## DCPI 655/2015

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 655 OF 2015

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##### BETWEEN

NG CHO CHU JUDY (吳楚珠) Plaintiff

### and

CHAN WING HUNG (陳永雄) Defendant

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Before : Master J Chow in Chambers (Open to public)

Dates of Hearing : 16April 2015 & 8 May 2015

Date of Decision : 15 May 2015

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DECISION

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*Introduction*

1. This is a decision on costs. The defendant conceded to the plaintiff’s summons filed on 28 March 2015 (“the plaintiff’s summons”), the issue is whether the plaintiff is entitled to costs.

*The plaintiff’s summons*

1. The plaintiff issued the Writ of Summons on 27 March 2015 for the purpose of taking out the plaintiff’s summons for an order of discovery of “all statements given to the police by the defendant in relation to the First Assault in 2013” (“the police statements”). The personal injury action, as suggested in the plaintiff’s summons, relates to two assaults committed by the defendant on 15 March 2013 and 26 July 2014 which had caused physical injuries on the plaintiff (“the 2013 and 2014 assaults”).
2. The parties’ solicitors had a series of correspondence at the pre-action stage with regard to, inter alia, disclosure of the police statements.
3. On 16 April 2015, in the call over hearing of the plaintiff’s summons, Mr. Ching appeared for the plaintiff and the defendant acted in person. By consent of the defendant, an order of discovery of the police statements was granted. Mr. Ching submitted costs should follow the event, he applied for costs of the plaintiff’s summons. The defendant opposed. As I aware it is pertinent to consider the all relevant correspondence between the parties prior to the issuance of the plaintiff’s summons, I adjourned the plaintiff’s summons to 8 May 2015 for argument on costs. The defendant’s solicitors appeared for the defendant in the hearing on 8 May 2015.
4. Mr. Chan, solicitors for the defendant submitted, the defendant has complied with the order of discovery and had confirmed the police statements have been disclosed to the plaintiff on 22 April 2015. He emphasized, the police statements disclosed pursuant to the order was identical to those disclosed by the defendant on 6 March 2015, although the defendant conceded to an order of discovery, the plaintiff’s summons is premature and unnecessary. The defendant seeks costs of the plaintiff’s summons, on an indemnity basis.
5. The issue in this costs application are (i) whether the plaintiff’s summons is premature; (ii) when the defendant conceded an order for disclosure of the police statements, whether the plaintiff should be entitled to costs.

*A chronology*

1. The very first letter dated 12 November 2014 was a standard pre-action letter where the defendant was first informed of the intended personal injury action and was asked to disclose documents, inter alia, the police statements.
2. The defendant’s solicitors replied on 12 December 2014, in turn asked the plaintiff’s solicitors to disclose documents, inter alia, the plaintiff’s police witness statements. The defendant’s solicitors made it clear that the action was still at an early stage, as investigation was on-going, they invited the plaintiff’s solicitors to refrain from commencing legal proceedings.
3. The plaintiff’s solicitors replied on 3 January 2014, they complained the defendant’s solicitors failed to disclose the defendant’s police statements.
4. On 12 January 2015, the defendant’s solicitors agreed to exchange the defendant’s police statements with the plaintiff, and alerted the plaintiff’s solicitors that mutual disclosure of information and documents shall be done within 3 months in accordance with paragraph 19 of the Practice Directions 18.1.
5. The plaintiff’s solicitors issued two letters dated 21 January 2015 and 3 February 2015 to press the defendant’s solicitors for exchange of their respective police statements.
6. The defendant’s solicitors replied on 3 February 2015, stating (i) they are in possession of two police records of interview of the defendant relating to the 2014 assault; (ii) the defendant is retrieving relevant police record of interview relating to the 2013 assault and those will be ready for exchange in due course.
7. On 4 February 2015, the plaintiff’s solicitors demanded exchange of police statements in relation to the 2013 assault within next 7 days.
8. On 5 February 2015, the defendant’s solicitors disclosed 2 police records of interview relating to the 2014 assault to the plaintiff’s solicitors.
9. On 6 March 2015, the defendant’s solicitors informed the plaintiff’s solicitors that police statements for both 2013 and 2014 assaults were ready for exchange. In the 2nd letter dated the same date, the defendant’s solicitors disclosed (i) two police notebook records; and (ii) a record of interview.
10. For the first time, on 10 March 2015, the plaintiff’s solicitors requested the defendant to confirm he gave no witness statement to the police in relation to the 2013 assault.
11. On 13 March 2015, the defendant’s solicitors complained the plaintiff failed to disclose the witness statement of the plaintiff relating to the 2013 assault.
12. On 16 March 2015, the plaintiff solicitors complained repeatedly that they have not received any statement made to the police by the defendant relating to the 2013 assault.
13. Letters dated 17, 18 and 20 March 2015 contained clarifications from both parties.
14. The plaintiff’s solicitors complained to the defendant’s failure to disclose the police statements in their letters dated 24 and 27 March 2015.
15. On 27 March 2015, the plaintiff issued the Writ of Summons.
16. On 28 March 2015, the plaintiff issued and served the plaintiff’s summons on the defendant.
17. On 13 April 2015, the defendant’s solicitors stated the three statements disclosed in the 2nd letter dated 6 March 2015 were all the statements the defendant had received from the police in relation to both the 2013 and 2014 assaults.

