Li Siu Lun *v* Looi Kok Poh and another
[2012] SGHCR 4

Case Number : Suit No 245 of 2009, Summons No 1936 of 2012

Decision Date : 04 May 2012

Tribunal/Court : High Court

Coram : Sarah Shi AR

Counsel Name(s) : Eugene Nai and Cannis Seng (Martin & Partners) for the plaintiff; Audrey Chiang and June Hong (Rodyk & Davidson LLP) for the second defendant.

Parties : Li Siu Lun — Looi Kok Poh and another

Civil Procedure – order of medical examination

4 May 2012 Judgment reserved.

Sarah Shi AR:

Introduction

1 This is an application taken out by the second defendant, Gleneagles Hospital ("Gleneagles"), asking for the following prayers in respect of the plaintiff, Li Siu Lun ("Li"):

(a) that Li submit himself for an examination by a psychiatric expert to be appointed by Gleneagles;

(b) that leave be given for Gleneagles' psychiatric expert to file an Affidavit of Evidence-in-Chief ("AEIC") on behalf of Gleneagles; and

(c) that the action be stayed pending completion of all reasonable medical and/or clinical examinations on Li which are reasonably required by Gleneagles' appointed experts.

2 The issue of when a medical examination can be ordered against an unwilling party appears to be a novel issue before the Singapore courts. This judgment will thus examine whether the court has the power to order a medical examination; and if so, what the test should be.

Background facts

3 The background facts relevant to the present application will be briefly stated. Li is a British citizen, resident in Hong Kong. He is self employed as a property and stock trader.

4 The first defendant, Dr Looi Kok Poh ("Dr Looi"), is a consultant hand surgeon who was at all material times running a private practice at the Pacific Hand, Wrist and Microsurgical Centre,

Singapore.

5 Gleneagles maintains and manages a private hospital which employs and engages doctors, nurses and other staff for the purposes of hospitalisation/surgical services for patients.

6 Li had suffered an injury to his right hand (his "Hand") in 1989, and had this treated by a surgical procedure (the "First Surgery") at the Prince of Wales Hospital in Hong Kong. While Li had good general function and use of his Hand after the First Surgery, he suffered from certain complications (the "Complications").

7 On a business trip to Singapore in 2006, Li consulted Dr Looi regarding the Complications. Subsequently, Dr Looi performed a surgery on Li on 26 April 2006 at Gleneagles (the "Second Surgery"). Li's case is that the condition of his Hand worsened after the Second Surgery. Li then brought a claim against Dr Looi for the personal injury allegedly caused by Dr Looi, alleging, *inter alia*, breach of contract and/or duty of care; and/or battery. Li's case against Dr Looi has since been settled, and in any case, it is not relevant to the present application which only involves Li and Gleneagles.

8 Li also brought a claim against Gleneagles, alleging that Gleneagles had conspired with Dr Looi to cause Li's consent form for the Second Surgery and other medical records to be altered in a bid to assist Dr Looi to cover up his negligence, alleging, *inter alia*, breach of contract and/or statutory duty and/or duty of care and/or fiduciary duty. It will be observed that Li's claim against Gleneagles was *not* for personal injury. Damages, including aggravated damages and punitive/exemplary damages were sought for the loss of Li's right to an accurate and proper set of medical records and financial loss and damages incurred in having to commence legal proceedings against parties other than Dr Looi and Gleneagles (Li had sought interrogatories from a nurse who was working at Gleneagles to establish his case that the medical records had been *inter alia* altered/amended). In support of the claim for aggravated damages, Li pleaded in his Statement of Claim ("SOC") that as a result of Gleneagles' acts, he had "suffered and continues to suffer considerable anger, outrage and distress". [note: 1]

9 An interlocutory judgment on liability has been entered for Li against Gleneagles. The matter is now approaching the stage of the assessment of Li's damages against Gleneagles ("AD").

