# DCPI 2626/2016

[2021] HKDC 132

**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: 24 December 2020

Date of Decision: 24 December 2020

Date of handing down Reasons for Decision: 29 January 2021

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REASONS FOR DECISION

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*INTRODUCTION*

1. This is a summons dealing with requests made by the 1st and 2nd defendants for further and better particulars (“F&BP”) on the answers given by the plaintiff to the interrogatories administered by the 1st and 2nd defendant in the context of a personal injury case.
2. At the hearing on 24 December 2020, I dismissed the 1st and 2nd defendant’s application with costs to the plaintiff.
3. I said I would give the reasons for my decision in due course. Here are the reasons.

*BACKGROUND*

1. By a summons taken out by the 1st and 2nd defendants on 20 October 2020 (“the Summons”), the 1st and 2nd defendants sought the following reliefs against the plaintiff under Order 18 rule 12, Order 24 rule 7 and Order 26 rule 5 of the Rules of the District Court (“the RDC”):-
2. The plaintiff do file and serve his answer to (i) the request for F&BP of the plaintiff’s answer to the interrogatories issued by the 1st and 2nd defendants by affirmation dated 7 April 2020; and (ii) the request for F&BP of the plaintiff’s answer to the interrogatories issued by the 1st and 2nd defendants by supplemental affirmation dated 30 June 2020 (collectively “Ds’ Requests for F&BP”) within 14 days from the date of the order to be made herein;
3. Further or in the alternative to paragraph (1), Ds’ Requests for F&BP do stand as further interrogatories issued against the plaintiff and the plaintiff do file and serve his answer by affirmation to the same within 14 days from the date of the order to be made herein;
4. The plaintiff do provide the 1st and 2nd defendants with copies of the documents specified under Ds’ Requests for F&BP as per their letter dated 1 June 2020 and the 2nd letter dated 9 September 2020 from the 1st and 2nd defendants’ solicitors to the plaintiff’s solicitors from the date of the order to be made herein; and
5. The costs of and incidental to the application be paid by the plaintiff to the 1st and 2nd defendants to be taxed if not agreed.
6. In support of the application, the 1st and 2nd defendants rely on the 5th affirmation of Woo Ka Wai Henry filed on 20October 2020.
7. The Summons was first heard before Master Jacqueline Lee on 10November 2020. At the hearing, the plaintiff's solicitor indicated to the court that he would oppose the Summons based on the reason that it was a “wrong application”. As such, the master made an order adjourning the Summons for full argument with 2 hours reserved to be heard before me on 24December 2020.

*Background to the personal injury claim*

1. One has to understand the background of the present claim in order to appreciate what the 1st and 2nd defendants are seeking under the Summons. They can be briefly stated as follows:-
2. This action is a personal injury claim made by the plaintiff against the 1st and 2nd defendants for neck injury suffered by him in a vehicle collision which took place on 18 February 2014 between a public bus driven by the plaintiff and a public light bus driven by the 1st defendant;
3. The 1st defendant was a permitted driver of the 2nd defendant;
4. Judgment on liability was entered against the 1st and 2nd defendants in favour of the plaintiff by consent on 28 April 2017;
5. The outstanding matter left in the present action therefore is one of assessment of damages only;
6. The plaintiff had, on a number of occasions, failed to disclose and/or provide relevant facts and documents relating to the matter in question between the parties in the cause or matter, leading to several applications made by the 1st and 2nd defendants to the court and consequential orders made against the plaintiff, including Order of Master J. Chow dated 24 May 2017, Orders of Master Michelle Soong dated 31 October 2017, 17 January 2018, 31 July 2018, 31 August 2018 and 12 March 2019 as well as Order of Master Jacqueline Lee dated 13 January 2020;
7. Among the aforesaid orders in respect of discovery of documents made against the plaintiff, the 1st and 2nd defendants were granted leave to file and serve interrogatories on the plaintiff pursuant to the Order of Master Jacqueline Lee dated 13 January 2020;
8. Interrogatories were subsequently served on the plaintiff on 14 January 2020. After seeking further extension of time, the plaintiff has finally provided his answers to the interrogatories by way of his affirmation dated 7 April 2020 and his supplemental affirmation dated 30 June 2020 (collectively "P's Answers");
9. The 1st and 2nd defendants then issued Ds' Requests for F&BP on the plaintiff on 1 June 2020 and 9 September 2020 respectively as a result of the alleged insufficiency in substance in P's Answers.
10. At the hearing before Master Jacqueline Lee, the master was of the view that substantial delays had been caused by the plaintiff in these proceedings which was not in line with the underlying objectives of cost-effectiveness from the case management point of view. The matter therefore was transferred to the PI Judge for further case managements.
11. In the aforesaid circumstances, 2 types of reliefs have been sought by the 1st and 2nd defendants under the Summons, namely, F&BP on P’s Answers or, alternatively, Ds’ Requests for F&BP to stand as further interrogatories: (see §§1 & 2 of the Summons) and specific discovery of documents based on Ds’ Requests for F&BP: (see §3 of the Summons).

