# DCPI 4106/2019

[2023] HKDC 295

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

# PERSONAL INJURIES ACTION NO. 4106 OF 2019

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BETWEEN

LEE PRISCILLA SIOK AI Plaintiff

and

WONG LOK HIM Defendant

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##### Before: His Honour Judge Andrew Li in Court

Date of Hearing: 22 February 2023

Date of Decision: 22 February 2023

Date of handing down Written Decision: 24 February 2023

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DECISION

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*INTRODUCTION*

1. This is a decision I gave at the end of the hearing on 22 February 2023 where I dismissed the plaintiff’s claim for damages at an assessment of damages (“AOD”) when she failed to turn up at the hearing.

*BACKGROUND*

1. At the hearing on 26 October 2022 where an application was made by way of summons by the plaintiff’s solicitors (“P’s Sol”), for the purpose of removing the AOD hearing set down in the running list and transferring it to the fixture list, on the ground that the plaintiff was in Pakistan and was not able to travel back to Hong Kong due to some alleged illness, this court gave the plaintiff a last opportunity to come to court to prove her case and placed the AOD hearing on the fixture list and adjourned the hearing to today, ie 22 February 2023 (with 2 days reserved).
2. On the last occasion, this court had made it abundantly clear to the plaintiff through her solicitors that there would be no further adjournment of the AOD hearing. The plaintiff was further requested to pay the costs of the summons, which had been summarily assessed at HK$46,000, as a pre-condition before she was allowed to proceed with the AOD.
3. I was told by Ms Lui for the defendant at the hearing this morning that on 3 February 2023 the plaintiff had paid the HK$46,000 as the costs for the summons dated 19 October 2022.
4. Then on 10 February 2023, quite out of the blue and without any prior indication or formal application, P’s Sol filed a notice of acceptance of sanctioned payment on behalf of the plaintiff.
5. The notice referred to a notice of sanctioned payment made by the defendant on 23 May 2022, which was of course more than 8 ½ months before the plaintiff purported to accept the sanctioned payment.
6. In doing so, the plaintiff has failed to obtain the consent of the defendant nor file a formal application by way of summons to seek leave from the court to accept the sanctioned payment out of time as is required under the rules.
7. Further, by doing so, it has the practical effect of allowing this court to read that document and the figure which the defendant had paid into court by way of sanctioned payment and therefore had prejudiced the mind of the court which is going to hear the AOD. Whether it is intended or not by the plaintiff or her solicitors is not the point, it has that exact effect on the court which is going to hear the AOD today.
8. As P’s Sol has acknowledged in court today, the proper way for the plaintiff to do this is to take out a summons to seek the court’s leave to allow the plaintiff to accept the sanctioned payment out of time with proper grounds and evidence in support. However, the plaintiff has failed to do so and decided to breach the rules by filing a purported notice of acceptance of sanctioned payment out of time on 10 February 2023.
9. In my judgment, that document does not have any intended effect of accepting the sanctioned payment and was filed solely with the purpose of prejudicing the mind of the court.
10. In any event, on 17 February 2023, which was 7 days after the filing of the above purported notice of acceptance and 5 days before the AOD hearing, P’s Sol wrote to the court asking for the hearing to be adjourned again on the alleged ground that they had been informed by the plaintiff the evening before:-
11. The plaintiff met with a motorcycle accident on 28 January 2023 in Pakistan which required her to be admitted for 2 days in hospital; and
12. The plaintiff was diagnosed with Covid-19 on 16 February 2023 when she returned to the doctor for follow-up treatment.
13. For the purpose of asking the court to adjourn today’s hearing, the plaintiff has produced 2 documents. They include: (i) a photocopy of a Dr Syed Zubair Younis (“Dr Younis”) of Zubair Hospital’s report dated 16 February 2023; and (ii) an undated print-out copy of her purported itinerary of returning to Hong Kong on a flight from Pakistan via Bangkok on 18 February 2023, allegedly issued by a travel agent situated within a shopping mall in Yuen Long.
14. In the letter, P’s Sol asked the hearing today be vacated and re-fixed to a later date in April 2023 so as to allow the plaintiff time to recover from her latest accident and attend the AOD hearing.
15. I note that no formal application by way of summons together with any supporting affidavit/affirmation or documentary evidence has been filed for the purpose of adjourning today’s AOD.

