IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION NO. 315 OF 1999

BETWEEN

CHEUNG SHUET LEE   Plaintiff

and

BIRKART-EAST WEST FREIGHT LIMITED   Defendant

Coram : Hon. Godfrey, J.A. in Chambers
(sitting as an additional Judge of the Court of First Instance)

Date of hearing : 27 July 1999

Date of judgment : 27 July 1999

J U D G M E N T

This is a plaintiff's application for summary judgment in an action by an employee against her former employer, who refuses to pay the full amount of the compensation which it had agreed to pay to the employee before she was dismissed. The sum to be paid was a sum based on a calculation prepared by the employee. It is accepted that it exceeds the employee's minimum legal entitlement, but the employee says that this was the result of a compromise of her claim, which is binding on the employer.

The employer says that the calculation was put forward by the employee as representing her legal entitlement and that he trusted her to put forward an accurate calculation, although, as the employee has pointed out, he had frequently complained of her want of accuracy in discharging her duties.

It seems to me arguable on the evidence that the employee did misrepresent the state of her own mind to the employer when presenting him with this calculation and that the employer relied on the calculation. The eventual resolution of the issues will depend on whether the judge at the trial forms the view that the calculation was honestly advanced without any intention to mislead the employer.

An application for summary judgment enables a plaintiff to obtain a quick judgment in a plain and obvious case to which the defendant has no defence. This is not such a case and I propose to give the defendant unconditional leave to defend. The costs will be costs in the cause.

(Gerald Godfrey)
Justice of Appeal

Mr. Rimsky K. K. Yuen, instructed by Messrs. Liu, Szeto & Partners, for the Plaintiff

Mr. Jeevan Hingorani, instructed by Messrs. Ince & Co., for the Defendant