The present proceedings

10 The present proceedings concern Li's allegation that he was depressed as a result of Gleneagles' acts. In Li's AEIC affirmed on 17 February 2012, he claimed that he suffered "grave mental anguish and/or distress ... [and] depression". [note: 2]

11 Gleneagles' case is that the court should exercise its powers under s 18 read with para 19 of the First Schedule of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") to order the medical examination of a person who is a party to any proceedings where the physical or mental condition of the person is relevant to any matter in question in the proceedings. As Li had alleged depression in support of an award of aggravated damages, counsel for Gleneagles argues that Li's mental condition is thus in issue and is a matter relevant to the proceedings.

12 Li's case is that the court should *not* exercise its power under s 18 read with para 19 of the First Schedule of the SCJA as (i) Gleneagles' request for medical examination was not reasonable as the medical examination was not required for Gleneagles to properly prepare its defence; and (ii) Li had a reasonable apprehension that any examiner proposed by Gleneagles would not make a just determination of the cause.

Analysis and decision

Jurisdictional issues

13 There are two related but distinct issues to be determined under the heading of "jurisdictional issues". Firstly, whether the court has a power to make a *direct order* for a plaintiff to submit himself to a medical examination ("Direct Order"), or whether the court's power is confined to ordering a *stay* of proceedings unless and until the plaintiff submit himself to a medical examination ("Stay"). Secondly, whether an Assistant Registrar ("AR"), as opposed to a High Court Judge, has the power to grant either a Direct Order and/or a Stay.

14 In English law, there is no statutory power enabling the court to order a medical examination "but the common law has found a solution", *viz*, that the court has inherent jurisdiction to order a Stay in appropriate circumstances (Steyn LJ, as he then was, concurring in *Jackson v Mirror Group Newspapers Ltd and Another* (The Times, 17 March 1994) ("*Jackson*")). The presence of this inherent jurisdiction was first observed in *Edmeades v Thames Board Mills Ltd* [1969] 2 QB 67 ("*Edmeades*") at 71, where Lord Denning, noting that there was no legislation on whether the court had power to grant a Stay, stated that he "[did] not think legislation [was] necessary" as the court has "ample jurisdiction to grant a stay whenever it is just and reasonable to do so".

15 By contrast, in Singapore, the power order a medical examination has been codified in statutory form. Section 18 of the SCJA provides as follows:

> **Powers of High Court**
>
> 18.—(1) The High Court shall have such powers as are vested in it by any written law for the time being in force in Singapore.
>
> (2) Without prejudice to the generality of subsection (1), the High Court shall have the powers set out in the First Schedule.
>
> (3) The powers referred to in subsection (2) shall be exercised in accordance with any written law or Rules of Court related to them.

16 Pursuant to s 18(2) of the SCJA, the High Court has the powers set out in the First Schedule. Paragraph 19 of the First Schedule of the SCJA provides as follows:

> **Ordering medical examination**
>
> 19. Power to order medical examination of a person who is a party to any proceedings where the physical or mental condition of the person is relevant to any matter in question in the proceedings.

17 Before going on to examine whether the power to order a medical examination extends to a Direct Order, I will first consider whether, as an AR, I have the power to grant an order for medical examination. Counsel for Gleneagles directed me to s 2 of the SCJA, where a Judge is defined as:

> a Judge of the High Court and includes the Chief Justice and *any person appointed to exercise the powers of a Judge* [emphasis added]

18 Section 62(1) of the SCJA provides that an AR shall have the "jurisdiction, powers and duties as

may be prescribed by Rules of Court". Pursuant to O 32 r 9(1) read with O 1 r 4(1) of the Rules, an AR has the *same powers and jurisdiction* as a Judge in Chambers. As a matter of practice, ARs routinely hear certain applications and have the power to grant certain orders which also fall under the First Schedule of the SCJA, *inter alia*, discovery and interrogatories, and costs (paras 12 and 13 of the First Schedule). I thus find that I have the power to order a medical examination. For completeness, it is noted that the District Courts and Magistrates' Courts have the corresponding power and may order a medical examination of a person who is a party to any proceedings in both civil and criminal matters where the physical or mental condition of the person is "relevant to any matter in question in the proceedings" (see ss 31(2)(*c*); 50(1)(*b*); 51(1)(*b*) and 52(1B)(*b*)(iii) of the Subordinate Courts Act (Cap 321, 2007 Rev Ed)).

