held that:

¹ At the hearing, the Court was informed that Dr Wong is the current supervisor of the Primary School.

“... an applicant seeking to invoke the court’s jurisdiction to grant declaratory relief has to show:

- (1) that he has a real interest in the subject matter of the declaration (the real issue requirement);
- (2) that he has a real interest in obtaining a declaration against the adverse party (the real interest requirement); and
- (3) that the adverse party is a proper contradictor (the proper contradictor requirement).”

34. The judge concluded in favour of the plaintiff. As I understand it, his summary of the legal requirements for declaratory relief is common ground. The dispute concerns the question whether on the relevant facts, those requirements are satisfied.

35. The material issue raised in the RASOC is whether D3 should be removed from office as supervisor of the Primary School for not being a “fit and proper person”: D3 held that office when he was joined as a party. He remained in office until 31 August 2018.

36. The plaintiff relied the 2018 Decision and the judge’s reasoning and conclusion on each of the 3 requirements.

37. Mr Paul Lam SC, leading counsel for D3, submitted that

- (a) the plaintiff cannot establish that he has a “real interest” in the subject matter of the declaration;
- (b) the only persons who enjoy legal rights/powers regarding the appointment of supervisor are (i) the management committee (which has the right or power to make a recommendation and to request the PSE to withdraw his approval); (ii) the PSE (who has the legal right to approve/refuse a recommendation or to withdraw an approval); and

(c) the relationship between D4 and the management committee is governed by D4's articles of association and the general principles of company law and its decisions are an internal matter and that do not concern the plaintiff.

38. It was further submitted that even a member of D4 (which the plaintiff is not), or its Council has no right to challenge a decision made by the management committee.

39. The correctness of the propositions set out in §37-38 requires a close consideration of Part IIIA of the Education Ordinance, Cap 279 ("the Ordinance") and an analysis of how (if at all) its provisions affect the duties and obligations of the management committee of the Primary School in relation to the appointment of supervisor.

40. The Primary School is a "school without IMC" for the purposes of the Ordinance and to which the provisions in Part IIIA of the Ordinance apply.

41. Every school to which Part IIIA applies is managed by its management committee (defined as meaning the managers of the school) responsible, *inter alia*, for ensuring that the Ordinance is complied with: §§32 and 33.

42. "Manager" in relation to a school means a person who is registered as a manager under §29. One of the grounds for refusing registration is that the person is not "a fit and proper person" to be a manager: §30(1)(b). A person who has been registered as manager may have his registration cancelled by the Permanent Secretary for Education

A (“PSE”) under §31 on, *inter alia*, any ground specified in §30 which
B applies to the manager, whether or not such ground existed at the time
C when he was registered as a manager of the school: see §31(1)(b).

D 43. The tenure of office of a supervisor continues until the
E occurrence of one of the 4 events set out in §36, namely, the supervisor
F ceasing to be a manager, resigns, the PSE approval is withdrawn under
G §37 or another manager of the school is approved under §38(2).

H 44. §38(1) mandates the management committee to recommend
I for approval by the PSE another manager of the school to be the
J supervisor within one month of the occurrence of any of the 5 events
K therein set out. Specifically, in sub-paragraph (e), the event is where the
L supervisor is no longer acceptable as such to the majority of the
M management committee. §38(2) provides that the PSE “shall approve”
N the manager recommended under subsection (1), subject only to his
O overriding discretion under §35(1) to refuse if he is not satisfied that the
P person recommended is a fit and proper person to be supervisor.

Q 45. The structure and scheme of the Ordinance in relation to a
R school without IMC is clear: it is the statutory duty of the management
S committee within one month of there being no supervisor under the
T subsections of §38(1) to recommend another manager for approval. It is
U *not* the case, as D3 submitted, that the management committee is *not*
V obliged to make a recommendation.

46. The consistent theme running through the Ordinance is that
those in charge of managing a school without IMC must be “fit and
proper” persons. This attribute is required of a “manager”, namely a

A person registered under §27 and extends to a “supervisor” since no approval can be given under §35 unless that person is a manager of the school. Moreover, since the management committee is made up of managers, the “fit and proper” attribute attaches to each member of the management committee.

47. It is apparent from the analysis above that, contrary to the D3’s submissions, the management committee and each of its members has a duty to ensure compliance with the Ordinance. That necessarily entails ensuring that the supervisor is a fit and proper person.

48. In my view, the Ordinance is so structured that the attribute is implicit in any recommendation for supervisor put forward to the PSE for approval. Since the duty is a continuing duty, it is incumbent on the management committee when it transpires that the officeholder is not a fit and proper person to take the necessary steps envisaged in §38(1)(e).

49. The evidence is that the management committee of the Primary School appoints its supervisor on an annual contract, coinciding with the academic year. The approval of the PSE of the appointment of D3 as supervisor of the Primary School took place on or before the academic year commencing 2010 and has continued without any interruption until he ceased to be supervisor of the Primary School 1 September 2018. No other approval is before the court.

