## DCPI 1217/2016

**IN THE DISTRICT COURT OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO 1217 OF 2016

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BETWEEN

LAU MING LEE（劉明莉） Plaintiff

and

SECRETARY FOR JUSTICE for and on behalf of

DIRECTOR OF AGRICULTURE, FISHERIES

AND CONSERVATION Defendant

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Before : His Honour Judge MK Liu in Chambers (Open to Public)

Date of Hearing : 29 May 2017

Date of Decision : 2 June 2017

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DECISION

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1. There are 2 summonses before me:-
2. the defendant’s summons dated 15 February 2017 and issued under the Rules of the District Court (“RDC”), Order 18 rule 19(1)(a), for an order to strike out the plaintiff’s statement of claim on the ground that it discloses no reasonable cause of action and to dismiss the plaintiff’s action;
3. the plaintiff’s summons dated 20 February 2017 for entering interlocutory judgment on liability against the defendant with damages to be assessed on the ground of default of defence.
4. To my surprise, the parties have filed affirmations in these 2 applications. I must say that this is improper.
5. The defendant’s application is made under Order 18 rule 19(1)(a). It is clearly provided in Order 18 rule 19(2) that on an application made under paragraph (1)(a), no evidence shall be admissible. Thus, there is no reason to file any affirmation in relation to this application.
6. The plaintiff’s application is made on the ground that the defendant has failed to serve a defence on her within the time stipulated in RDC. It is trite that in considering an application of this kind, the court is not allowed to receive any evidence but must decide the application according to the applicant’s pleading alone. This point has been repeatedly emphasized by various courts from time to time. A recent reminder has been given by DHCJ Paul Lam SC in *Leung Pak Ki v The Estate of Pang Kau (deceased)* (HCA 624/2009, 1 March 2016), in which the learned judge said:-

“5. Leung made a second affirmation dated 14 January 2016 to support this application. It is trite that in an application made under Order 19 rule 7, the court cannot receive any evidence but must give judgment according to the pleadings alone (*Hong Kong Civil Procedure 2016*, vol 1 §19/7/11 at p 472). I have repeated this fundamental procedural point in my judgment in *Biostime International Investment Ltd v Finance Heson Paper (HK) Co Ltd* [2015] 2 HKLRD 658 at 661, §§7-8. I also note that this procedural point was repeated in recent cases including *Li Sau Sing v CTMA Holdings Ltd and others*, DCCJ 4825/2014 (5 October 2015, unreported), §§6–7, pp 3-4; *Tsui Ming Sin v Tsui Chi Ping and another*, HCA 2550/2014 (2 February 2016, unreported), §§10–11, pp 3-4; *Li Sau Sing v CTMA Holdings Ltd and others*, DCCJ 4825/2014 (3 February 2016, unreported), §9, pp 5-6). It is disappointing that legal practitioners still need to be reminded of such a fundamental procedural rule.”

1. It is disappointing that notwithstanding these reminder, this fundamental procedural point has still been often overlooked by legal practitioners. No affirmation should be filed in relation to the plaintiff’s application. All the affirmations filed are inadmissible for the purpose of considering the plaintiff’s application.
2. I note that the plaintiff’s solicitors also include the statement of damages in the hearing bundle. The statement of damages is not relevant to the 2 applications before me and should not be included in the hearing bundle.
3. The only material document is the statement of claim. I would consider whether the case as pleaded by the plaintiff in the statement of claim has disclosed a reasonable cause of action. If the answer is yes, I would proceed to consider whether the facts as pleaded therein would be sufficient for the purpose of granting an interlocutory judgment on liability to the plaintiff.
4. A copy of the statement of claim is annexed to this decision. For ease of reference, unless otherwise specified, the abbreviations used in the statement of claim are adopted herein. The background has been set out in the statement of claim and I would not repeat the same here.

