## DCPI 801/2016

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 801 OF 2016

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BETWEEN

LAI CHU YIU Plaintiff

and

LEE MEI PING 1st Defendant

ZURICH INSURANCE COMPANY LTD 2nd Defendant

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Before: Her Honour Judge Winnie Tsui in Chambers (Open to Public)

Date of Hearing: 11 July 2017

Date of Decision: 11 July 2017

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1ST DECISION

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*Introduction*

1. There are two applications in this action which are fixed before me today. The application before me this morning is the plaintiff’s summons dated 5 January 2017 asking for the 1st defendant’s counterclaim be struck out under O18, r19 of the Rules of the District Court.
2. The second one, fixed for this afternoon, is the 2nd defendant’s summons of the same date asking for the 1st defendant’s defence in the contribution and indemnity proceedings brought by the 2nd defendant against the 1st defendant be struck out, pursuant to O18, r19 or the inherent jurisdiction of the court.
3. This decision concerns the first application only. As I shall explain below, the plaintiff’s application is taken out in what can be described as the main proceedings in this action, ie, the action brought against the 1st defendant by the plaintiff.
4. This is to be distinguished from the contribution and indemnity proceedings brought by the 2nd defendant against the 1st defendant.

*Background*

1. The action arises out of a traffic accident which happened in the morning of 20 June 2014 in Shatin. The taxi driven by the plaintiff and the private car driven by the 1st defendant collided when both vehicles were moving along their two respective lanes of Mei Tin Road.
2. In January of the following year, the 1st defendant was convicted of careless driving in the accident.
3. The plaintiff now claims that he suffered neck and upper back injuries as a result of the 1st defendant’s negligence. He received treatment at the Accident & Emergency Department of Tseung Kwan O Hospital and later at a private clinic. He claims also that he was granted sick leave of 30 days after the accident.
4. In his statement of damages, the plaintiff claims a total sum of $305,300. This sum is composed of, amongst other things, a claim for pain, suffering and loss of amenities in the sum of $200,000. He pleads that when the accident happened, he was 50 years old and had enjoyed good health. He had enjoyed swimming but after the accident could no longer enjoy swimming.
5. I would pause here to make an observation that it is a straightforward personal injuries claim.

*Procedural history*

1. The plaintiff issued the writ on 22 April 2016, almost two years after the accident. On the same day, the statement of claim and statement of damages were filed. The 1st defendant was then the only defendant in the action.
2. The 1st defendant, acting in person all along in these proceedings (including today’s hearing), filed a document entitled “Defense and Counter Claims” on 23 May 2016. The document contains a section headed “Counter claims”. This is the part which the plaintiff now seeks to strike out.
3. The plaintiff then filed his reply and defence to counterclaim on 13 June 2016.
4. By order dated 26 September 2016, the 2nd defendant, an insurer, was joined as the second defendant.
5. In the affirmation filed by the 2nd defendant in support of its joinder application, it was disclosed that it was the insurer of a motor insurance policy covering the private car driven by the 1st defendant at the time of the accident. The insured was however not the 1st defendant, but her husband. No notice was given to the 2nd defendant of the accident in accordance with the terms of the policy. For that reason, the 2nd defendant subsequently repudiated liability under the policy and gave notice to that effect to the 1st defendant’s husband. Given that the 2nd defendant would likely be liable to satisfy any judgment obtained by the plaintiff against the 1st defendant in respect of the accident under section 10 of the Motor Vehicles Insurance (Third Party Risks) Ordinance, Cap 272, the 2nd defendant asserted that it had a real interest in this action and ought therefore to be joined as a party. Its application was allowed.
6. After the joinder, on 14 October 2016, the 2nd defendant issued its notice of contribution and indemnity to the 1st defendant. That is the beginning of the contribution and indemnity proceedings identified above. The 2nd defendant pleads that it had repudiated liability under the policy by letter dated 4 May 2016. It claims, amongst other things, judgment against the 1st defendant for any amount, including costs, which the 2nd defendant may be obliged to pay to the plaintiff pursuant to a court order or judgment or a *bone fide* settlement agreement.
7. In response to that, the 1st defendant sent by post to court a document entitled “Defense and Counterclaims” and dated 5 December 2016. This is the document which the 2nd defendant seeks to strike out in the hearing to be heard before this court this afternoon.
8. In parallel with the contribution and indemnity proceedings, the 2nd defendant also took steps to deal with the main proceedings vis-à-vis the plaintiff. On the same date as it issued the above contribution notice, the 2nd defendant made a sanctioned payment in the sum of $145,000, which was subsequently accepted by the plaintiff.
9. By order dated 21 February 2017:-
10. Leave was granted for the payment out of the sanctioned payment to the plaintiff;
11. The 2nd defendant do pay the plaintiff’s costs of the main proceedings, excluding costs in relation to the 1st defendant’s counterclaim against the plaintiff;
12. The plaintiff do have leave to discontinue the main proceedings against the 1st defendant;
13. As between the plaintiff and the 1st defendant in the main proceedings, there be no order as to costs (save, again, those costs in relation to the 1st defendant’s counterclaim).
14. Subsequent to this order, the 2nd defendant paid into court a further sum of $100,000 in settlement of the whole of the plaintiff’s costs in the main proceedings, by way of sanctioned payment, which was accepted by the plaintiff shortly afterwards.