*Applicable legal principles*

1. It is specifically stated in Order 62 rule 5(1) of the Rules of District Court, Cap 336H, in exercising discretion as to costs, the court should take into account, inter alia, the underlying objectives as set out in Order 1A rule 1 of the Rules of District Court and the conduct of the parties[[1]](#footnote-1). The conduct of the parties, Order 62 rule 5(2)(d) expressly includes the conduct before, as well as during, the proceedings.
2. In this costs application, paragraph 19 of the Practice Directions 18.1 is also relevant:-

“The letter of claim should be sent no later than 4 months prior to the commencement of proceedings, and the proposed defendant(s) or insurer(s) concerned should reply constructively thereto within one month. A simple acknowledgement is not a constructive reply. If there is no such reply, the claimant will be entitled to commence proceedings forthwith without risk as to costs arising out of non-compliance of this paragraph. If such reply is received within one month, the parties should over the next 3 months communicate constructively and provide mutual disclosure of information and documents with respect to issues of liability and quantum (including, without limitation, the information and documents identified in Schedules A and B of the specimen letter which have not already been served) as are reasonably required for attempting to settle the claim in whole or in part, instructing medical expert(s) and / or arranging expert medical examination (see paragraph 22 hereof).”

*Discussion*

1. I see no fault on the part of the defendant’s solicitors. They acted promptly in accordance with paragraph 19 of the Practice Directions 18.1. When the plaintiff’s solicitors issued the pre-action letter on 12 November 2014, the defendant’s solicitors duly replied within one month period. The defendant’s solicitors have rightly pointed out in their letter dated 12 January 2015 that a 3-month period shall be allowed for the parties to effect mutual discovery.
2. The plaintiff’s solicitors emphasized the disclosure of the defendant’s statement(s) “made to the police”. Mr. Ching maintained his view that the defendant had failed to disclose his police statements and refused to state whether it existed. Mr. Ching explained the necessity and urgency of obtaining those statements at the pre-action stage because the plaintiff was in need of the police statements in assessing the defendant’s liability, the plaintiff’s injury and quantum.
3. I have reservation. Mr. Ching was in possession of the plaintiff’s police witness statement, he could have taken instructions from the plaintiff in formulating the claim. Coupled with the fact that defendant pleaded guilty and was convicted of one count of wounding on 9 April 2013, it formed the basis of a personal injury claim against the defendant. Secondly, in quantifying the plaintiff’s claim, at the pre-action stage, the medical reports of treatment and care are vital evidence.
4. Reasonable time ought to be allowed for the defendant to make attempts to retrieve his statements made to police. Taking into the account the fact that the defendant’s solicitors’ constructive reply and had disclosed the police statements to the plaintiff’s solicitors on 6March 2015, I find the defendant’s solicitors were neither delaying the intended personal injury action nor withholding the police statements during the pre-action stage.
5. After the defendant’s solicitors have duly provided the plaintiff with the defendant’s police statements. The plaintiff’s solicitors discovered such statements relating to the 2013 assault was contained in a police notebook, not in form of a record of interview (Pol 857). Mr. Ching then pressed the defendant’s solicitors to admit there was no statement (in form of a record of interview) given by the defendant to the police in 2013 assault. I accept Mr. Chan’s submission that in the police notebook disclosed in the 2nd letter on 6March 2015 was in fact a cautioned statement of the defendant taken on the date of the assault. It is expected the request of the plaintiff’s solicitors has been answered. As Mr. Chan has rightly submitted, there is no hard fast rule that statements made to police must be in form of a Pol 857, it is redundant for the defendant to make such admission at all.
6. It is worth mentioning the defendant (a litigant in person) has indicated he has already disclosed all statements made to police to the plaintiff’s solicitors in call over hearing on 16 April 2015. Yet he has made a second attempt to reconfirm with the police that they have not left out any statements made by him in relation to the 2013 assault. He submitted a letter issued by the police which invited the defendant to collect his statements. Being sensible, he conceded to an order for disclosure.
7. Costs of the plaintiff’s summons should be assessed in light of the conduct of the parties (a requirement in Order 62 rule 5(2)(d)), it is well noted in the correspondence leading to the plaintiffs summons. I must say, there are good reasons the defendant should entitle to costs of the plaintiff’s summons. The defendant’s solicitors endeavoured every opportunity to invite the plaintiff to withhold issuance of Writ of Summons at the pre-action stage, pending investigation and discovery. Albeit the defendant’s solicitors did not state in the correspondence that he has made no statements to the police other than the notebook cautioned statement. I fail to see it is a compelling reason that warrants the plaintiff’s solicitors to issue the Writ of Summons (and the plaintiff’s summons) at this early stage.
8. More importantly, the defendant’s solicitors were at all times willing to disclose the police statements to the plaintiff’s solicitors (see letter dated 3 February 2015). I see both parties are engaging in constructive communication for discovery and investigation during the 3-month period as prescribed in paragraph 19 of the Practice Directions 18.1.
9. In this regard, the plaintiff’s summons is premature. I am satisfied the costs of and incidental to the plaintiff’ summons should be borne by the plaintiff. Nevertheless, I disagree with Mr. Chan submissions that the plaintiff should pay such costs on an indemnity basis. No conclusion can be drawn that the conduct of the plaintiff’s solicitors were utterly unreasonable, only that the plaintiff’s summons was taken out prematurely.

*Conclusion*

1. I order the costs of and incidental to the plaintiff’s summons to be paid by the plaintiff to the defendant forthwith, to be taxed if not agreed.

( J Chow )

Master

Mr Ching Ming Yue, of Ching & Co, for the plaintiff

The defendant, acting in person on 16 April 2015 and Mr Joe Chan, of So, Lung & Associates on 8 May 2015, for the defendant.

1. Respectively in Order 62 rule 5(1)(aa) and (e) of the Rules of District Court. [↑](#footnote-ref-1)