*DISCUSSION*

1. I do not accept any of the above submissions of the plaintiff at all for the following reasons.

1. First, as both the plaintiff and her solicitors are well aware, the AOD hearing is a “milestone date” under Order 25, rule 3 of the Rules of the District Court (“RDC”), which cannot be varied unless for “exceptional circumstances”.
2. The court had already, quite exceptionally for this case, given the plaintiff an opportunity in October last year to remove the case from the running list and have a date fixed in February this year on the fixture list in order to allow her 4 months to get back to Hong Kong to attend the AOD hearing. She therefore has had ample time to put her house in order and to get herself back to Hong Kong for the hearing in a timely fashion.
3. The fact that the plaintiff has chosen not to return in time to attend the hearing is entirely her own fault and making. It is not due to the fault of any other parties involved in this case.
4. It is her case and it is up to her to whether to turn up to court to prove her claim. If she chooses to wait until the last minute to return from overseas, she must take the risk herself.
5. In my judgment, the above allegations or claims made on behalf of the plaintiff do not fall within any “exceptional circumstances” under Order 25, rule 3(3) of the RDC which would justify the court to give her another opportunity to adjourn the AOD hearing today.
6. Second, as I have stated in a recent case where the plaintiff was represented by the same firm of solicitors as in this case: (See *Shahid Muhammad v The Kowloon Motor Bus Co (1933) Ltd* DCPI 527/2020; [2022] HKDC 1122), the court does not take a doctor’s medical report or certificate at its face value. This is particularly so if the purported medical report or certificate is signed by a doctor overseas (which qualifications may or may not be recognized locally) and when the original medical report/certificate has not even been provided to the court.
7. In this case, there are a number of questions raised in Dr Younis’ purported report which have not been answered by the plaintiff. They included (i) if the alleged “bruises to her head” only required 2 days of hospitalization after the motorcycle accident on 28 January 2023, why the plaintiff could not have made arrangements and travelled back to Hong Kong in early February; (ii) why the alleged “swelling and onset of severe headaches and dizziness” which have been found in the follow-up treatment on 16 February 2023 would have prevented her from travelling at all; and (iii) why the additional finding of the fact that she had been tested positive for Covid-19 would affect her travel plan at all.
8. In my view, the plaintiff has simply failed to answer any of the above issues, whether by way of affidavit evidence or through her solicitors.
9. Third, in my judgment, the purported itinerary produced by the plaintiff to prove her original intended date of returning to Hong Kong on 18 February 2023 is of no value at all. That is because not only the itinerary has no date printed on it, such document can be printed out by any travel agent if someone has tentatively booked a ticket through the agent. Further, there was no details provided next to the column where it stated “Electronic Ticket nbr” which strongly indicates that the purported return ticket of the plaintiff has not even been issued yet. Thus, I find this purported itinerary not proving anything at all and not worth the paper it is printed on.
10. Last but not the least, as of today’s hearing, there was no formal application taken out by the plaintiff to adjourn the AOD hearing. The plaintiff is not here to prove her case. P’s Sol is not in a position to proceed with the AOD. In the exercise of my discretion and try to uphold justice and to show mercy at the same time, this court had already given the plaintiff an opportunity back in October 2022 to get herself back to Hong Kong in time for the AOD hearing. She had been warned in no uncertain terms on that occasion that it would be the last and only opportunity that the court would grant leave to her to adjourn the “milestone date”. However, in spite of that, the plaintiff has clearly failed to make use of that final chance given to her by the court and has failed to turn up to today’s “milestone date” to prove her claim. I do not see any good reasons of why the court should give her another chance.
11. In my judgment, if the court were to allow the case to be adjourned again, it would not only lead to further and unnecessary incurrence of legal costs on both sides (of which the costs would then become totally disproportionate to the overall likely amount of quantum even if the plaintiff were to succeed in this case); it would also lead to further wasting of the precious judicial resources of the court. More importantly, it would further delay the just resolution of the matter in a time efficient and cost effective manner. They are everything which are said to be against the underlying objectives of the Civil Justice Reform of which I am a great believer and adherer to.

*CONCLUSION*

1. In the aforesaid circumstances, I have no hesitation to dismiss the plaintiff’s claim herein based on the fact that she is not here today to prove her case. I so make such an order. I further order that the costs of the AOD (including today’s hearing) to be paid by the plaintiff to the defendant on an indemnity basis, with certificate for counsel, with such costs to be taxed if not agreed. The hearing date reserved for 23 February 2023 is hereby vacated also.
2. I further order that the sanctioned payment paid into court by the defendant on 23 May 2022, together with any accrued interest thereon, to be paid out to the defendant through his solicitors Messrs Y C Lee, Pang & Kwok within 14 days from today.

( Andrew SY Li )

District Judge

Mr Dherraj Suresh Mohnani of Messrs Mohnani Associates, for the plaintiff

Ms Ann Lui, instructed by Messrs Y C Lee, Pang & Kwok, for the defendant