*Any reasonable cause of action?*

1. Mr Wong, counsel for the plaintiff, refers me to the following principles concerning striking out pleadings:-
2. In *CY Foundation Group Ltd v Best Max Holdings Ltd* (HCA 787/2011, 3 June 2013), Recorder Lisa Wong, SC (as she then was) summarized the relevant legal principles and said at [2]:-

“(1) First, this being an application under rule 19(1)(a) only, no evidence is admissible under rule 19(2). The court will simply **assume the facts as pleaded in the statement of claim to be proved and determine, on that basis, whether the pleading discloses a reasonable cause of action**.

(2) Second, the question for the court is whether the allegations as pleaded in the statement of claim disclose some cause of action or raises some question that ought to be tried. It is not concerned with an assessment of the strength or weakness of the case. The mere fact that the case is weak, and not likely to succeed, is no ground for striking it out. The court would only strike out when it is impossible, and not just improbable, for the case to succeed.

(3) Third, where a pleading is defective only for want of particulars to which the other side is entitled, particulars (and not an order to strike out the pleading) should have been sought under Order 18, rule 12. The court can properly refuse to strike out even a pleading seriously lacking in particularity if the defect is not the result of a blatant disregard of court orders and can be remedied.

(4) Fourth, where a statement of claim does not disclose the cause of action relied upon but there is reason to believe that the case can be improved by amendment, the court may give an opportunity to amend, even though the formulation of the amendment is not before the court.” (emphasis added)

1. See also *Hong Kong Civil Procedure 2017*, Vol 1, §18/19/4:-

“It is **only in plain and obvious cases** that the court should exercise its summary powers to strike out the indorsement on any writ or any pleading under this rule. There should be no trial upon affidavit. Disputed facts were to be taken in favour of the party sought to be struck out. **Nor should the court decide difficult points of law in striking out proceedings**. The claim must be obviously unsustainable, the pleadings unarguably bad and it must be impossible, not just improbable, for the claim to succeed before the court will strike it out. If the court does not think the matter to be clear beyond doubt or if it fails to be satisfied that there is no reasonable cause of action or that the proceedings are frivolous or vexatious, then, there should be no striking out. One must be careful not to drive a plaintiff from the judgment seat nor should the court decide difficult points of law.” (Emphasis added)

“The court is **loath to strike out** a case that **involves an area of the law which is in the process of developing** — summary dismissal would deprive the court of hearing full argument on the subject (*Tadjudin v Bank of America National Association* [2010] 3 HKLRD 417).” (Emphasis added)

1. These principles are well known and not in dispute. I bear all these in mind in considering the defendant’s application.
2. Mr Wong submits that the cause of action relied upon by the plaintiff is the tort of negligent investigation. Mr Wong draws my attention to the decision of the Supreme Court of Canada in *Hill v Hamilton-Wentworth Regional Police Services Board* [2007] 3 SCR 129, in which the Supreme Court of Canada by a majority held that the tort of negligent investigation exists in Canada. It would be necessary to set out the majority’s view and the minority’s view as summarized in the headnotes of the law report:-
3. The majority held that (at 130-132):-

“…… the tort of negligent investigation exists in Canada. Police officers owe a duty of care to suspects. Their conduct during an investigation should be measured against the standard of how a reasonable officer in like circumstances would have acted. Police officers may be accountable for harm resulting to a suspect if they fail to meet this standard. In this case, the police officers’ conduct, considered in light of police practices at the time, meets the standard of a reasonable officer in similar circumstances and H’s claim in negligence is not made out.

A person owes a duty of care to another person if the relationship between the two discloses sufficient foreseeability and proximity to establish a prima facie duty of care. In the very particular relationship between the police and a suspect under investigation, reasonable foreseeability is clearly made out because a negligent investigation may cause harm to the suspect. Establishing proximity generally involves examining factors such as the parties’ expectations, representations, reliance and property or Other interests. There is sufficient proximity between police officers and a particularized suspect under investigation to recognize a prima facie duty of care. The relationship is clearly personal, close and direct. A suspect has a critical personal interest in the conduct of an investigation. No other tort provides an adequate remedy for negligent police investigations. The tort is consistent with the values of the Canadian Charter of Rights and Freedoms and fosters the public's interest in responding to failures of the justice system.