19 Having decided that I have the power to order a medical examination, I will now return to the issue of the scope of the power to order a medical examination, *ie*, whether it extends to a Direct Order or only comprises a Stay. While para 19 of the First Schedule of the SCJA provides that the High Court has the "[p]ower to order medical examination", the express wording is not conclusive, as the "order" in question is not defined as either a Direct Order or as a Stay. While *Singapore Court Practice 2009* (Jeffrey Pinsler, gen ed) (LexisNexis, 2009) ("*Singapore Court Practice 2009*") notes at para 25/3/11 that the court is "specifically empowered to order a medical examination", the learned editor goes on to discuss principles governing the court's exercise of its discretion to grant a Stay. This is perhaps unsurprising, as the cases referred to at para 25/3/11 are English cases where the courts have only granted a Stay rather than a Direct Order.

20 The guiding principle behind the English cases is that to require a claimant to submit to a medical examination is, "to an extent, intrusive and must be justified as necessary" (*Edwards-Tubb v J D Wetherspoon plc* [2011] 1 WLR 1373 at [18]). In the case of a Direct Order, this concern is heightened as a Direct Order leaves the plaintiff caught between the Scylla of a potentially intrusive medical examination and the Charybdis of contempt of court proceedings being initiated against him. The reason for this is that a Direct Order is an order of court, thus its breach will presumably amount to contempt of court, as noted by Widgery LJ in *Edmeades* (at p72):

> … I can see the objections that would be raised if it were sought to give the court power to make a direct order for medical examination with, *presumably power to commit the plaintiff for contempt if he refused*. … [emphasis added]

21 However, it might be argued that a Stay also leaves the plaintiff with the hard choice of being "[shut] out ... from the seat of justice" or compelled "against his will to submit to a medical examination; ... an invasion of his personal liberty" (*Lane v Willis & anor appeal* [1972] 1 WLR 326 ("*Lane v Willis*") at 68). It might then be further argued that the invasion of the plaintiff's personal liberty in such a case is justified, as the issue of a medical examination only arises where it is relevant to the proceedings before the court. As the argument would go, where the plaintiff has *himself chosen to put his mental or physical condition in issue*, thus causing it to become relevant to the court proceedings, it behoves the plaintiff to agree to a reasonable request by the defendant for a medical examination. This view was stated by Millett LJ (as he then was) in *Hookham v Wiggins Teape Fine Papers Limited* [1995] PIQR p392 at p400:

> ... A plaintiff chooses to sue; a defendant has no choice whether to be sued or not. A plaintiff who sues for damages for personal injury must afford the defendant a reasonable opportunity to have him medically examined. By choosing to sue *he forgoes his right to protest at the invasion of his privacy which a medical examination involves*. If he refuses such an examination his action may be stayed. ... [emphasis added]

I am in full agreement with Millett LJ that the rationale behind the court's power to order a medical examination is that a plaintiff who chooses to sue for damages based on his medical condition must afford the defendant a reasonable opportunity to have him medically examined, and thus foregoes the right to protest the invasion of his privacy which a medical examination involves.

22 Even so, I note that this rationale was used by Millett LJ to justify the grant of *a Stay and not a Direct Order*. While a Stay may deny the plaintiff from pursuing his claim, a Direct Order goes further as it adds potential contempt of court proceedings on top of denying the plaintiff from pursuing his claim; a consequence I find to be disproportionately adverse. The court has the power under O 52 of the Rules to make an order of committal in the appropriate case to punish for contempt of court (for the rationale and test for the court's power to punish for contempt see *Sembcorp Marine Ltd v Aurol Anthony Sabastian* [2012] SGHC 52 at [33] – [34]).

