DCPI 990/2015

[2018] HKDC 55

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 990 OF 2015

--------------------------

BETWEEN

WEI WEI Plaintiff

and

CHI CHIH TONG 1st Defendant

WONG YIN MUI 2nd Defendant

TSANG CHI HO Intended 3rd Defendant

--------------------------

Before: Deputy District Judge C. Chow in Chambers

Date of Hearing: 15 January 2018

Date of Decision: 15 January 2018

---------------------

DECISION

---------------------

*Background*

1. The plaintiff commenced this action in 2015 against two individuals, the 1st and the 2nd defendants, for damages she sustained as a result of being bit by a dog with Microchip Code no. 035540782 (“the Dog”) on 16 November 2013 (“Accident”). It was pleaded in the Statement of Claim that the 1st defendant was the owner and/or keeper of the Dog and the 2nd defendant was the co-owner and/or keeper of the Dog at all material times. It was also alleged that the plaintiff was bit by the Dog when she went on the roof of Cheong Lok Mansion, No 1G Baker Street, Kowloon (“Building”) to collect a blanket.
2. The plaintiff was represented by the Director of Legal Aid (“DLA”) up till 18 May 2017 when her legal aid certificate was discharged. By the Order of Master SH Lee dated 25 August 2017, the pre-trial review (“PTR”) was set to be heard on 1 December 2017, and the date of the trial set to commence on 2 February 2018 with 3 days reserved.
3. On 3 November 2017, the plaintiff filed a summons seeking an order for (1) the addition of Tsang Chi Ho (“Tsang”) as the third defendant; (2) abrogation of right of the 2nd defendant to defence during trial; and (3) for disclosure of the fact that the 1st defendant has been raising dogs all the time by the Incorporated Owners of Cheong Lok Mansion (“IO”) via CCTV or the guard (“First Summons”). An affirmation in support (“P First Affirmation”) was filed by the plaintiff at the same time.
4. The First Summons was first heard on 1 December 2017. The fact that interlocutory judgment had already been entered against the 2nd defendant was not drawn to the court’s attention at that hearing. Directions were given for filing and service of affirmation in opposition by the 1st defendant, the 2nd defendant and Tsang (“Other Parties”) and for filing and service of affirmation in reply by the plaintiff. The directions given by the court were as follows:-

Directions given on 1 December 2017:

“1. 批准第一被告人及擬加入之一方於2017年12月22日或之前，就原告人之傳票存檔及送達其反對誓章；

2. 第二被告人須於2017年12月6日或之前，以書面通知法庭其就原告人之傳票是否提出反對及提出有關其反對誓章之建議。法庭其後將通知訴訟各方聆訊押後之日期；

3. 批准原告人於2018年1月5日或之前，存檔及送達就上述第1及第2段所提及之反對誓章所作之回應誓章；

4. 各方可自由提出申請；及

5. 今天的訟費保留待決。”

Directions given on 8 December 2017:

“1. 批准第二被告人於2017年12月22日下午4時或之前，存檔就原告人2017年11月3日傳票之反對誓章，如有的話；

2. 批准原告人於2018年1月5日下午4時或之前存檔其回應誓章，如有的話；

3. 法庭於2017年12月1日指示存檔的各誓章須於相關限期當天下午4時或之前存檔；

4. 為送達上述第1、第2及第3段提及之各誓章，作出誓章一方須於存檔誓章限期當日4時30分前另送達3份副本於本法庭書記（到達區域法院3樓後至電2582 4011聯絡職員收取），各與訟他方可在限期當天下午4時30分後向本法庭書記領取有關誓章副本。不論任何一方是否依時到法庭領取副本，只要各份副本如前所述送達予本法庭書記便會視為已妥善送達至有關各方；

5. 原告人於2017年11月3日存檔的傳票聆訊押後至2018年1月15日上午10時正於區域法院第11庭進行辯論，預留2小時；

6. 本案之審前覆核聆訊及原告人之證人傳票申請將於上述押後聆訊日期一併處理。”