No compelling policy reasons negate the duty of care. Investigating suspects does not require police officers to make quasi-judicial decisions as to legal guilt or innocence or to evaluate evidence according to legal standards. The discretion inherent in police work is not relevant to whether a duty of care arises, although it is relevant to the standard of care owed to a suspect. Police officers are not unlike other professionals who exercise levels of discretion in their work but who are subject to a duty of care. Recognizing a duty of care will not raise the reasonable and probable grounds standard required for certain police conduct such as arrest, prosecution, search and seizure. The record does not establish that recognizing the tort will change the behaviour of the police, cause officers to become unduly defensive or lead to a flood of litigation. The burden of proof on a plaintiff and a defendant’s right of appeal provide safeguards against any risk that a plaintiff acquitted of a crime, but in fact guilty of the crime, may recover against an officer for negligent investigation.

The standard of care of a reasonable police officer in similar circumstances should be applied in a manner that gives due recognition to the discretion inherent in police investigation. Police officers may make minor errors or errors in judgment without breaching the standard. This standard is flexible, covers all aspects of investigatory police work, and is reinforced by the nature and importance of police investigations.

To establish a cause of action for negligent police investigation, the plaintiff must show that he or she suffered compensable damage and a causal connection to a breach of the standard of care owed to him or her. Lawful pains and penalties imposed on a guilty person do not constitute compensable loss. The limitation period for negligent investigation begins to run when the cause of action is complete and the harmful consequences result. This occurs when it is clear that the suspect has suffered compensable harm. ln this case, the limitation period did not start to run until H was acquitted of all charges of robbery.”

1. The minority is of the view that (at 132-133):-

“The tort of negligent investigation should not be recognized in Canada. A private duty of care owed by the police to suspects would necessarily conflict with an officer’s overarching public duty to investigate crime and apprehend offenders. This alone defeats the claim that there is a relationship of proximity between the parties sufficient to give rise to a prima facie duty of care. Even if a prima facie duty of care were found to exist, that duty should be negatived on residual policy grounds. The recognition of this tort would have significant consequences for other legal obligations and would detrimentally affect the legal system and society more generally.”

1. Mr Chik, government counsel for the defendant, submits that the tort of negligent investigation does not exist in Hong Kong, and he refers to me to, inter alia, *Liu Mei Huei v Government of the HKSAR* [2016] 2 HKLRD 249, in which the Hong Kong Court of Appeal said:-

“59. Both the plaintiff and the defendant relied on *Hill v Chief Constable of West Yorkshire* [1989] AC 53 in their submissions. Since that decision, the House of Lords in two other cases further elaborated on the question of law of whether or not policemen owed a duty of care towards victims or witnesses of crimes (*Brooks v Commissioner of Police of the Metropolis & Ors* [2005] 1WLR 1495 and *Smith v Chief Constable of Sussex Police* [2009] 1 AC 225). In view of this, we provided the parties with these cases during the hearing of the appeal. They both made supplemental written submissions in respect of these cases later.

……

62. As far as the broad principles are concerned, it is correct for the plaintiff to say that the Police Force and public servants might have to be liable in tort under the common law for their acts of negligence. However, just because the Police Force or public servants had been negligent in performing their statutory duties is not sufficient to render them liable for negligence under the common law. It is also necessary for the claimant to show that the circumstances of the case were such that they owed him/her a duty of care under the common law: *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633, 734H to 735A. He must satisfy the three-part test laid down in *Caparo Industries Plc v Dickman* [1990] 2 AC 605: (1) The harm the claimant suffered was a reasonably foreseeable consequence of the defendant’s negligence; (2) There existed between the claimant and the defendant a relation of sufficient proximity; and (3) It was fair, just and reasonable to impose the duty of care the claimant claims to have existed on the defendant.