23 The reason why I find the consequence to be disproportionately adverse is that an order of a medical examination involves *two competing sets of rights* and a Direct Order creates an imbalance between the two rights. In *Starr v National Coal Board* [1977] 1 WLR 63 ("*Starr*") at 70 – 71, Scarman LJ framed this as a balance between the plaintiff's right to personal liberty and the defendant's right to defend himself in litigation as he thinks fit (which includes the right to choose expert witnesses). The only gloss that I would add to this analysis is that the term "personal liberty" might not be apposite in the local context (given the interpretation of the term in *Lo Pui Sang and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and other appeals* [2008] 4 SLR(R) 754 at [6]) and the term "bodily integrity" might be a better formulation of the plaintiff's right. To my mind, the defendant's right to defend himself in litigation as he thinks fit is *sufficiently protected by a Stay*. If the plaintiff chooses not to submit to a medical examination upon the order of a Stay, he will be unable to pursue his claim any further, and the defendant's right to defend himself will *no longer be engaged* as there will be no claim left to defend. With the defendant's right to defend himself lifted off the balancing scales by the effect of a Stay, the plaintiff's right to bodily integrity becomes weightier and the plaintiff ought not to be put in the position of having to choose between an unwanted and potentially invasive medical examination and having committal proceedings initiated against him.

24 I am thus of the view that the court's power to order a medical examination only comprises the power to order a Stay and not a Direct Order. Having considered parties' arguments, I am of the view that a Stay is justified in the present case. I will now give my reasons.

Whether Li's mental condition is relevant to any matter in question in the proceedings

25 Before I exercise the power to order a medical examination, I must first be satisfied that Li's mental condition is "relevant to any matter in question in the proceedings" (para 19 of the First Schedule for the SCJA).

26 I find that this precondition is met, as Li had raised the issue of his mental condition (be it mental distress and/or depression), in support of his claim for aggravated damages (see above at [8] and [10]). Therefore, Li's mental condition is relevant to the issue of aggravated damages in the proceedings before the court.

The test for a medical examination to be ordered

27 As noted earlier (at [2]), the issue of when a medical examination can be ordered against an unwilling party is a novel issue before the Singapore courts. Before me, parties have relied on English cases, and I will examine these decisions to see if the principles expounded therein are applicable in

Singapore.

The "reasonableness" test

28 The "reasonableness" test was elucidated in *Edmeades* and affirmed in *Lane v Willis*, two decisions of the English Court of Appeal.

29 In *Edmeades* at 71, Lord Denning held that the test for the order of a medical examination was *whether the defendant's request that the plaintiff submit to medical examination was reasonable*.

30 In *Lane v Willis* at 330, Davies LJ affirmed the test was one of "reasonableness" and framed the test in the following manner:

> ... In the circumstances, was the defendant's request for a further psychiatric examination reasonable; or was the plaintiff's refusal to submit himself to it reasonable?

31 It can thus be seen that the court will balance the reasonableness of the defendant's request against the reasonableness of the plaintiff's refusal (the "balance of reasonableness test"). The reason for the balancing exercise is that there are two competing rights involved in an order for medical examination, *viz*, the plaintiff's right to bodily integrity and the defendant's right to defend himself in litigation as he thinks fit (see above at [22]).

32 As our statutory provisions are silent on the applicable test, it appears to me that the balance of reasonableness test is one which is open to the Singapore courts to adopt. In fact, it is almost trite to say that whenever the court has a discretion, it should exercise it reasonably. I will now turn to apply the test.