1. The Other Parties filed and served their affirmations in opposition pursuant to the above directions on 22 December 2017. I will refer to the affirmations from the 1st defendant, the 2nd defendant and Tsang as “D1 Affirmation”, “D2 Affirmation” and “Tsang Affirmation” respectively. The plaintiff did not pick up such affirmations in opposition until 5 January 2018, the due date for her to file and serve her own affirmation in reply.
2. On 8 January 2018, without leave of the court, the plaintiff filed two affirmations. In one of the affirmations that was written out in English, the plaintiff complained about the directions I made at the hearing on 1 December 2017 and the prejudice that she perceived to be held by me against her at that hearing (“P Second Affirmation”). In the other affirmation filed on 8 January 2018 that was written out in Chinese (“P Third Affirmation”), the plaintiff referred to further matters in support of the First Summons.
3. On 12 January 2018, the plaintiff filed a summons (“Second Summons”) seeking for a response from the court to P Second Affirmation and leave to file P Third Affirmation. As the Other Parties have not been in receipt of P Second Affirmation and P Third Affirmation prior to the hearing today, copies have been provided to them for review before proceeding further.
4. One thing I need to deal with at the outset and that is D2 Affirmation. I have since found out that as a result of the default of the 2nd defendant in filing any notice of intention to defend, interlocutory judgment was entered against her on 28 July 2015, with damages to be assessed. That being the case, the 2nd defendant cannot now raise any matter for her defence. I will therefore expunge the D2 Affirmation.

