# DCPI 2626/2016

[2021] HKDC 1190

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

# PERSONAL INJURIES ACTION NO 2626 OF 2016

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BETWEEN

YUEN MING TUNG Plaintiff

and

MAN LAU CHUEN 1st Defendant

MING WAI PUBLIC LIGHT BUS LIMITED 2nd Defendant

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##### Before: His Honour Judge Andrew Li in Chambers (Open to public)

Date of Hearing: 16 March 2021 & 28 April 2021

Date of Decision: 17 September 2021

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DECISION

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*INTRODUCTION*

1. This is a summons taken out by the 1st and 2nd defendants (collectively “the defendants”) for interrogatories in a personal injuries (“PI”) action.
2. In the summons dated 18 February 2021 (“the Summons”), the defendants seek leave to file and serve the answer to the further interrogatories which have been enclosed and marked as annexure 1 to the Summons (“the Further Interrogatories”). They ask the Further Interrogatories to be served by the plaintiff by way of affidavit/affirmation. Further, the defendants request the plaintiff to provide the defendants copies of the documents specified under the Further Interrogatories as per the 2nd letter of the defendants dated 5 January 2021 which has been marked as annexure 2 to the Summons (“the Specific Discovery”).

*BACKGROUND*

1. On 29 January 2021, I handed down a reasons for decision in this case which is closely related to the present application. In that decision, I concluded that the defendants’ requests for further and better particulars (“F&BP”) should be served in the form of further interrogatories rather than F&BP.
2. Hence, this application can be considered as a follow up of those requests made by the defendants on the last occasion.
3. The Summons was first heard by me on 16 March 2021 during which the plaintiff’s solicitor who attended the hearing on behalf of the plaintiff indicated for the first time that he would oppose to the defendants’ application. As such, I made an order that the plaintiff to file an affirmation in opposition and that the defendants to file the affirmation in reply. I also adjourned the Summons for arguments with 2 hours reserved to be heard on 30 April 2021. It was subsequently changed to 28 April 2021 due to a clash in the court’s dairy.
4. This action arose out of a simple traffic accident involved with the collision between a public bus (“the Bus”) driven by the plaintiff and a public light bus (“the PLB”) driven by the 1st defendant. The 1st defendant was the employee and permitted driver of the 2nd defendant. The accident happened over 7.5 years ago on 18 February 2014 (“the Accident”). The plaintiff claims damages for the alleged neck injury sustained by him in the Accident.
5. Judgment on liability has been entered against the defendants by consent on 28 April 2017.
6. Hence, the outstanding issue in this case is in relation to quantum only.
7. Reading from the history of this case, it is clear that the plaintiff had, on a number of occasions, failed and/or refused to disclose and/or provided relevant facts and documents relating to the matters in dispute between the parties, in particular, in respect of his source of income. This had led to several applications made by the defendants and subsequent orders made by the court against the plaintiff. They included the Order of Master J Chow dated 24 May 2017, the Orders of Master Michelle Soong dated 31 October 2017; 17 January 2018; 31 July 2018; 31 August 2018 and 12 March 2019 respectively.
8. On 13 January 2020, Master Jacqueline Lee made an order granting leave to the defendants to file and serve interrogatories on the plaintiff.
9. The interrogatories were issued on the plaintiff on 14 January 2020. After seeking further extension of time, the plaintiff provided his answers to the interrogatories by way of an affirmation dated 7 April 2020 and a supplemental affirmation dated 30 June 2020 (“the P’s Answers”).
10. On 20 October 2020, the defendants took out an application by summons requesting for F&BP to P’s Answers (“the October 2020 Application”).
11. The application was dismissed by me on 24 December 2020 and the reasons for decision were handed down on 29 January 2021.
12. Having considered the reasons stated in the decision, the defendants took out the Summons for the Further Interrogatories and Specific Discovery in respect of the plaintiff’s Answers.

