## DCPI 747/2016

[2018] HKDC 62

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO 747 OF 2016

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BETWEEN

DORTHE FISKER HANSEN Plaintiff

and

TANG WAI KEUNG 1st Defendant

DIAMOND ELECTRONICS HONG KONG 2nd Defendant

COMPANY LIMITED

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Before: Her Honour Judge Winnie Tsui in Court

Date of Hearing: 10 January 2018

Date of Decision: 10 January 2018

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DECISION

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1. These are my reasons for adjourning the present trial.
2. It only transpired to the court *just* before the trial that there is a High Court personal injuries action brought by the plaintiff’s husband against the same defendants in the present action in respect of the same traffic accident.
3. The same issues on liability, namely the alleged negligence on the part of the 1st defendant, the driver, and the liability of the 2nd defendant, the registered owner of the vehicle, arise in both the present action and the High Court action.
4. I have been informed by counsel that the pleadings and the witness statements filed in both actions are substantially the same. The material difference is that in the High Court action, the husband is the plaintiff and the witness whereas in the present action in the District Court, the wife is the plaintiff and the witness; and, the extent of their injuries and hence the items of claims are different.
5. Given the overlapping issues on liability, it is totally undesirable and unsatisfactory to have the two actions tried separately at different times by two different courts. This is particularly so when the court is required in each case to make factual findings as to how the traffic accident happened, based on its evaluation of the credibility and reliability of the witnesses.
6. To allow the present trial to proceed would potentially lead to conflicting factual findings and outcome as between the husband’s and the wife’s claims. This has a direct impact on the substantive rights and obligations of the parties.
7. It is regrettable that throughout these two set of proceedings, neither party has seen fit to take steps to have these two actions tried or dealt with together, not even to inform the two courts involved as to the existence of the other action. Much time and efforts had already been wasted on duplicating the documents and similar applications (such as the applications for security for costs) in the two actions. This must stop now.
8. From both the merits perspective and the costs perspective, the two actions should be disposed of at the same time by the same court. The High Court action is ready for trial but a trial date has not yet been fixed.
9. I am satisfied that the above amounts to exceptional circumstances which justify the adjournment of the present trial so as to enable the parties to take the necessary step to have the two actions tried together.

*(Discussion re form of order and costs)*

*Orders*

1. And I make the following orders:-
2. The trial of the action be adjourned sine dine and the remaining date reserved for the trial be vacated.
3. The action be transferred to the Court of First Instance. It be noted that the transfer is to facilitate the disposal of this action together with the High Court Action No HCPI 413/2016, both actions being in respect of the same accident. It be further noted that no consensus was reached by the parties to have the actions tried in the District Court, relying on section 44 of the District Court Ordinance.
4. The costs of the transfer be in the cause.
5. The costs occasioned by the adjournment of the trial be in the cause.

(5) Leave to the plaintiff to withdraw §§4, 5 and 6 of her summons dated 14 December 2017. The remainder of the summons be adjourned pending the transfer, with liberty to restore. It be noted that the plaintiff in the High Court action may take out a similar application to amend pleadings in the High Court.

(6) Costs of the preparation of that summons by the defendants and wasted by reason of the adjournment be borne by the plaintiff, summarily assessed in the sum of $10,000, payable within 28 days from today.

(7) Leave to the plaintiff to withdraw her summons dated 19 December 2017 with no order as to costs.

(8) The plaintiff’s summons dated 8 January 2018 be adjourned pending the transfer, with liberty to restore. It be also noted that the plaintiff in the High Court action may take out a similar application to file further witness statement in the High Court.

( Winnie Tsui )

District Judge

Mr Jackson Poon, instructed by Or & Partners, for the plaintiff

Mr Tony Chow, instructed by Simon Si & Co, for the 1st and 2nd defendants