*DISCUSSION*

*The 1st and 2nd defendant’s submissions*

1. At the hearing before me, Miss Leung who represents the 1st and 2nd defendants has cited in details the general principles governing serving of interrogatories under Order 26 rule 5(2) of the RDC and for specific discovery under Order 24 rule 7 of the RDC.
2. The principles in relation to serving of interrogatories are in fact trite and not in dispute: (see Order 26 rule 5(2) of the RDC; *Hong Kong Civil Procedure 2021 (“HKCP”)* at §26/5/3; §26/4/7 & §26/4/11; *Duke of Sutherland v British Dominions Land Settlement Corp Ltd* [1926] Ch 746 at 753 and *Esquire (Electronics) Ltd v The Hong Kong and Shanghai Banking Corp Ltd* (unreported, HCA 11077/1994, 2 September 2003) at §11). Further, the rules in respect of discovery by interrogatories have been clearly set out in *Lee Nui Foon v Ocean Park Corp (No 2)* [1995] 2 HKC 395 at §2 and they are not disputed by the plaintiff also.
3. Similarly, the principles governing order for specific discovery are well established and need not be repeated. They can be found under Order 24 rule 7 of the RDC: (see *HKCP* at §24/7/2 and *Compagnie Financière et Commerciale du Pacifique v Peruvian Guano Co* (1882) 11 QBD 55).

*Whether a party can seek F&BP from an answer given to interrogatories*

1. The problem I have with the 1st and 2nd defendants’ application is that their requests for F&BP had in my view taken the wrong route and made under the wrong order.
2. It is not disputed by the plaintiff that request for F&BP can be sought against the other party's pleadings. However, the key question in this case is whether the answers provided by a party under interrogatories served can be considered as pleadings.
3. I agree with the plaintiff’s submissions that an answer to interrogatories is not pleadings in itself since they mainly deal with the evidence a party is seeking to rely on rather than the issues defined in the statement of claim or defence. They often would touch on the quantification of a plaintiff’s claim only. For example, as often happens in personal injuries cases, the interrogatories query upon certain bank statements and it turns out that those statements are irrelevant to anything in dispute. Also, the answers are often given in less formal and “loose” language than those found in pleadings.
4. A party who wishes the court to make an order for F&BP on answers to interrogatories will have to apply to the court to make them to stand as pleadings first. Hence, in *Leung Kwai Ling v HK Glory Properties Limited* [2013] HKEC 1104, the court ruled that an order for F&BP of the contents of an affidavit will not be made, unless the same has been ordered to stand as pleadings under the Order 18 rule 12(3) of the Rules of the High Court.
5. In our present case, no order has been made by the court for the answers to stand as pleadings. As such, the 1st and 2nd defendant’s cannot simply treat them as pleadings in this case.

*Whether Ds’ Requests for F&BP can be treated as interrogatories*

1. The 1st and 2nd defendants submit in the alternative that their request for F&BP should stand as further interrogatories: (see §2 of the Summons).
2. While I accept that there have been repeated delays on the part of the plaintiff in answering the 1st and 2nd defendants’ previous requests for F&BP and interrogatories in this case, it does not mean that the 1st and 2nd defendants should be allowed to take a short-cut and not to follow the proper procedures to seek for clarification to the answers given under the interrogatories.
3. I do not accept the 1st and 2nd defendants’ submission that their 2 applications can be convertible or interchangeable since they are of different nature as the prior application is against pleadings and the latter is against evidence. I agree with the plaintiff’s submission that they are subject to different limitations and will lead to different legal consequences, subject to the response or answer given by the plaintiff.
4. According to Order 26 rule 4, where an application is made for leave to serve interrogatories, a copy of the proposed interrogatories shall be served with the summons or the notice under Order 25 rule 7: (see *HKCP* at §26/4). In the present case, the plaintiff has not been served with any proposed interrogatories with the Summons. In my judgment, the 1st and 2nd defendants cannot simply ask the plaintiff to treat Ds’ Requests for F&BP as further interrogatories and that it has the effect of "deemed service". In my judgment, the 1st and 2nd defendants have to serve fresh interrogatories in order to ask the plaintiff to clarify P’s Answers given under previous interrogatories served.

*Whether Ds’ Requests for F&BP can be treated as request for specific discovery*

1. The 1st and 2nd defendants also requested the plaintiff to "identify the documents" in Ds’ Requests for F&BP and requested the plaintiff to provide the 1st and 2nd defendants with copies of the documents specified under §3 of the Summons. It is trite that interrogatories should not be used for obtaining documents by way of discovery. I do not see why the 1st and 2nd defendants should be allowed to do so in this case.
2. In my judgment, the 1st and 2nd defendants are certainly entitled to seek further interrogatories on P’s Answers. However, the issues will go to whether the queries made in the interrogatories are sufficiently clear and whether the answers to the same are already sufficient. If not, then it should be done by way of a fresh application for interrogatories instead of seeking F&BP on P’s Answers.

*CONCLUSION*

1. For the above reasons, I had dismissed the Summons with costs in favour of the plaintiff at the hearing.

( Andrew SY Li )

District Judge

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

Miss Alice Leung, of Messrs Tsang Chan & Woo, for the 1st and 2nd defendants