*DISCUSSION*

1. In essence, 2 types of reliefs are being sought by the defendants under the Summons, namely, (i) Further Interrogatories under §§1 and 2; and (ii) Specific Discovery of those documents specified in the Further Interrogatories under §3.
2. In support of the Summons, the defendants rely on the 6th affirmation of Woo Kai Wai Henry filed on 18 February 2021 (“Ds’ 6th Aff”) and the 7th affirmation of Woo Kai Wai Henry filed on 20 April 2021 (“Ds’ 7th Aff”). In opposition, the plaintiff relies on the affirmation of Li Chun Wan filed on 7 April 2021 (“P’s Aff”).

*LEGAL PRINCIPLES*

*(i) Further Interrogatories*

1. Order 26 rule 1 of the Rules of the District Court (“the RDC”) entitles a party to apply to the court for an order to serve on the other party interrogatories relating to any matter in question in the cause or matter, and the other party on whom interrogatories have been served is required to answer the interrogatories on affidavit. It is trite that the essential requirements permitting interrogatories under Order 26 rule 1 are that they are “necessary either for disposing fairly of the cause or matter or for saving costs”: *Hong Kong Civil Procedure 2021* at §26/4/7 and §26/4/11. Interrogatories can be regarded as necessary where they may assist the parties fairly to bring an action to an end at an earlier stage than the trial itself: See *Duke of Sutherland v British Dominions Land Settlement Corporation, Limited* [1926] Ch 746 at 753.
2. If the interrogatories served are contested, it must be shown to the court that the interrogatories, if answered, will serve a clear litigious purpose by saving costs or promoting the fair and efficient conduct of the action: See *Esquire (Electronics) Limited v The Hong Kong and Shanghai Banking Corporation Limited* *and Another* (unreported, HCA 11077/1994, 2 September, 2003) at §11; *Hong Kong Civil Procedure 2021* at §26/4/11.
3. The principles regarding the discovery by interrogatories are set out in *Lee Nui Foon administratrix of the estate of Chiu Yu Fu, deceased v Ocean Park Corporation, an Independent Statutory Corporation* [1995] 2 HKC 395 at §2. In summary:-

(1) The interrogatories must relate to “a matter in question” between the parties;

(2) The interrogatories must be “necessary” either (a) for disposing fairly of the cause or matter; or (b) for saving costs;

(3) The interrogatories must not be fishing, oppressive, prolix or imprecise. An interrogatory will be oppressive if the answer cannot be given without an examination of the respondent’s record, with the expenditure of much time and trouble;

(4) The interrogatories must not be questions which go to the evidence the opposing party intends to adduce;

(5) The interrogatories must not be questions which require an answer which is a matter of opinion or for an expert;

(6) The interrogatories must not be questions which go to the facts which will assist in establishing the opposing party as opposed to the case of the party seeking to interrogate;

(7) The interrogatories must not be effectively asking for documents of discovery; and

(8) If the interrogatories do not comply with the requirement of the rules under Order 26 of the RDC, they may not be administered. Even if they do comply with the rules, the court still retains an overriding discretion as to whether or not to allow them to be administered.

1. When insufficient answers to the interrogatories were given, further interrogatories can be sought.
2. The basis for asking for leave from the court to serve further interrogatories on the other party is the same as that stipulated under Order 26 rule 1 of the RDC.

*(ii) Discovery of documents*

1. Order 24 rule 7 of the RDC allows the party to apply to the court for an order for specific discovery of documents.
2. *Hong Kong Civil Procedure 2021* at §24/7/2 observes the 3 prerequisites for the court’s jurisdiction to make an order for specific discovery under Order 24 rule 7 of the Rules of High Court, Cap 4A (which has the same wordings as Order 24 rule 7 of the RDC). The court has no jurisdiction to make such order unless there is sufficient evidence or *prima facie* case that:-

(1) The documents or classes of documents exist which the other party has not disclosed;

(2) The documents relate to a matter in issue in the action; and

(3) The documents are in the possession, custody or power of the other party.