63. Besides, in cases **where the police are accused of having been negligent in the investigation of crimes and the apprehension of a criminal**, whether or not they should owe the victim a duty of care also involves **public policy considerations**. In *Hill v Chief Constable of West Yorkshire*, the House of Lords held that the police owed the victim who was killed by a serial killer no duty of care not only because she was only a member of public who had no relationship of proximity with the police but also because of public policy considerations. In page 63, the House of Lords opined that **once a duty of care had been imposed, when the police were executing their duties, they might become defensive to protect themselves in order to avoid legal liabilities. This is not in the public interest. Moreover, once the police are dragged into litigation, they will have to divert the time and resources that should have been used on performing their duties to deal with the litigation. Further, in this kind of litigation, the court will have to examine some of the internal police policy decisions, but it is not appropriate for the court to judge whether such policy decisions are reasonable or not**. The House of Lords therefore held that **the police should be exempted from being held liable for civil negligence in respect of the acts they performed for the purpose of investigating and suppressing crimes on the ground of public policy**. This principle will hereinafter in this judgment be referred to as **the core principle of *Hill’s* case**.

64. In *Brooks v Commissioner of Police for the Metropolis*, the House of Lords examined the legal developments that had taken place since *Hill*, including some decisions of the European Court of Human Rights. Although the five members of the House of Lords did not endorse the full breadth of what *Hill* had laid down, they all agreed that the core principle of *Hill*’s case had remained unchallenged in the UK domestic jurisprudence and in European jurisprudence. They held that as a matter of public policy the police generally owed no duty of care to victims or witnesses in respect of their activities when investigating crimes and suppressing them. Admittedly, the House of Lords did not rule out that in some exceptional circumstances, the police might owe them a duty of care.

65. Later, in *Smith v Chief Constable of Sussex Police*, the House of Lords once again examined the core principle of Hill’s case. Four of the members (with Lord Bingham dissenting) endorsed the principle of the judgment in *Brooks* and reiterated that when deciding whether the police had to bear a duty of care, public policy was an important consideration. The majority decision of the case affirmed the core principle of *Hill*. It held that considering the question in the light of public policy and the collective interest of the society, no duty of care should be imposed on the police in their activities to investigate and suppress crimes for the reason that to do so would encourage defensive policing and divert manpower and resources from their function of suppressing crimes and apprehending criminals. The four members did not endorse the liability principle Lord Bingham propounded. However, they did not deny that beyond investigating and suppressing crimes (that is, outside the scope defined in the core principle of *Hill*’s case), the police might have to bear a duty of care while pointing out that it would only be in very exceptional circumstances.

……

70. **In our view, the principles in the decisions of *Brooks* and *Smith* and the core principle of *Hill* are applicable parts of the common law of Hong Kong. In view of the public policy consideration referred to in both cases, the police do not generally owe the victims or witnesses involved in criminal investigative work any civil duty of care**.” (Emphasis added)

1. The Hong Kong Court of Appeal’s decision in *Liu Mei Huei* is binding upon me. Facing that decision, Mr Wong submits that the Court of Appeal’s decision is that the police do not generally owe the victims or witnesses involved in criminal investigative work any civil duty of care. The Court of Appeal has not decided whether the police would owe a duty of care to the suspect in a criminal investigation.
2. Mr Wong’s proposition is that in a criminal investigation, a law enforcement officer *generally* owes a duty of care to the suspect in a criminal investigation (“P’s Proposition”). Mr Wong submits that he is relying upon this proposition in support of the plaintiff’s case, and he is not saying that there is any exceptional circumstance in the plaintiff’s case leading to a duty of care owed by the defendant to the plaintiff.
3. Mr Wong submits that there is a difference between a suspect and a victim in a criminal investigation, and he refers me to minority’s view in *Hill* as summarized in the headnotes at 133:-

