

Rules of the District Court (Amendment) Rules 2008

The Rules of the District Court (Cap. 336H)

Order 29 – INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, INTERIM PAYMENTS, ETC.

Remarks

I. INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, ETC.

1. Application for injunction (O. 29, r. 1)

(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency such application may be made ex parte on affidavit but, except as aforesaid, such application must be made by summons.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

2. Detention, preservation, etc., of subject-matter of cause or matter (O. 29, r. 2)

(1) On the application of any party to a cause or matter the Court may make an order for the detention, custody or preservation of any property which is the subject-matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.

(2) For the purpose of enabling any order under paragraph (1) to be carried out, the Court may by the order authorize any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Where the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into court or otherwise secured.

(4) An order under this rule may be made on such terms, if any, as the Court thinks just.

(5) An application for an order under this rule must be made by summons **or by notice under Order 25, rule 10.**

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(6) Unless the Court otherwise directs, an application by a defendant for such an order may not be made before he acknowledges service of the writ or originating summons by which the cause or matter was begun.

3. Power to order samples to be taken, etc. (O. 29, r. 3)

(1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any cause or matter, the Court may, on the application of a party to the cause or matter, and on such terms, if any, as it thinks just, by order authorize or require any sample to be taken of any property which is the subject-matter of the cause or matter or as to which any question may arise therein, any observation to be made on such property or any experiment to be tried on or with such property.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorize any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

4. Sale of perishable property, etc. (O. 29, r. 4)

(1) The Court may, on the application of any party to a cause or matter, make an order for the sale by such person, in such manner and on such terms (if any) as may be specified in the order of any property (other than land) which is the subject-matter of the cause or matter or as to which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any other good reason it is desirable to sell forthwith.

In this paragraph “land” (土地) includes any interest in, or right over, land.

(2) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

5. Order for early trial (O. 29, r. 5)

Where on the hearing of an application, made before the trial of a cause or matter, for an injunction or the appointment of a receiver or an order under rule 2, 3 or 4 it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merits thereof for the purposes of the application, the Court may make an order accordingly and may also make such order as respects the period before trial as the justice of the case requires.

Where the Court makes an order for early trial it shall by the order determine the place and mode of trial.

6. Recovery of personal property subject to lien, etc. (O. 29, r. 6)

Where the plaintiff, or the defendant by way of counterclaim, claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears from the pleadings (if any) or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum (if any) for interest and costs as the Court may direct and that, upon such payment being made, the property claimed be given up to the party claiming it.

7. Directions (O. 29, r. 7)

(1) Where an application is made under any of the foregoing provisions of this Order, the Court may give directions as to the further proceedings in the cause or matter.

~~(2) If, in an action begun by writ, not being any such action as is mentioned in paragraphs (a) to (c) and (e) of Order 23A, rule 1(1), the Court thinks fit to give directions under this rule, rules 9 to 13 of that Order shall apply as if the Court were conducting a directions hearing under that Order.~~

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(2) If, in an action begun by writ, not being any such action as is mentioned in subparagraphs (a), (b), (c), (e) and (f) of Order 25, rule 1(4), the Court thinks fit to give directions under this rule before the case management summons, then rules 5 to 10 of that Order –

(a) with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they desire; and

(b) with any other necessary modifications,

apply as if the application were a case management summons.

7A. Inspection, etc. of property under sections 47B(2) and 47D of the Ordinance (O. 29, r. 7A)

(1) An application for an order under section 47D of the Ordinance in respect of property which may become the subject-matter of subsequent proceedings in the Court or as to which any question may arise in any such proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the summons.

(2) An application after the commencement of proceedings for an order under section 47B(2) of the Ordinance in respect of property which is not the property of or in the possession of any party to the proceedings shall be made by summons, which must be served on the person against whom the order is sought personally and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by affidavit which must specify or describe the property in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings or subsequent proceedings, that it is property which is or may become the subject-matter of the proceedings or as to which any question arises or may arise in the proceedings.