1. Once it is established that the 3 preconditions exist, the court has the discretion to order the discovery. Such order will be made only if the discovery sought is necessary either for disposing fairly of the cause or matter or for saving costs.
2. The test for the relevance of documents is laid down in *The Compagnie Financière Et Commerciale du Pacifique v Peruvian Guano Company* (1882) 11 QBD 55, where a document is considered to be relevant if:-

(1) It is reasonable to suppose that it contains information which may, not must, either directly or indirectly enable the party requiring the same either to advance his own case or to damage the case of his adversary; or

(2) It is a document which may fairly lead the party to a train of inquiry which may have either of those two consequences.

1. This *prima facie* case may be based simply on the probability arising from the surrounding circumstances or in part on specific facts deposed to: *Hong Kong Civil Procedure 2021* at §24/7/2.
2. It is also trite law that “fishing” is not allowed and discovery should not be oppressive: *Hong Kong Civil Procedure 2021* at §24/7/2.
3. The making of such order for specific discovery does not preclude the other party from stating in his answer to an application for specific discovery by affidavit that he does not have the documents sought in his possession, custody or power. Such answer is conclusive at the interlocutory stage: *Hong Kong Civil Procedure 2021* at §24/7/2.

*FINDINGS OF THE COURT*

1. I agree with Miss Leung who represents the defendants in this application that the plaintiff tried to confuse the issues by repeating the same objections raised in the previous application which I had ruled in the plaintiff’s favour. It is apparent from my previous decision that I had never ruled on the relevancy or necessity of the defendants’ request for discovery under the previous application. The main reason why the previous application was disallowed by me was purely due to a technical objection where I was of the opinion that the requests for discovery should have been raised by way of further interrogatories rather than by way of requests for F&BP.