“There is a crucial distinction between victims and suspects. Whereas a victim’s interest is generally reconcilable with a police officer’s duty to investigate crime, a suspect will always suffer some harm from being targeted in an investigation, even if ultimately exonerated. A suspect’s interest in being left alone by the state is at odds with the fulfilment of the police officer’s public duty to investigate crime. ……”

1. With respect to Mr Wong, I do not see how that part of the judgment in *Hill* can lend any support to the plaintiff’s case. It is true that the suspect’s position and the victim’s position in a criminal investigation are different – the victim is in a relatively better position. As said by the minority in *Hill*, a suspect would always suffer some harm from being targeted in an investigation.
2. In my judgment, the public policy considerations mentioned by the Court of Appeal in *Liu Mei Huei* [63] – [65] also apply to the suspects in criminal investigative work. As a result of *Liu Mei Huei* case, with respect to Mr Wong, I do not regard P’s Proposition as an arguable point of law.
3. I have asked Mr. Wong that apart from the Supreme Court of Canada’s decision in *Hill*, whether there is any authority suggesting that law enforcement officers would owe a duty of care to suspects generally. Mr Wong says that the Supreme Court of Canada’s decision is the only authority on the point. In the circumstances, with the public policy considerations mentioned by the Court of Appeal in *Liu Mei Huei* in mind, I do not regard P’s Proposition as an area of law which is in the process of developing.
4. As a matter of law, the defendant did not owe the plaintiff a duty of care in the investigation of the said Incident. For this reason alone, the defendant’s application should succeed.
5. Even if I am wrong on the above, I would still give judgment to the defendant for the reasons set out in the paragraphs below.
6. Assuming that P’s Proposition is correct and the facts pleaded in the statement of claim are true, I am still of the view that the statement of claim discloses no reasonable cause of action against the defendant.
7. According to the majority’s view in *Hill*, in order to establish the tort of negligent investigation, the claimant has to show:-
8. a duty of care is owed by the investigating officer to the claimant;
9. the investigating officer has breached the standard of care owed to the claimant, which is measured against the standard of how a reasonable officer in like circumstances would have acted;
10. a causal connection between the investigating officer’s breach of the standard of care and the damage suffered by the claimant; and
11. the damage suffered by the claimant is compensable damage.
12. The cause of action as pleaded in the statement of claim is “**…… wrongfully, recklessly and/or negligently instituted the said prosecution against the Plaintiff**” – see §12 of the statement of claim. With respect, the cause of action pleaded is not negligent investigation, but negligent prosecution.
13. Investigation and prosecution are 2 different matters. The job of an investigator is to find out and to collect evidence. The job of a prosecutor is to consider the evidence and the law, and then to consider whether the case should be brought to court, and if yes, to present the case in court. While *Hill* is an authority on negligent investigation, it does not establish any tort called “negligent prosecution”.
14. Even if the substance of §12 of the statement of claim is “negligent investigation”, I am of the view that an important element is missing in the statement of claim, ie why the standard of care exercised by the defendant is lower than the standard of how a reasonable enforcement officer would have acted in like circumstances.
15. Mr. Chik refers me to the following provisions in the Rabies Ordinance (“the RO”):-

(a) S 2 provides that:-

“"**keeper**" (畜養人) in relation to an animal means a person who-

* 1. owns the animal or **has it in his possession or custody**; or
  2. harbours the animal; or
  3. occupies land or premises on which the animal is usually kept or permitted to remain; or
  4. is the parent or guardian of a person under the age of 16 years who is the keeper of the animal pursuant to paragraph (a), (b) or (c) of this definition,

but does not include a person who has seized or taken possession or custody of an animal under this Ordinance or who has possession or custody of an animal for the purpose of examining or vaccinating it in accordance with this Ordinance;” (Emphasis added)