Reasonableness of Gleneagles' request

(1) Whether Gleneagles requires its own medical examination of Li in order to properly conduct its defence

33 Li's case is that a defendant's request for medical examination will only be reasonable if it is unable to properly conduct its defence without its own medical examination of the plaintiff, *eg*, where the entire liability of the defendant rests on the sufficient establishment of an injury in the plaintiff's cause of action. In the present case, as Li's depression was not claimed as a separate head of damages but only pleaded in support of his claim for aggravated damages, counsel for Li argues that Gleneagles would not require its own medical examination of Li in order to properly conduct its defence. Counsel for Li further submits that if Gleneagles wanted to challenge the expert evidence in Li's expert's AEIC, this could be done in cross-examination.

34 Gleneagles' case is that depression is an important element of Li's claim for aggravated damages and that Gleneagles would be severely prejudiced if it was unable to get its own psychiatric expert. Counsel for Gleneagles submits that to rebut Li's allegation of depression, Gleneagles would need to adduce evidence in the form of its own psychiatric report and not merely rely on cross-examination of Li's psychiatric expert.

35 I am unable to agree with counsel for Li that a defendant's request for medical examination will only be reasonable where the *entire liability* of the defendant rests on the sufficient establishment of an injury in the plaintiff's cause of action. To my mind, it is clear that even where liability is not in issue, where the quantum of damages is dependent on sufficient establishment of a medical condition,

this suffices. In *Edmeades*, the issue of liability had been settled at the time of the request for medical examination, and the only remaining issue had been that of damages (see *Edmeades* at 69). In the present case, as I have found that depression is a relevant issue to the assessment of damages (see above at [26]), this goes towards a finding that Gleneagles' request for medical examination is reasonable.

36 I am also unable to agree with the argument that Gleneagles does not have to conduct a medical examination as it can cross-examine Li's expert witness at trial. In *Edmeades* at 73, Widgery LJ opined that if the defendant was deprived of medical advice and the only evidence on that aspect was given by the plaintiff's doctors, there would be "no way by which the balance [between the plaintiff and the defendant could] be adjusted", for if the trial judge found the plaintiff's doctors credible, he would have to follow their evidence. It appears that the same position regarding the evaluation of uncontroverted expert evidence will be taken in Singapore. In *Saeng-Un Udom v Public Prosecutor* [2001] 2 SLR(R) 1, the Court of Appeal accepted the following principle at [26]:

> *The court should not, when confronted with expert evidence which is unopposed and appears not to be obviously lacking in defensibility, reject it nevertheless and prefer to draw its own inferences. While the court is not obliged to accept expert evidence by reason only that it is unchallenged (Sek Kim Wah v PP* [1987] SLR 107*), if the court finds that the evidence is based on sound grounds and supported by the basic facts, it can do little else than to accept the evidence.* [emphasis in original]

Therefore, I find that Gleneagles' request that Li submit to an examination by a psychiatrist to be appointed by Gleneagles is reasonable, as Gleneagles might otherwise be unfairly disadvantaged.

(2) Whether the alleged depression is a new allegation

37 It is established in case law that whether the alleged medical condition is a new allegation is a factor to be taken into account in determining the reasonableness of the defendant's conduct. In *Edmeades* at 71, Lord Denning found that the defendant's request that the plaintiff submit to medical examination was reasonable given that they were faced with "a new allegation which had not been made in the statement of claim".

38 There is a dispute between Li and Gleneagles as to whether Li's allegation of depression was a new allegation. As noted earlier at [8], it was pleaded in Li's SOC that Gleneagles' actions had caused him "considerable anger, outrage and distress". In Li's AEIC affirmed on 22 August 2011, he prayed that aggravated damages be awarded to him as he was "extremely distressed and underwent much suffering"; and suffered "mental distress and pain" when he found out that his medical records were falsified. [note: 3]

39 Subsequently, as noted above at [10], depression was alleged in addition to distress in Li's AEIC affirmed on 17 February 2012. This was supported by an AEIC by a psychiatric expert on behalf of Li ("Li's expert") affirmed on 20 February 2012 ("Li's expert's AEIC"), which provided an expert opinion that Li exhibited symptoms in the "severe range of Depression [sic]" which had evolved into a "chronic unremitting course". [note: 4] Li's expert also noted that Li's depression had origins "beyond the physical disability" suffered by Li, [note: 5] *ie*, his depression was not just caused by Dr Looi but was caused in part by Gleneagles' acts.