*Further Interrogatories*

1. I agree with Miss Leung’s submission that the plaintiff’s allegation that there had been a “change of stance” on the part of the defendants, based on the reason that it was seeking further answer to the interrogatories which was once mentioned in the defendants’ submission for the previous application, was without any foundation. I further agree with Miss Leung that such allegation has been totally misconceived. I also agree with her that for the purpose of considering the Summons, reference should not be drawn from the defendants’ submission for the previous application which was a totally different and separate application from the present application. I agree that there was no need for the defendants to make any explanation as to why they seek Further Interrogatories instead of further answers to the Interrogatories under the Summons.
2. In addition, I agree with the defendants that even though the substance of the issues raised in the Further Interrogatories are substantively the same as that of the previous application, the Summons in fact is a fresh application and was made independent of the previous application.
3. More importantly, as I had expressly stated in my reasons for decision, the defendants are entitled to seek the further interrogatories on the plaintiff’s Answers and the defendants are entitled to serve a fresh application for further interrogatories to ask the plaintiff to clarify the plaintiff’s Answers given under the original Further Interrogatories. Hence, in my judgment, there is absolutely nothing wrong with the defendants in taking out the present application under the Summons. As such, the plaintiff’s objection on the grounds as stated in the plaintiff’s affirmation are in my view without any substance and are entirely superfluous. In my judgment, those objections are nothing other than tools employed by the plaintiff to delay the supply of the answers to the Further Interrogatories which were fairly and properly served by the defendants. In this regard, I agree with the defendants that no affidavit is necessary to support the Summons.
4. Further, it is obvious that Ds’ 6th Aff was filed mainly for the purpose of the request for seeking the Specific Discovery under the Summons, namely, §3 of the Summons. It is clearly that once an application for Further Interrogatories is taken out, the only matters for the court to consider are the necessity and relevancy of the request contained therein.
5. In this case, for the sake of saving time and costs, in the letter issued by the defendants to the plaintiff prior to issue of the Summons, the defendants had already drawn the plaintiff’s attention to the 2 paragraphs in the defendants’ submissions for the previous application, purely for emphasizing the necessity and relevancy of the queries made in the Further Interrogatories. As such, I entirely agree with the defendants that there is no basis for the plaintiff now to contend the basis of the defendants’ application for the Further Interrogatories were unknown to the plaintiff. In any event, as the defendants submitted, the plaintiff had never informed the defendants that he was unclear about the ground of the defendants seeking the Further Interrogatories when they received a copy of the requests on 5 January 2021, ie prior to the issue of the Summons. In my opinion, this is just another delaying tactic employed by the plaintiff to put off the evil day to provide the relevant information and/or documents relating to his post-accident financial position so as to allow the defendants to make a proper assessment of the likely damages suffered by him in this case.
6. In my judgment, both the Further Interrogatories and the further answer to the interrogatories served the same purpose, ie to require the plaintiff to answer the interrogatories which were answered insufficiently on the previous occasion. The only difference is that the former would require the plaintiff to answer the matter on oath (either by way of an affirmation or an affidavit) while the latter would request the court to order the further answer to be made.
7. In my opinion, regardless of the form in which the further requests for interrogatories had been raised, the plaintiff is obliged to answer them so long as the queries are relevant to the issue of the quantum and necessary for the fair disposal of the cause/matter and for saving costs. Hence, in my view, the plaintiff’s objection to the Summons which is based purely on technical grounds is totally devoid of merits.
8. The plaintiff in the submission relies on the case of *Regent Land Asia Ltd v Lee Chau Hung Eva & Ors* [2010] HKEC 2849, to support his contention that the defendants in this case have made a wrong application by way of Further Interrogatories instead of further answer. With respect to Mr Li, the plaintiff’s solicitor who represents the plaintiff at the hearing, the court in that case did not decide on whether an application for further answer must be made instead of further interrogatories in the defendants’ answers to the interrogatories given. It was only a case where the interrogating party mistakenly stated the basis of application by summons for further answer as Order 26 rule 1 of the RDC (ie for interrogatories) when it should be made under Order 26 rule 5(2) of the RDC. I agree with the defendants that the interrogating party had never brought the application for further interrogatories in that case and therefore there was no ruling on or even any discussion on whether answer of further interrogatories was a proper way to deal with the insufficiency of answers to the interrogatories.
9. As such, I would reject the plaintiff’s submission that the *Regent* case has laid down the rule that any application to ask the interrogated party to clarify its insufficient answers must specify which part of such answer is insufficient. With respect, such requirement of the application is only applicable for further answer made under Order 26, rule 5(2) of the RDC. However, in this case, the application which the defendants are seeking under the Summons is made under Order 26, rule 1 of the RDC in respect of the Further Interrogatories. Thus, I find the plaintiff has misconstrued the ruling in *Regent.*
10. In fact, the plaintiff has repeatedly stated in his affirmation that, in the event that Further Interrogatories are raised to the plaintiff’s answers, the plaintiff would answer them as, according to the plaintiff himself, the queries are made in accordance with the rules of the interrogatories: (See §8 of the plaintiff’s affirmation at Bundle C/6).
11. In this case, I find P’s Answers given were insufficient and therefore they had given rise to the need for the defendants to seek for the Further Interrogatories that they sought for in the Summons. I find the Further Interrogatories have clearly satisfied the prerequisites of relevance and necessity. Therefore, the plaintiff is obliged to answer them. In fact, as admitted by the plaintiff in his affirmation, he has no objection to provide answers to the Further Interrogatories in almost half of the requests made: see the table summarized by the defendants’ solicitors at §32 of the defendants’ submission.
12. Hence, the only outstanding items are those identified by the plaintiff in his affirmation in which he has put down the basis of his purported objections.