(b) S 23 provides that:-

“(1) Unless it is on a leash or is otherwise under control, no Part II animal shall be in-

1. a public place; or
2. any place from which it may reasonably be expected to wander into a public place if it is not on a leash or otherwise under control.”
3. S 25 provides that:-

“(1) Where a Part II animal that is in any place in contravention of section 23 bites a person (other than the animal's keeper) **the keeper shall be guilty of an offence** and liable to a fine of $10,000.” (Emphasis added)

1. Accordingly, it is clear that for the purposes of the RO, not only the owner or a “licenced keeper” (a term used by the plaintiff in various places in the statement of claim but not in the RO) is regarded as “keeper”, a person having an animal in his possession or custody is also regarded as “keeper” for the purposes of the RO.
2. It is pleaded in §1(1) of the statement of claim that the plaintiff was residing at the said Resident, and it is pleaded in §1(3) that the said Dog was kept by the plaintiff’s husband at the said Residence. Bearing these facts and the statutory definition of “keeper” in mind, a reasonable law enforcement officer may well regard the plaintiff as “keeper” of the said Dog for the purposes of the RO.
3. I am aware that it is pleaded in §§10 and 11 that the plaintiff was found as having no case to answer in the Tuen Mun Magistrates’ Court, and the plaintiff was found as not the keeper of the said Dog for the purpose of the charge laid by the defendant. However, these matters are not relevant to the question of standard of care.
4. It is not known whether the facts as pleaded in §1(1) and §1(3) of the statement of claim were before the magistrate.
5. The real question is whether a reasonable law enforcement officer, with the facts in §1(1) and §1(3) of the statement of claim and the statutory definition of “keeper” in mind, may regard the plaintiff as “keeper” of the said Dog for the purposes of the RO. In my view, the answer to the question above is in the affirmative.
6. For these reasons above, even with the assumptions mentioned in §21 above, I am still of the view that the statement of claim discloses no reasonable cause of action against the defendant.
7. I have considered whether I should give the plaintiff a chance to amend her statement of claim. In my judgment, the problems in the statement of claim as set out above are incurable. Accordingly, I reach the conclusion that there should be an order in terms of the defendant’s summons.

*Any default judgment?*

1. I have ruled that the statement of claim discloses no reasonable cause of action against the defendant. Even if the facts pleaded therein are true, there cannot be a default judgment on liability against the defendant. I would dismiss the plaintiff’s summons.

*Disposition*

1. Both Mr Wong and Mr Chik agree that costs should follow the event, with a certificate for counsel.
2. On the defendant’s summons, I make the following order:-
3. the plaintiff’s statement of claim filed on 30 November 2016 be struck out on the ground that it discloses no reasonable cause of action;
4. the plaintiff’s action against the defendant be dismissed; and
5. costs of this action, including the costs of this application, be to the defendant, with a certificate for counsel.
6. I dismiss the plaintiff’s summons with costs to the defendant, with a certificate for counsel.
7. I proceed to summarily assess the costs payable by the plaintiff to the defendant. I have read the defendant’s statement of costs (“the statement”) and heard the parties’ submissions in this regard.
8. Mr Wong fairly accepts that all the items and figures on the statement are reasonable, save and except there may need to have a deduction as a result of an affirmation filed by the defendant in these application. I agree.
9. Mr Chik submits that after preparing the statement, he has spent one more hour to conduct further legal research. This is reasonable.
10. The length of the hearing of the 2 summonses is about 1 hour.
11. Taking all the aforesaid into account, I summarily assess that the total of the costs payable by the plaintiff to be defendant be HK$15,000.
12. There be an order that the total of the costs payable by the plaintiff to the defendant be summarily assessed at HK$15,000, which have to be paid by the plaintiff to the defendant forthwith.
13. I thank Mr Wong and Mr Chik for their fair and helpful submissions.