50. Given the above analysis, the Achilles heel of D3’s submissions is the premise that there are no constraints on the management committee and each of its members may act as they wish

A provided the acts are not prohibited by the articles and the general
B principles of company law.

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D 51. D3's approach overlooks the statutory responsibilities of the
E management committee to ensure, *inter alia*, that the school is managed
F satisfactorily and that the Ordinance is complied with: see §33 of the
G Ordinance.

H 52. The judge opined² (at §23 of the 2018 Decision) that the
I resolution of the issue whether D3 should be removed from the office as
J supervisor of the Primary School for not being a "fit and proper person"
K would have the effect of securing compliance with the statutory
L requirements as well as protecting and maintaining the good name and
M reputation of the Schools. He concluded that it was a real and not a
N theoretical question.

O 53. In his written submissions, D3 referred to *Fred Jackson v*
P *Attorney General* [1980] HKLR 323 in which the Court of Appeal held
Q that the power to make declarations is confined to making declarations on
R matters that are justiciable in the courts. That decision does not take
S matters further because, in substance, the real issue and real interest
T requirements reflect the same principle although differently expressed.
U Mr Lam did not demur from that statement.

V 54. The conclusion reached by the judge is equally applicable to
the RASOC because when D3 became a party to the action, he was in

² This was necessarily based on the evidence before the judge. At the date of the hearing (November 2017), D3 was the supervisor of the Primary School.

office as supervisor of the Primary School. In my view, the question whether an incumbent is a fit and proper person to hold the office of supervisor of the Primary School is a justiciable issue by the court.

(3) Order 18, rule 19

55. HKCP 2020 at 18/19/4 addresses how the discretion of powers under rule 19 is to be exercised:

“[i]t is only in plain and obvious cases that the court should exercise its summary powers to strike out ... The claim must be obviously unsustainable, the pleadings unarguably bad and it must be impossible, not just improbable, for the claim to succeed before the court will strike it out.

If the court does not think the matter to be clear beyond doubt or it fails to be satisfied that there is no reasonable cause of action or that the proceedings are frivolous or vexatious, then, there should be no striking out. One must be careful not to drive the plaintiff from the judgment seat nor should the court decide difficult points of law ... Where the legal viability of a course of action is sensitive to the facts, an order to strike out should not be made. The mere fact that the case is weak and not likely to succeed is no ground for striking it out.”

(a) Sub-rule (1)(a)

56. In so far as the RASOC is concerned, D3 cannot possibly succeed under head (a) in light of §54 above.

(b) Subsequent events: effect on sub-rule (1)(a)

57. I turn to consider whether the fact that D3 ceased to be supervisor as from 1 September 2018 (well after the service of the writ on him) has any, and if so, what effect.

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58. In determining whether the plaintiff's pleaded cause of action against the defendant is viable, logically, the relevant date for that determination must be the date the proceedings were commenced. As a matter of principle, subsequent events cannot and should not retrospectively invalidate what was a viable cause of action.

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59. The court was not referred to any authority to the effect that subsequent events can or are to be taken into account for the purposes of applying head (a).

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(c) Subsequent events: relevance to heads (b), (c) and (d)

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60. That said, subsequent events could be of relevance to heads (b), (c) and (d) and may well affect the issue of costs at the end of the day.

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61. D3 ceased to be supervisor over 20 months ago. In those circumstances, Mr Lam asked, rhetorically, what purpose would the proceedings continue to serve? He submitted that the issue is rendered academic.

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62. The court was referred to the plaintiff's reply where (at §15) the plaintiff stated that the allegation that D3 is not a fit and proper person to serve as the supervisor of the Primary School is irrespective of whether his term of office has expired. If and to the extent that it has expired, D3 is not a fit and proper person to continue to serve as supervisor of the Primary School "after 31 August 2018 or at any other time".

63. This was repeated in §38 of the plaintiff's 7th affirmation ("P 7th") which went on to state that the declaration sought "will have a long-lasting declaratory effect". At §40, the plaintiff considered that if a "declaration of long-term effect" is not granted by the court because of D3's cessation,

"there will be a real risk that he would return to put his hands on the Primary School one way or another in the future. Nothing other than a [d]eclaration can prevent [D3] from being re-appointed as the Supervisor of the Primary School or getting approval from the Education Bureau."

64. The plaintiff referred to the fact that since his first appointment in 2010, D3 has been re-elected for 7 academic years in a row. Based on that track record, the plaintiff stated (at P 7th, §43) that he

"believed that [D3] will seek to be re-elected ... for the next academic year. Indeed, [D3] is free to stand for election any time in the future unless [D3's] integrity is proved questionable and it is declared that he is not a fit and proper person to serve or continue to serve as the [s]upervisor of the Primary School."