*Findings on the outstanding requests*

1. Even though the plaintiff alleges that he now claims for pain, suffering and loss of amenities (“PSLA”), pre-trial loss of earnings, loss of earning capacity and special damages only and not for any future loss of earnings and that he has also chosen to retire after the end of his sick leave, I agree with Miss Leung that the issues raised in the Further Interrogatories are still related to the plaintiff’s post-accident financial position which are directly relevant and necessary for the disposal of this case, ie allow the defendants to be placed in the position where they can fairly and accurately assess the likely amount of loss claimed by the plaintiff, in particular, the alleged loss for pre-trial loss of earnings and loss of earning capacity.
2. I do not agree with the plaintiff’s contention that the issues raised under the Further Interrogatories, like the details of the transaction records in his bank statement, can be dealt with by way of cross-examination at the trial. Clearly, this has been misconceived. The underlying objectives of the Civil Justice Reform (“CJR”) are to enable the parties to be able to dispose of the case in a costs effective and time efficient manner without going to trial. The earlier the defendants are able to find out the basis of the plaintiff’s claims and to determine whether those claims have any substance or not, the better it will be for the facilitation of an early settlement of the case. In my judgment, the defendants should not need to wait until the trial in order to find out the basis of those claims made by the plaintiff and the documents relied on by him have any substance or not. All these matters can be dealt with by way of interrogatories or further interrogatories so long as the party administering the interrogatories is able to show the relevancy and necessity of those requests.
3. In the aforesaid circumstances, I would allow the Further Interrogatories requested by the plaintiff under §§1(b), 2(b), 3(b) and 3(f), 6(e), 7(a)(v) and 7(b)(iv) of the Further Interrogatories.

*Re: §1(c) of the Further Interrogatories*

1. As to §1(c) of the Further Interrogatories, while the plaintiff on one hand alleges that he was unfit for work and had not taken any steps to return to work, he on the other hand claims that he has been routinely taking care of his father since early 2016. Although the plaintiff now alleges through his solicitors that the word “father” was a typo, I note that he had never bothered to clarify this matter since making his affirmation. He now seems to have put the blame (and the burden) on the defendants’ solicitors to identify the typo and to seek clarification by correspondence from his solicitors.
2. I agree with the defendants that since the alleged typo was initially made by the plaintiff in his previous affirmation, the proper way to deal with this matter is for the plaintiff (as contrast to his solicitors) to make a further affirmation himself to clarify the matter.
3. In relation to §1(d), (e) and (f) in the Further Interrogatories, I consider that the nature and scope of the purported caretaking formed by plaintiff since early 2016 is necessary because such caretaking was allegedly performed during the time when the plaintiff claims to be suffering from on and off neck pain, stiffness, numbness and right upper limb numbness. The plaintiff claimed that he had no working ability and therefore not able to resume his pre-accident driving job or other work during that time. As such, I consider these requests are relevant to his loss of earning capacity claim.

*Re: §2(a) of the Further Interrogatories*

1. I noted that the plaintiff chose to retire even though the medical experts suggest that he could engage in various jobs after the Accident. As such, the plaintiff is duty bound to mitigate his loss suffered from the Accident. §2(a) is related to the plaintiff's post-accident income, financial position and means of support which are in turn necessary for the assessment of the quantum of the plaintiff's claim for pre-trial loss of earnings.
2. I would allow the request.

# *Re: §4(a) of the Further Interrogatories*

1. The plaintiff has failed to disclose entries for the period from 8June 2017 to 18September 2017 which are clearly missing from the bank passbook which he was obliged to produce under the Order of Master Jacqueline Lee of 13January 2020. I agree with the defendants that the plaintiff has the duty to fully disclose his financial position for the assessment of damages and to strictly comply with the Court Order.

# *Re: §5(a) of the Further Interrogatories*

1. This interrogatory was raised due to the plaintiff’s failure to answer the interrogatories to the best of his own knowledge, information and belief.
2. The documents concerned are the plaintiff’s own bank account passbooks/statements which are clearly in the knowledge of the plaintiff and are clearly within the plaintiff’s power and control to obtain, if necessary. The queries raised by the defendants about the details of the withdrawal entries of his own bank account can easily be answered by the plaintiff by obtaining the relevant information or documents from his bank.
3. I agree with the defendants that the plaintiff could not fully discharge his duty to answer the interrogatories to the best of his knowledge, information and belief by simply saying that he has no recollection about the details of the said withdrawals at all without making some effort to make enquiries of the same with his bank.