40 According to Gleneagles, it was "taken by surprise" by Li's allegation of depression as Li had not previously pleaded that he had suffered depression as a result of Gleneagles' conduct. [note: 6] While

Gleneagles concedes that Li had pleaded that he was depressed as a result of Dr Looi's conduct, its case is that Li had only hitherto pleaded that he was *distressed* as a result of Gleneagles' conduct. Counsel for Gleneagles argues that "distress" is not synonymous with "depression" in the clinical sense of the word and that the allegation of depression against Gleneagles was thus a new allegation.

41 The facts of the present case are similar to that of *Lane v Willis*, where the plaintiff's statement of claim had particularised minor physical injuries and "nervous shock, depressive anxiety state". Subsequently, the plaintiff applied to amend the statement of claim to include particulars of severe depression. Davies LJ noted at 329 that while some of the added particulars in the statement of claim had been referred to in an earlier doctor's report, the allegations contained in the statement of claim were nevertheless "very considerably expanded by the amendment". As there was a "substantial difference" between the injuries as originally pleaded and the injuries pleaded after the amendment, it was found reasonable for the defendant to ask for a psychiatric examination (*Lane v Willis* at 332). It can thus be seen that though the allegation of depression was not "new" *per se* as some form of depression had been originally pleaded in the statement of claim, this did not bar a finding that the defendant's request was reasonable given the subsequent expansion on the severity of depression suffered.

42 Turning back to the present case, in my view, even if distress is a symptom of depression, a claim of distress nonetheless substantially differs from a claim of severe depression, which suffices for a finding of a new allegation. Therefore, on this factor, the request for Li to be examined by a psychiatrist to be appointed by Gleneagles is reasonable.

(3) Delay

43 This concerns the time lapse between the discovery of the allegation of a new medical condition and the request for a medical examination on the new medical condition.

44 In the present case, Li's SOC containing the allegation of distress was filed on 16 March 2009. Li's expert AEIC was filed on 21 February 2012. While Gleneagles filed objections to Li's expert's AEIC on 5 March 2012, no objections were raised as to Li's allegation that he suffered depression. It was only on 12 April 2012 that counsel for Gleneagles wrote a letter to Li proposing that Li be submitted to an examination by a psychiatric expert to be appointed by Gleneagles, a suggestion which Li rejected. The time lapse between the SOC and the request for the psychiatric examination was thus approximately three years, and the present summons for an order for medical examination was taken out very close to the dates that were initially fixed for the AD. I will examine the effect of delay in case law.

45 In *Lane v Willis*, Davies LJ observed that there had been "considerable delay on the part of the defendant" (at 332). A timeline of the relevant events will illustrate this (see *Lane v Willis* at 333). The incident giving rise to the plaintiff's claim took place on 16 May 1968. On 13 September 1968, the plaintiff's solicitors had sent the defendant's solicitors a report which made it clear that a neurosis element was subsisting. This was followed by a second letter which again made plain that the neurosis element was subsisting and was serious. The plaintiff was also examined by the defendant's neurologist. The statement of claim was then served on 16 June 1969. An amendment to the statement of claim followed on 5 February 1971, and this enlarged the gravity of the neurosis aspect of the claim (see above at [41]). The defendant's neurologist then examined the plaintiff on a further two occasions. On 22 July 1971 the defendant made a request for the plaintiff to be examined by a psychiatrist on the defendant's behalf. It can thus be seen that the defendant was aware of the neurosis claim as early as 13 September 1968 but took approximately 2 years and 10 months to request for the psychiatric examination, despite having sight of two medical reports from the plaintiff

detailing the neurosis element and despite having its own neurologist examine the plaintiff three times. Even so, this was not fatal to the finding that the defendant's request was reasonable in that case.