*The plaintiff’s striking out application*

1. It is necessary to set out the 1st defendant’s counterclaim against the plaintiff in full as follows:-

“*The Solicitors for the plaintiff* may not or do not exercise adequate professional legal due diligence of his professions or his best endeavor or to solicit the relevant proof documentation to substantiate from plaintiff or provide a expert opinion/endorsement from qualified third party[ies] to substantiate his claim that to valid the plaintiff damages loss, and suffer was valid such as, medical certificate, medical report that are not proven, nor endorsed by third party[ies], or subject matter expert[s], domain expert[s], plaintiff’s solicitors as a processional lawyer, may need to verify, or at least give significant documentation to substantiate his claim for permanent disability[ies] for the plaintiff who act on behalf of the plaintiff in this writ of summon [DCPI 801/2016],

I may be in doubt/question/if *professional negligence or other vested interests or agenda[s] the plaintiffs’ solicitors* working the plaintiff for accident damages/ injury for a vested interest.

*I would demand a proof of the plaintiff’s solicitors of documentation that when and how the plaintiff would first made contact with the plaintiff’s solicitors, how often the proposed arbitrator/mediator proposed by plaintiff lawyer were working closely together on personal injury claims on traffic accident,* which I don’t need such service at all. And all the arbitrator/mediator resume and marketing material was sent to me and filed in the writ of summon which may intend, in my view, to mitigate the claim and settled by the arbitrator has connection the plaintiff’s solicitors. So that I can seek third party investigator, my legal advise/lawyer, HK Solicitors society to investigate this case.” (emphasis added)

1. Given the procedural history set out above, if the above counterclaim is struck out, the main proceedings as between the plaintiff and the 1st defendant would be disposed of entirely.
2. Mr Alexsander Wong acts for the plaintiff at today’s hearing. His submissions are straightforward. In gist, he argues that insofar as the counterclaim is directed, as it seems to be the case, against the plaintiff’s solicitors, as opposed to the plaintiff, it clearly discloses no reasonable cause of action *against the plaintiff*. In any event, there is no merit whatsoever in the 1st defendant’s pleaded case as against the plaintiff or the plaintiff’s solicitors.

*Analysis*

1. My preliminary observation is that it is not easy to understand what the 1st defendant is trying to counterclaim. It may help if the counterclaim is read in conjunction with her defence. I do not propose to set out her defence in full. The gist is essentially that the plaintiff and the plaintiff’s solicitors have not provided “significant proof” to substantiate the plaintiff’s claim. In particular, she takes issue with the plaintiff’s plea on his inability to enjoy swimming after the accident, which the 1st defendant seems to have characterised as a “permanent disability” in her pleading. She writes:

“I would wonder it is a Plaintiff’s Solicitors made up such diagnosis[s] or verdict[s] or is it an expert judgment verdict/qualified medical professional practitioner diagnosis before the plaintiff attempted to file the writ of summon …”

1. She also queries whether the plaintiff’s solicitors have “exaggerated” the claim. She also challenges causation as she claims that after the accident happened, the plaintiff never requested to go on the ambulance for treatment.
2. Therefore, if one reads the 1st defendant’s counterclaim against the allegations made in her defence, it seems tolerably clear that the gravemen of the 1st defendant’s case is against *the plaintiff’s solicitors* for “professional negligence” or “other vested interest”. (It is however not known exactly what the latter means.)
3. I agree with Mr Wong’s submission that as such, the counterclaim discloses no cause of action against *the plaintiff* at all. For that reason, the 1st defendant’s counterclaim must be struck out.
4. In any event, as far as the plaintiff’s solicitors are concerned, no counterclaim is made against them and no third party proceedings are initiated by the 1st defendant against them.
5. Therefore, there is no need to deal with the merits of any claim the 1st defendant purports to raise against the plaintiff’s solicitors. Suffice it to say that in any event (a) the 1st defendant would not be entitled to seek the correspondence between the plaintiff and his solicitors in relation to the accident as they are clearly covered by legal professional privilege, and (b) there does not appear to be any basis to compel the plaintiff or the plaintiff’s solicitors to disclose the latter’s previous dealings with any proposed arbitrator or mediator.

*Order*

1. For the above reasons, I order that the “Counter Claims” as included in the 1st defendant’s “Defense and Counter Claims” dated 21 May 2016 be struck out and her counterclaim against the plaintiff be dismissed.

*(Discussion re costs)*

1. The plaintiff do have costs of the counterclaim and this application, including any reserved costs, with certificate for counsel, summarily assessed in the sum of $60,000, payable by the 1st defendant on or before 8 August 2017.
2. The plaintiff do draw up, file and serve today’s order.

( Winnie Tsui )

District Judge

Mr Alexsander Wong, instructed by Mike So, Joseph Lau & Co, for the plaintiff

The 1st defendant was not represented and was acting in person