# *Re: §7(a)(vi) of the Further Interrogatories*

1. The plaintiff has failed to produce copies of all accurate bank passbooks/statements. He has an ongoing discovery obligation and must clarify the discrepancies in the documents provided by him to the defendants.
2. In light of the matters as aforesaid, I find that the interrogatories have not been sufficiently answered by the plaintiff in the plaintiff’s Answers and hence further interrogatories should be sought by the defendants. I further find that the queries made in the Further Interrogatories are not oppressive as alleged by the plaintiff and have satisfied the requirements of relevance and necessity. As such, I find the defendants are entitled to issue the Further Interrogatories and the plaintiff has the obligation to answer the same by affidavit.
3. I further find that it is not reasonable to limit the scope of requests to a period since late 2018 and to transactions over HK$6,000 and income instead of payment because any transactions relevant to the quantum of pre-trial loss of earnings should be included.

# *C2. Discovery of documents*

1. The Specific Discovery of the documents requests were made by way of letter to the plaintiff’s solicitors for the plaintiff on 5January 2021. The defendants set out the grounds for the Specific Discovery in Ds’ 6th Aff.
2. In summary, the specific discovery is divided into 3 types of documents, namely, medical advice/letter from the plaintiff's treating doctor of the Orthopaedic Department of Precious Blood Hospital; documents relating to the plaintiff’s engagement in investments or business; and the plaintiff’s bank account passbooks /statements /transaction records or related transaction proofs.
3. I find the defendants have fulfilled the 3 prerequisites for specific discovery in the following manner:-

(1) *Existence*: I find *prima facie* the requested documents under the Specific Discovery exist but have not been disclosed as they all stemmed from and are  related to the contentions made by the plaintiff in P’s Answers. For instance, specified documents in support of the plaintiff’s alleged engagement in the business of 库店like receipts of commissions, full transaction records shown on passbooks or bank statements of the plaintiff’s bank accounts relating to the business of 库店and/or the plaintiff’s alleged investments which have not been fully disclosed.

(2) *Relevance*: The documents sought directly relate to the prognosis of the plaintiff’s alleged injuries and his loss of earning capacity which are relied on by the plaintiff for his allegation that he was unfit for work after the Accident. They also relate to the plaintiff’s post-Accident income and financial position and loss of earning capacity which are relevant for the fair assessment of the plaintiff’s claim.

(3) *In the plaintiff’s possession, custody or power*: I accept the defendants’ submission submit that it is in their belief that the plaintiff has or has had in his possession, custody or power the documents specified under the specific discovery, because those are the plaintiff’s bank statements or passbooks or documents showing the transaction records of the plaintiff’s bank accounts which should have been possessed or retained by the plaintiff or which the plaintiff has the power to obtain as the holder of those bank accounts or the one who effected the transactions to or from the plaintiff’s bank accounts. I further accept that for documents relating to the plaintiff's injuries or investments or engagement in the business of they are likewise likely to be in the plaintiff’s possession, custody or power as there is a high likelihood that the plaintiff is the only person who can gain access to and possess or obtain those supporting documents.

(4) *Necessity*: The requested documents are necessary for considering whether it was indeed the plaintiff’s case that he was unfit for resuming his pre-accident job or other similar occupation after the Accident as contended by the plaintiff and assessing the quantum of the plaintiff’s alleged loss of earning capacity and pre-trial loss of earnings, and also assessing the plaintiff’s post-Accident financial status, especially how the plaintiff could afford not to return to work after the Accident and claim to have retired in around September 2017.

(5) Such requests are necessary to allow the defendants to fairly assess the quantum of damages at this interlocutory stage for the purpose of assisting the parties fairly to bring the action to an end by settlement or mediation in due course or saving costs.

(6) Most importantly, I agree with the defendants that when considering the specific discovery, it does not matter whether the plaintiff in fact has the documents sought in his possession, custody or power, it is the prerequisites of existence, possession, custody or power and relevance of the specified documents that matter.

1. Hence, I accept the above submissions of the defendants without any reservation. I find that the threshold for the Specific Discovery has clearly been satisfied. I find that the plaintiff is obliged to disclose the documents specified by the defendants in the Summons.
2. I further find that the way the plaintiff’s attempt to try to deal with the Specific Discovery on a later occasion subsequent to the substantive hearing of the Summons is a delaying tactic. It is wholly unacceptable and unnecessary. It is also contrary to the underlying objectives of the CJR which are to deal with the case expeditiously and to save the time and costs of the court and the parties. The necessity and relevance of the requests made under the Specific Discovery is intertwined with that of the Further Interrogatories which could be decided at the same hearing. I agree with Ms Leung for the defendants that the plaintiff’s proposal is merely another blatant attempt to avoid making discovery of the relevant documents and further prolong the proceedings which will cause prejudice and unfairness to the defendants.