*SECOND SUMMONS*

1. I need to consider first whether to allow an extension of time for the plaintiff to file P Third Affirmation. Matters to be taken into account include the length of the delay and the reason for the delay.
2. The original deadline for the plaintiff to file her affirmation in reply was 5 January 2018. She filed it on 8 January 2018 and so the delay was three days. The delay is not substantial.
3. In the Second Summons, the plaintiff refers to the reasons for the delay set out in P Second Affirmation. The plaintiff regards P Second Affirmation as a letter to me. It is important for the plaintiff to bear in mind that the litigation in hand is a dispute between herself and the Other Parties and all her applications have to be made under the relevant rules of procedure applicable. The plaintiff has not indicated the rules of procedure under which her request for a reply from me was made. Further, it is open to the parties, including the plaintiff, to appeal against the orders made by the court, including the order I made on 1 December 2017, if he or she so wishes. For these reasons, I will not be replying to P Second Affirmation, but I will take into account the matters deposed therein only for the purpose of deciding whether they can be accepted as reasons justifying the delay in the filing of P Third Affirmation.
4. In P Second Affirmation, the plaintiff stated that it was unfair to direct the filing and service of her affirmation in reply by 5 January 2018. She referred to her being granted 13 days to reply whereas the Other Parties were given “extra 21 days” after the hearing on 1 December 2017 to file and serve their affirmations in opposition. She pointed out that she had to read three statements from the Other Parties while they each had to read one statement from her. What is worse, according to the plaintiff, was the counting of 22 December 2017 as one day when the plaintiff could only get the statements from the court by 4:30pm on that day. She also said I did not count from the date of the hearing of 1 December 2017 for the Other Parties.
5. According to the last paragraph of P Second Affirmation, the delay in the submission of the plaintiff’s statement against Tsang was because the plaintiff had to get some letters from the Legal Aid Department (“LAD”) to prove what they had done after they had notice of the identity of the registered owner of the Dog at the time of the Accident. The plaintiff also referred to her inability to get all the documents before 5 January 2018 owing to the Christmas and New Year break.
6. That the plaintiff considers the directions I gave for the filing of evidence in respect of the Summons to be unfair is not an acceptable reason for the late filing of the affirmation in reply by the plaintiff. In exercising any of its powers under the Rules of the District Court (Cap. 336H) (“Rules”), the court shall seek to give effect to the underlying objectives set out in Order 1A, rule 1 of the Rules, including to increase the cost-effectiveness of any practice and procedure to be followed in relation to proceedings before the court, to ensure that a case is dealt with as expeditiously as is reasonably practicable, to promote a sense of reasonable proportion and procedural economy in the conduct of proceedings, to ensure fairness between the parties, and to facilitate settlement between the parties. It is also stipulated in Order 1A, rule 3 that the parties to any proceedings and their legal representatives shall assist the court to further such underlying objectives.
7. Leaving aside the other reason about getting documents from the LAD and simply looking at the state of affairs as they have occurred, the plaintiff did not need more than 4 days to get her affirmation in place. She only picked up the affirmations of the Other Parties on 5 January 2018 and she filed P Second Affirmation and P Third Affirmation on 8 January 2018. There is no explanation from the plaintiff as to why she did not pick up the affirmations of the Other Parties earlier, and wasting 14 days’ time unused for the preparation of her affirmation in reply. She has not fulfilled her duty to assist the court to further the aforesaid underlying objectives. In view of such duty, she should also not be asking for more time than would be necessary simply because the Other Parties were given more time than she was.
8. At the hearing on 1 December 2017, the directions for filing evidence were given after hearing the submissions of the plaintiff about the time she would require for the filing and serving of the affirmation in reply. The parties were told that they could apply to the court if they would need more time and “liberty to apply (各方可自由提出申請)” was specifically stipulated in one of the paragraphs of the Order made that day. The plaintiff did not so apply before the due date for her to file and serve her affirmation in reply, but opted to file the same at the time she chose herself.
9. The plaintiff said the Order I made did not require her to seek time extension before the due date. That is a blatant disregard to her duty to give effect to the underlying objectives to increase the cost-effectiveness of any practice and procedure to be followed in relation to proceedings before the court, to promote a sense of reasonable proportion and procedural economy in the conduct of proceedings, and to facilitate settlement between the parties. As the plaintiff only came to court to get the affirmations of the Other Parties on 5 January 2018, she knew full well that she would not be able to file her affirmation in reply before the due date, but she made no attempt to ask for consent of the other sides.
10. The other reason proffered by the plaintiff for the delay is that she had to get some documents from the LAD. P Third Affirmation made reference to 5 letters sent by the LAD on behalf of the plaintiff to Tsang, from 21 April 2016 to 20 December 2016. These letters had been in existence for about one year or more at the time the plaintiff filed the First Summons. The LAD was representing the plaintiff at that time and she could have access to them. Even if the plaintiff had not kept a copy of such letters earlier, she should have obtained all the relevant papers from the LAD once her legal aid certificate was discharged in May 2017 and made reference to them in P First Affirmation. If she only cared to obtain them at a much later time, she herself, and not the other sides, has to bear the consequences of leaving the matter to the last minute.
11. Another matter to be taken into account is the merits of the plaintiff’s case. As the extension of time applied for is for the filing of P Third Affirmation, it is time to consider the nature of the evidence sought to be adduced under P Third Affirmation. Part 1 of P Third Affirmation is “相關法律” and Part 2 is “相關事實”. In the said Part 1, the plaintiff referred to the definition of “畜養人” in section 2 of the Dogs and Cats Ordinance (Cap. 167), section 20A of the Rabies Regulation (Cap. 421A) and section 32 of the Rabies Ordinance (Cap. 421). All these references were not made in P First Affirmation.
12. The leave granted to the plaintiff is for adducing evidence in reply to the evidence sought to be relied upon by the Other Parties to oppose the First Summons only. It is not for her to file another around of fresh evidence which she could and should have produced when she filed P First Affirmation.
13. Although the plaintiff has the last say in the filing of evidence relating to the First Summons, the 1st defendant and Tsang have to be given the chance to respond to her affirmation in support. If the plaintiff only discloses some of the evidence she wants to rely on in the last round of the filing of evidence but not before, the other sides, who can only know about it after they have filed their own affirmations, will have no further chance to respond. That is not in the interest of justice.
14. There are eight paragraphs in Part 2 of P Third Affirmation. Paragraphs 1-3 of Part 2 of P Third Affirmation are comments of the plaintiff on the evidence in Tsang Affirmation, while paragraph 7 of that Part 2 is in response to D1 Affirmation. They are indeed evidence in reply.
15. Paragraph 4 is where the plaintiff referred to the 5 letters mentioned in paragraph 18 above. As pointed out in that paragraph, they should have been raised in P First Affirmation. The same goes for the attendance of Tsang at a mediation meeting on 4 January 2017 referred to in paragraph 5 of Part 2 of P Third Affirmation and the receipt by the plaintiff of the relevant documents in June 2017 (incorrectly stated as June 2016 in P Third Affirmation) in paragraph 6 of that Part 2, which happened well before the filing of the First Summons.
16. In paragraph 7 of Part 2 of P Third Affirmation, the plaintiff referred to the admission of the 1st defendant in his affirmation that he was keeping the Dog. The other matters dealt with in this paragraph 7 relate to another application of the plaintiff for issue of a writ of subpoena. That has nothing to do with the First Summons and should not be included in the affirmation in reply.
17. Paragraph 8 of Part 2 of P Third Affirmation is in reply to D2 Affirmation. With D2 Affirmation expunged, there is no need for the plaintiff to reply. That paragraph 8 should also be disregarded.
18. Having taken into account all relevant considerations, in particular the interest of justice, I grant retrospective leave to the plaintiff to file P Third Affirmation on 8 January 2018, but with Part 1 on “相關法律” and paragraphs 4, 5, 6 and 8 of Part 2 on “相關事實” expunged. I make no order as to paragraph 1 of the Second Summons.
19. I will hear parties on costs after dealing with the First Summons.

( C. Chow )

Deputy District Judge

The plaintiff was not represented and appearing in person

The 1st defendant, the 2nd defendant and the intended 3rd defendant were not represented and appearing in person