4 6 *Lane v Willis* can be distinguished from the present case. The defendant in *Lane v Willis* had sight of two medical reports from the plaintiff which mentioned a serious neurosis element even before the plaintiff filed his statement of claim. In the present case, Li's expert's AEIC was filed considerably later in the course of proceedings. Li's expert's AEIC would have been the first time a claim of depression (as opposed to distress, which is not a psychiatric condition) was raised against Gleneagles, and within a month of receiving Li's expert's medical report Gleneagles requested that Li submit to a medical examination by an expert to be appointed by Gleneagles. The operative delay here is thus *less than a month*. Further, in *Lane v Willis*, the defendant's neurologist had examined the plaintiff three times but in the present case no expert has ever examined Li on Gleneagles' behalf. Even though the defendant's conduct of the case in *Lane v Willis* was arguably more worthy of reproach than in the present case (and indeed, in *Lane v Willis* at 334, Sachs LJ expressed disapproval at the way the defendant had handled the matter), as noted in the preceding paragraph, the defendant's request for a medical examination was still found reasonable.

47 Bearing in mind that Gleneagles might be unfairly disadvantaged in its conduct of the AD if it is unable to obtain an expert opinion (see above at [22]), and that its right to defend to defend itself in litigation might thus be compromised, I find that the delay does not in itself show that Gleneagles' request that Li submit himself to a medical examination is unreasonable. This is especially so when it is noted that Gleneagles' request for medical examination was done *within a month* of receiving Li's expert's medical report.

48 Even though delay does not bar an order for medical examination, I am of the view that in general, a party seeking an order for medical examination would do well to apply for such an order as soon as possible after they become aware of the new allegation, and should do so before trial dates have been set. This will promote proper and efficient administration of justice.

(4) Whether a request for medical examination is only reasonable in cases of personal injury

49 Li's case is that a medical examination is mainly applicable when the matter involves a claim of personal injury. Counsel cites *Starr* for this proposition, where it was held (at 69) that it was clearly established that if the defendant in a *personal injury* case made a reasonable request for the plaintiff to be medically examined, the plaintiff should accede to the request unless he has reasonable ground for objecting to that particular doctor. As Li's claim against Gleneagles was not for personal injury, counsel for Li submits that Gleneagles' request for a medical was not reasonable. In reply, counsel for Gleneagles noted that a Stay had been ordered pursuant to a request for medical examination in the *Jackson* case which involved a defamation claim and not a claim for personal injury.

50 While I accept Li's point that cases in which orders for medical examinations were granted have mainly been personal injury cases, I find that this point does not advance Li's case. The fact that orders for medical examinations have been granted mainly in personal injury cases does not go so far as to suggest that requests for medical examinations are always unreasonable in non-personal injury cases. As counsel for Gleneagles has rightly pointed out, orders for medical examination have been made in non-personal injury cases, such as *Jackson*. For the reasons given above (see [36] in particular), I find that the request for medical examination in the instant case is reasonable, so as to enable Gleneagles to properly conduct its case.

Reasonableness of Li's refusal

(1) Whether there is reasonable objection to the nature of the medical examination

(1) Whether there is reasonable objection to the nature of the medical examination

51 In *Singapore Court Practice 2009* at para 25/3/11, it is noted that when a medical examination would be "oppressive", the court may exercise its discretion against granting a Stay. A similar point is made in *Singapore Civil Procedure 2007* (GP Selvam gen ed) (Sweet & Maxwell Asia, 2007) ("*Singapore Civil Procedure 2007*") at para 40A/1/3 where it is stated that if the proposed examination is "unpleasant, painful or risky" the court will be reluctant to order a stay. This proposition was derived from *Prescott v Bulldog Tools Ltd* [1981] 3 All ER 869 ("*Prescott v Bulldog*") where it was found (at 876) that the risks reasonably apprehended by the plaintiff were of a substantial risk of not insubstantial discomfort and minimal though real risks of "not insubstantial and possibly serious injury or injuries to health". The discomfort in that case was of giddiness and nausea and vomiting, while the injury to health was that of a radiation dosage and puncture of the ear membrane (*Prescott v Bulldog* at 873).