# *CONCLUSION*

1. Based on the above discussions, I will make an order in terms of the Summons, including the items which the plaintiff has subsequently agreed to provide in his affirmation and/or under his solicitors’ submissions. It only leaves the issue of costs of the Summons to be determined.
2. This action was commenced about 5 years ago in 2016 and the issue of liability was dealt with by way of a consent order back in 2017. However, the issue of quantum has still not been resolved mainly due to the plaintiff’s reluctance to disclose the documents and/or answer the interrogatories which are clearly relevant to the issue of quantum. I find they are necessary information which would enable the defendants to form an accurate basis to assess the plaintiff’s claim. It would only help the parties to resolve the matter in a more costs effective and time efficient manner without going to trial. As I pointed out to the parties at the call-over hearing of the Summons, the delay in this case had been caused by the plaintiff’s repeated refusal and/or failure to make full disclosure of the relevant documents since 2017 which led to the stalemate in this case.
3. I agree with Ms Leung that the time and costs in this case would have been largely reduced had the plaintiff informed the defendants that he would consent to answer the requests raised under the Further Interrogatories, or let the defendants know the grounds of his objections against the Further Interrogatories and/or Specific Discovery after he had received a copy of the Further Interrogatories on 5January 2021. However, the plaintiff had failed to do so. Further, the plaintiff has steadfastly refused to indicate his stance in relation to the Summons until the call-over hearing. I find the plaintiff’s inaction in this regard has simply wasted much valuable time and resources of the parties and the court which is clearly not in line with the underlying objectives of the CJR.
4. In fact, as mentioned above, the substance of the Further Interrogatories and the Specific Discovery requests is substantively the same as that in the October 2020 application. It means that the plaintiff has had ample prior notice and plenty of time and opportunity to consider and respond since June or September 2020. Yet, the plaintiff had never taken a pragmatic and costs effective approach to deal with the issues in order to ensure the proceedings would not be substantially prolonged. I agree with the defendants that such blatant attempt to delay the action on the part of the plaintiff should be put to an end given that the requests for discovery by way of both Further Interrogatories and the Specific Discovery are clearly relevant and necessary for fairly disposing of the cause/matter.
5. With regard to costs, it is worth noting that the plaintiff did agree implicitly in his submission to bear part of the costs of and incidental to the Summons for the parts which the plaintiff agreed to answer. I so order that they should bear those costs. Those costs should be taxed on a party and party basis if not agreed. There will be no legal aid taxation as the plaintiff is not on legal aid.
6. I did remind the plaintiff’s solicitors at the call-over hearing about the costs consequence of raising unmeritorious allegations to resist the Summons. Nevertheless, the plaintiff and his solicitors have insisted on opposing the Summons without any valid grounds at all. It is clearly a delaying tactic and a waste of the valuable time and resources of the court. Thus, for those items which the plaintiff had unreasonably refused to provide the answers and/or documents which led to the unnecessary hearing for the arguments, I order that the plaintiff to pay those costs on an indemnity basis and such costs to be summarily assessed by the court and to be paid forthwith by the plaintiff.
7. For the purpose of the summary assessment on those costs, I would like to direct the defendants to lodge a statement of costs with the court within 7 days after the handing down of this decision with copy served on the plaintiff. The plaintiff will have 7 days to lodge a list of objections, if any, with the court with copy served on the defendants. The court will summarily assess those costs on paper and will inform the parties of the result by letter.

( Andrew SY Li )

District Judge

Mr Li Chun Wan of Au Yeung, Cheng, Ho & Tin, for the plaintiff

Miss Alice Leung of Tsang, Chan & Woo Solicitors & Notaries, for the 1st and 2nd defendant