( MK Liu )

District Judge

Mr Anson Wong Yu Yat, instructed by YH Yeung and Associates, for the plaintiff

Mr Edward Chik, Government Counsel, of Department of Justice, for the defendant

ANNEX

The plaintiff’s statement of claim

“1. At all material times :-

1. the plaintiff was residing at Ground Floor, No 50 Chun Hing San Tsuen, Yuen Long, New Territories, Hong Kong (“the said Residence”) with her husband and their daughter;
2. the said Residence was rented in the name of the plaintiff's husband;
3. there was kept at the said Residence by the plaintiff’s husband an inter-bred female dog (混種唐母狗) (“the said Dog”) which caused the incident forming the subject matter of the prosecution to be described hereinbelow (“the said Incident”);
4. the plaintiff’s husband has had the said Dog vaccinated against rabies, microchipped and licence in compliance with the Rabies Ordinance, Cap 421 and its subsidiary legislations prior to happening of the said Incident by bringing the said Dog to Agriculture, Fisheries and Conservation Department’s (“AFCD”) Anti-Rabies Dog Inoculation and Licensing Centre for licensing and rabies vaccination;
5. the plaintiff therefore shall not be the licenced keeper of the said Dog and the true owner thereof being the plaintiff's husband instead;
6. the said Dog has had valid and subsisting licence at the time when the said Incident happened; and
7. the defendant therefore knew or ought to have known that the plaintiff shall not be the keeper of the said Dog for the purpose of the offence prosecution of which was being brought by them against the plaintiff.

2. (1) At all material times AFCD was the government department responsible for, inter alia, enforcement of the provisions of the Rabies Ordinance, Cap 421 and its subsidiary legislations.

(2) AFCD will be called the Defendant in this Statement of Claim although the they are being represented by the Secretary of Justice in the present action since they were the party responsible for investigation into and prosecution of the offence related to the said Incident.

3. On or about 4 July 2012, one Mr Wong Ng Tak reported to the police that he was bitten by the said Dog at or about No 58 Chun Hing San Tsuen, Yuen Long, New Territories, Hong Kong. Further investigation was carried out by the defendant thereafter.

4. On or about 11 July 2012 one 黃輝慶 (“Mr Wong”) of the defendant went to the said residence of the plaintiff when the plaintiff’s husband and daughter were not at home at the material time. The said Mr Wong took a written statement from the plaintiff which was in pro-forma format. In the said statement, the plaintiff professed herself as keeper of the said Dog.

5. Being an immigrant from Hunan Province in Mainland China in or around 2003, the plaintiff was at all material times and still not conversant fluent with spoken Cantonese or conversant with Traditional Chinese in its written form. The said Mr Wong of the defendant who took the said statement, although he knew at the material time that the plaintiff was not able to speak fluent Cantonese, did not ask if the plaintiff was able to read Traditional Chinese or understood the content of the said statement. Without explaining the content of the said statement and its effect in relation to future prosecution, the said Mr Wong of the defendant asked the plaintiff to sign on the said statement right away when the plaintiff did comply. The plaintiff did comply with the direction of the said Mr Wong because he had represented to the plaintiff that “簽咗名就解決件事”. Also the plaintiff was laboured under the belief that she should comply with what Mr Wong had told her since he was the representative of government authority.

6. Alternatively, even if the plaintiff did confirmed to the said Mr Wong of defendant that she was the keeper of the said Dog, she was laboured under the mistaken belief that she ought to be the keeper of the said Dog by reason of it being kept by her family.

7. Later on, the plaintiff received a Summons issued out of Tuen Mun Magistrates’ Court on 4 January 2013 in which the plaintiff was alleged to have committed the offence under Section 25(1) of the Rabies Ordinance, Cap 421 when the plaintiff allegedly being the keeper of the said Dog which was not on a leash or under control in a place at outside No 58, Chun Hing San Tsuen, Yuen Long from which the said Dog might reasonably be expected to wander into a public place bit a person named Wong Ng Tak. She was summoned to attend the said court on 22 February 2013 to plead to the said allegation.