(4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(5) An order made under section 47B(2) or 47D of the Ordinance may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just.

(6) No such order shall be made if it appears to the Court –
(a) that compliance with the order, if made, would result in the disclosure of information relating to a secret process, discovery or invention not in issue in the proceedings; and
(b) that the application would have been refused on that ground if –
(i) in the case of a summons under paragraph (1), the subsequent proceedings had already been begun; or
(ii) in the case of a summons under paragraph (2), the person against whom the order is sought were a party to the proceedings.

8. Allowance of income of property pendente lite (O. 29, r. 8)

Where any real or personal property forms the subject-matter of any

proceedings, and the Court is satisfied that it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all of such parties.

II. INTERIM PAYMENTS

9. Interpretation of Part II (O. 29, r. 9)

In this Part of this Order –
“interim payment” (中期付款), in relation to a defendant, means a payment on account of any damages, debt or other sum (excluding costs) which he may be held liable to pay to or for the benefit of the plaintiff; and any reference to the plaintiff or the defendant includes a reference to any person who, for the purpose of the proceedings, acts as next friend of the plaintiff or guardian of the defendant.

10. Application for interim payment (O. 29, r. 10)

- (1) The plaintiff may, at any time after the writ has been served on a defendant and the time limited for him to acknowledge service has expired, apply to the Court for an order requiring that defendant to make an interim payment.
- (2) An application under this rule shall be made by summons but may be included in a summons for summary judgment under Order 14 or Order 86.
- (3) An application under this rule shall be supported by an affidavit which shall –
 - (a) verify the amount of the damages, debt or other sum to which the application relates and the grounds of the application;
 - (b) exhibit any documentary evidence relied on by the plaintiff in support of the application; and
 - (c) if the plaintiff’s claim is made under the Fatal Accidents Ordinance (Cap. 22), contain the particulars mentioned in section 5(4) of that Ordinance.
- (4) The summons and a copy of the affidavit in support and any documents exhibited thereto shall be served on the defendant against whom the order is sought not less than 10 clear days before the return day.
- (5) Notwithstanding the making or refusal of an order for an interim

payment, a second or subsequent application may be made upon cause shown.

11. Order for interim payment in respect of damages (O. 29, r. 11)

(1) If, on the hearing of an application under rule 10 in an action for damages, the Court is satisfied –

- (a) that the defendant against whom the order is sought (in this paragraph referred to as “the respondent”) has admitted liability for the plaintiff’s damages; or
- (b) that the plaintiff has obtained judgment against the respondent for damages to be assessed; or
- (c) that, if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the respondent or, where there are 2 or more defendants, against any of them,

the Court may, if it thinks fit and subject to paragraph (2), order the respondent to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff after taking into account any relevant contributory negligence and any set-off, cross-claim or counterclaim on which the respondent may be entitled to rely.

(2) No order shall be made under paragraph (1) in an action for personal injuries if it appears to the Court that the defendant is not a person falling within one of the following categories, namely –

- ~~(a) a person who is insured in respect of the plaintiff’s claim;~~
- ~~(b) a public authority; or~~
- ~~(c) a person whose means and resources are such as to enable him to make the interim payment.~~
- (a) a person who is insured in respect of the plaintiff’s claim or whose liability in respect of the plaintiff’s claim will be met by the following person –
 - (i) an insurer under section 10 of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272);
 - (ii) an insurer who is a party to an agreement with the Motor Insurers’ Bureau of Hong Kong; or
 - (iii) the Motor Insurers’ Bureau of Hong Kong;
- (b) a public authority; or
- (c) a person whose means and resources are such as to enable him to make the interim payment.

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Alignment with RHC

(3) In paragraph (2)(a)(ii), “agreement” (協議) means the domestic agreement between the Motor Insurers’ Bureau of Hong Kong and the insurance companies and Lloyd’s underwriters authorized to carry on motor vehicle insurance business in Hong Kong, made on 1 February 1981, as amended from time to time.