52 Risks of physical injury of such nature and degree are not present in the instant case given that the proposed medical examination is a psychiatric examination. Even so, psychiatric examinations may risk further psychiatric injury. However, Li has not pleaded that the examination by Gleneagles would cause him further psychiatric injury. While every medical examination inevitably carries the risk of a degree of discomfort, the party refusing medical examination needs to show that the risk of discomfort or injury to health is reasonably apprehended as substantial. As this has not been shown, I find that Li's refusal of the medical examination is not reasonable on this ground.

53 Further, I note that Li's expert has already conducted a psychiatric examination on him. If an expert appointed by Gleneagles is prevented from conducting a similar examination, there would be "one law for plaintiff[s] and another for defendants" (*Prescott v Bulldog* at 876). This cannot be so.

(2) Whether there is reasonable objection to the medical examiner

54 In *Singapore Civil Procedure 2007* at para 40A/1/3, it is stated that if the particular medical expert is likely to conduct his examination or make his report "unkindly or unfavourably" then a Stay should not be ordered. This is derived from *Starr* where it was held (at 72) that if the plaintiff could prove that he had a reasonable apprehension that the defendant's choice of doctor might make a just determination of the cause "more difficult than it would be if another doctor conducted the examination" this goes towards a finding that the plaintiff's refusal was reasonable.

55 In the present case, Gleneagles has not nominated any particular doctor, but has simply applied for the medical examination to be conducted by a psychiatric expert "to be appointed" by itself. Counsel for Li argues that as Gleneagles is a hospital, there is a "*prima facie* risk" that any psychiatric expert to be appointed by Gleneagles would have a "pecuniary or commercial relationship" with Gleneagles thus compromising the impartiality of the medical examination. [note: 7] Against this, counsel for Gleneagles argues that the credibility of its appointed expert is an issue that could be taken up at the AD hearing.

56 I would be slow to say that there is *prima facie* risk that *any* expert appointed by Gleneagles would fail to be impartial owing to a pecuniary or commercial relationship with Gleneagles. The fact that Gleneagles *might* appoint an expert that *might not* be impartial is, in my view, insufficient to amount a reasonable objection as it relies on a *hypothetical* situation. If Gleneagles appoints a non-impartial expert, objection can properly be taken, but the proper forum for this would be at the AD when the situation has crystallised, and not at the present application. While it is "safer to offer the plaintiff a choice of doctors" (*Singapore Civil Procedure 2007* at para 40A/1/3), the failure to do in this case is not fatal. It would be different if there was a named expert against whom there were

substantiated submissions that he had "difficulty in providing reports which are not misleading" (*Starr* at 72).

Conclusion

57 Having examined the relevant factors, I find that Gleneagles' request that Li submit himself for an examination by a psychiatric expert to be appointed by Gleneagles is reasonable, and that Li's refusal to submit to the medical examination is unreasonable. I thus give leave for Gleneagles' psychiatric expert to file an AEIC on behalf of Gleneagles and direct that the action be stayed pending completion of a reasonable psychiatric examination on Li which is reasonably required by Gleneagles' appointed expert.

58 I will hear the parties on costs.

[note: 1] SOC para 73

[note: 2] Li's AEIC affirmed on 17 February 2012 at para 41

[note: 3] Li's AEIC affirmed on 22 August 2011 at para 88

[note: 4] Dr Lim Yun Chin affirmed on 20 February 2012 at p 8

[note: 5] Dr Lim Yun Chin affirmed on 20 February 2012 at p 7

[note: 6] June Hong's AEIC affirmed on 19 April 2012 at para 5

[note: 7] Li's submissions dated 26 April 2012 at para 24