8. Having received the said summons, the plaintiff emotion was much depressed and she felt very anxious about the prosecution. To alleviate the depressive psychological condition of the plaintiff, her husband decided and in fact has had changed their residence to Au Tau, Yuen Long, New Territories away from Chun Hing San Tsuen.

9. Due to unresolved depressive and anxious psychological condition, the plaintiff attempted to commit suicide on or about 11 June 2013. Fortunately, her situation was discovered by her husband and she was sent to Castle Peak Hospital for treatment. She was discharged on or about 14 June 2013 but was required to receive out-patient psychiatric treatment from Castle Peak Hospital thereafter.

10. The plaintiff did not plead guilty to the allegation and she attended trial in Tuen Mun Magistrates’ Court on 17 June 2013. The presiding Magistrate found that there was no case to be answered by the plaintiff and she was acquitted of the allegation against her with costs.

11. In making the aforementioned ruling, the presiding Magistrate found that the defendant had prosecuted the wrong person as the plaintiff was not the keeper of the said Dog for the purpose of the offence as alleged by the defendant.

12. Defendant therefore has wrongfully, recklessly and/or negligently instituted the said prosecution against the plaintiff.

Particulars

1. Failure to take all reasonable steps to check and/or to verify the true identity of the licenced keeper of the said Dog on the date of the said Incident before proceeded to take statement only from the plaintiff when the defendant was at all material times the official authority to carry out vaccinating, microchipping and licensing the said Dog as well as being the authority responsible for keeping of the relevant records.
2. Failure to take all reasonable steps to check and/or to verify who was the true keeper of the said Dog on the date when the said Incident happened despite having knowledge that apart from the plaintiff, her husband might reasonably be true keeper of the said Dog at the material time.
3. Failure to take all reasonable steps to confirm if the plaintiff was conversant with Traditional Chinese in its written form or her knowledge about the content of the said statement before asking the plaintiff to sign on the same even though the statement taker knew of the plaintiff’s inability to speak fluent Cantonese.
4. Failure to take all reasonable steps to confirm and/or to verify as to whether the plaintiff did understand the content of the statement before the defendant told the plaintiff to sign her name thereon.
5. Failure to explain content of the statement and its legal implication in relation to future prosecution to the plaintiff before asking her to sign thereon despite the fact and matter pleaded in (3) and (4) above.
6. Failure to discharge their duty to conduct reasonably and/or diligently investigation into the true identity of the keeper of the said Dog before institution of the prosecution against the plaintiff but only relied unreasonably on the statement signed by the plaintiff.
7. Failure to take all reasonable steps to assesse whether the plaintiff was the probable defendant in the said prosecution and/or whether a probable cause had been made out against the plaintiff before institution of the said prosecution.

13. By reason of the facts and matters aforesaid, the plaintiff sustained personal injuries, loss and damage as particularized in the Statement of Damages filed herewith.

14. Pursuant to Order 18 rule 12(1A) of the Rules of District Court, Cap 336H, the following medical reports are filed and served herewith:-

1. Medical Report prepared by Dr Joyce Heung of Castle Peak Hospital dated 10 October 2013.
2. Medical Report prepared by Dr Pan Ming Yeung Ian of Castle Peak Hospital dated 30 December 2015.

15. By reason of the facts and matters pleaded hereinabove, the plaintiff is entitled to claim against the defendant damages as set out in the Statement of Damages filed herewith.

16. The plaintiff is entitled to and claims interests pursuant to Sections 49 and 50 of the District Court Ordinance, Cap 336 on such amount, at such rate and for such period as this court shall deem just.

AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT for:-

1. Damages;
2. Interest as pleaded in paragraph 16 hereof;
3. Costs; and
4. Further and other relief as this Court shall deem just.＂