65. D3 submitted that the declaration sought was one with a long-lasting effect: "forever" was the description used and that the plaintiff's pleading and evidence set out above appeared to be at odds with §89 of his written submissions where the plaintiff maintained that "D3 is not barred from being elected as Supervisor in future".

66. It was submitted that in principle it is not right for the plaintiff to seek what would in effect be a permanent injunction preventing D3 from ever holding office as supervisor when there is no evidential basis that at any time in the future: (i) D3 would stand for

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election; or (ii) the management committee would nominate D3 as supervisor.

67. The Court was referred to D4's Memorandum and Articles of Association which shows that the management committee is under the control of D4, the "supreme authority": see §57 of the Articles.

68. Further, given D4's public announcement published in the newspapers in February 2019, it was said that it is almost inconceivable that D4 would make or approve such an appointment in the future and that the election of D3 as supervisor is but a future hypothetical possibility that is highly unlikely to happen. In those circumstances, the declaration sought was said to be valueless.

69. What the facts show is that notwithstanding the plaintiff's complaints and commencement of this action, D3 nevertheless stood as candidate for and was elected to that office for the academic year 2017/2018. Even the 2018 Decision did not deter him from standing for the 2018/2019 election nor did it deter the management committee from electing him to that office.

70. But for the re-election that had to take place because of D4's refusal to approve D3's appointment with the final result described in §27 (iii) above, D3 would still be in office.

71. In view of the public announcement made in February 2019, it is unlikely that D4's approval would be forthcoming in the event of D3 standing for election in the future and being elected again, absent good reason. Nonetheless, it is a possibility that cannot be ruled out

altogether from ever happening and circumstances may exist to warrant a change of mind on the part of D4.

72. §89 of the plaintiff's written submissions (which were said to be inconsistent with the plaintiff's pleading and evidence), contemplated this possibility. It went on to state that "D3 could, as in *Re "A" (admission as a barrister)*, CACV 161/2017; [2018] 2 HKLRD 1245, at the time of the election, demonstrate that he is a fit and proper person (for example, with evidence of reform)".

73. What I understand to be the plaintiff's position is that a declaration would put the onus of demonstrating that D3 is a reformed person on D3. If the plaintiff's claim were struck out, and D3 were to stand for election in the future, the plaintiff will have to start a similar action all over again and that would not be right.

74. While at the close of the hearing the Court was reminded that the present application was made under all the 4 heads in O 18, r 19(1), in his oral submissions, Mr Lam did not specifically address the Court on any of the remaining heads.

75. Given the nature of the points made, it would appear that head (d) would be the most relevant. There is a distinction between the viability of a cause of action and the relief that would be appropriate. For a claim to be struck out as being an abuse of process, it will have to be shown with certainty that, at trial, no court would grant the declaration sought.

76. Whether it would be appropriate to grant the declaration sought is plainly highly fact-sensitive and a matter for the trial judge to decide. In these circumstances, D3 is not in a position to show with certainty that no court would grant the relief the plaintiff seeks.

(4) Conclusion

77. For the reasons stated above, the plaintiff's appeal is allowed and the Master's decision striking out the RASOC be set aside.

(B) The other summonses

78. There were 3 summonses before the Master. Because of his decision to strike out the RASOC, the remaining 2 summonses relating to a request for further and better particulars and for discovery respectively were dismissed.

79. As his order dated 29 April 2019 is now set aside, those summonses are restored.

(1) The request for further and better particulars dated 24 October 2018

80. It is stated in D3's written submissions (§42) that if he fails in his striking out application, he will answer the request.

81. Accordingly, there will be an order in terms of §1.

(2) The discovery summons

82. It is stated in the plaintiff's written submissions (§103) that he will only pursue the discovery summons for item 5 which is the

original certificate dated 10 October 2007 referred to in §14 of D3's defence.

83. Accordingly, there will be an order in terms of §1.

IV. ORDER

84. I make the following order:

- (1) The plaintiff's appeal is allowed and the order dated 29 April 2019 is set aside.
- (2) There be an order in terms of §1 of the plaintiff's summons dated 24 October 2018.
- (3) There be an order that the 3rd defendant do produce within 7 days of this order the original of the document described in item 5 of the list attached to plaintiff's summons dated 30 October 2018.

85. So far as costs are concerned, there is to be an order *nisi* of costs in favour of the plaintiff of

- (1) this appeal and of the hearing dated 29 April 2019
- (2) the summons dated 24 October 2018; and
- (3) the summons dated 30 October 2018

such costs to be with certificate for counsel and in the case of the hearing on 29 April 2019, with certificate for 2 counsel, such costs to be taxed if not agreed and payable forthwith.

(Doreen Le Pichon)
Deputy High Court Judge

Mr Kelvin Leung, instructed by How & Co, for the plaintiff

Mr Paul Lam SC and Mr Bosco Cheng, instructed by Lui & Law,
for the 3rd defendants