12. Order for interim payment in respect of sums other than damages
(O. 29, r. 12)

- If, on the hearing of an application under rule 10, the Court is satisfied –
- (a) that the plaintiff has obtained an order for an account to be taken as between himself and the defendant and for any amount certified due on taking the account to be paid; or
 - (b) that the plaintiff's action includes a claim for possession of land and, if the action proceeded to trial, the defendant would be held liable to pay to the plaintiff a sum of money in respect of the defendant's use and occupation of the land during the pendency of the action, even if a final judgment or order were given or made in favour of the defendant; or
 - (c) that, if the action proceeded to trial, the plaintiff would obtain judgment against the defendant for a substantial sum of money apart from any damages or costs,

the Court may, if it thinks fit, and without prejudice to any contentions of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make an interim payment of such amount as it thinks just, after taking into account any set-off, cross-claim or counterclaim on which the defendant may be entitled to rely.

13. Manner of payment (O. 29, r. 13)

- (1) Subject to Order 80, rule 12, the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into court, and where the amount is paid into court, the Court may, on the application of the plaintiff, order the whole or any part of it to be paid out to him at such time or times as the Court thinks fit.
- (2) An application under paragraph (1) for money in court to be paid out may be made ex parte, but the Court hearing the application may direct a summons to be issued.
- (3) An interim payment may be ordered to be made in one sum or by such instalments as the Court thinks fit.
- (4) Where a payment is ordered in respect of the defendant's use and occupation of land the order may provide for periodical payments to be made during the pendency of the action.

~~**14. Directions on application under rule 10** (O. 29, r. 14)~~

~~Where an application is made under rule 10, the Court may give directions as to the further conduct of the action, and, so far as may be applicable, Order 23A, rules 9 to 13, shall apply as if the Court were~~

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~~conducting a directions hearing under that Order, and, in particular, the Court may order an early trial of the action.~~

14. Directions on application under rule 10 (O. 29, r. 14)

Where an application is made under rule 10 –

(a) the Court may give directions as to the further conduct of the action; and

(b) so far as may be applicable, Order 25, rules 5 to 10 –

(i) with the omission of so much of rule 10(1) as requires the parties to serve a notice specifying the orders and directions which they require; and

(ii) with any other necessary modifications, apply as if the application were a case management summons; and

(c) in particular, the Court may order an early trial of the action.

15. Non-disclosure of interim payment (O. 29, r. 15)

The fact that an order has been made under rule 11 or 12 shall not be pleaded and, unless the defendant consents or the Court so directs, no communication of that fact or of the fact that an interim payment has been made, whether voluntarily or pursuant to an order, shall be made to the Court at the trial, or hearing, of any question or issue as to liability or damages until all questions of liability and amount have been determined.

16. Payment into court in satisfaction (O. 29, r. 16)

Where, after making an interim payment, whether voluntarily or pursuant to an order, a defendant pays a sum of money into court under ~~Order 22, rule 4~~ **Order 22**, the notice of payment must state that the defendant has taken into account the interim payment.

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Consequential
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17. Adjustment on final judgment or order or on discontinuance (O. 29, r. 17)

Where a defendant has been ordered to make an interim payment or has in fact made an interim payment, whether voluntarily or pursuant to an order, the Court may, in giving or making a final judgment or order, or granting the plaintiff leave to discontinue his action or to withdraw the claim in respect of which the interim payment has been made, or at any other stage of the proceedings on the application of any party, make such order with respect to the interim payment as may be just, and in particular –

(a) an order for the repayment by the plaintiff of all or part of the interim payment; or

- (b) an order for the payment to be varied or discharged; or
- (c) an order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff's claim.

18. Counterclaims and other proceedings (O. 29, r. 18)

The preceding rules in this Part of this Order shall apply, with the necessary modifications, to any counterclaim or proceeding commenced otherwise than by writ, where one party seeks an order for an interim payment to be made by another.