#### DCPI1557/2005

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

PERSONAL INJURIES ACTION NO. 1557 OF 2005

BETWEEN

SO YUK SHIM Plaintiff

and

KEEN PORT INTERNATIONAL LIMITED Defendant

trading as TAO HEUNG SEAFOOD

HOTPOT RESTAURANT

##### Coram: H H Judge Marlene Ng in Chambers (Open to the public)

Date of Hearing: 4 September 2006

Date of Ruling: 4 September 2006

## R U L I N G

1. The defendant applies for leave to serve interrogatories on the plaintiff. The application is late since the case is to be warned for trial today. There is an application for specific discovery returnable also before me today but that has been resolved, subject to the question of costs. The defendant says that this triggers the application for interrogatories. In my view, the defendant could have issued interrogatories earlier and the specific discovery application is no bar to the application for leave to serve interrogatories.
2. Miss Ng for the plaintiff submits that the applicant is unscrupulous and makes the present application for a hidden purpose, namely, to use all means to prevent the plaintiff from putting the case onto the warned list today.
3. This is a serious allegation but other than submissions from the Bar table, I do not find support for any deliberate obstruction or deliberate ulterior purpose. It is inappropriate for the court to speculate on these matters. It is sufficient for the court to hold that the application is late and the reason for the lateness is not satisfactory.
4. But the fact that the application for leave to serve interrogatories is late is not the sole criterion for the exercise of the discretion. The question here is whether the interrogatories are probative for the further conduct of the trial and whether the plaintiff would suffer any prejudice that cannot be compensated by costs if the application is granted. If the application is granted, the goalposts of the trial will have to be moved. The court is loath to do that unless it is appropriate and necessary for the justice of the case. But the court is also concerned with the proper adjudication of cases and too rigid adherence to goalposts may lead to injustice.
5. Here, the plaintiff claims for past and future maid or domestic helper expenses from 2004 to date as well as future expenses. The defendant challenges such claim, saying that the surveillance records show that the plaintiff, despite her old age of over 80 years, can get about on her own reasonably well.
6. To start off, there is some incongruity in the plaintiff’s witness statement and pleadings. In her pleadings, i.e. the amended statement of damages filed in July 2006, the plaintiff claims for incurred maid expenses up to November 2005. But in her witness statement filed on 2 June 2006, she claims for incurred maid expenses up to May 2006. Miss Ng for the plaintiff submits that an application will have to be made to further amend the amended statement of damages to reflect the correct position, but this is something that the court has to bear in mind in the balancing exercise.
7. According to the witness statement of the plaintiff, she has, through the assistance of her daughter, engaged personal maid service from 2004 to May 2006 at $2,500 per month. Despite such assertion of employing maid service, she denies possession of any employees’ compensation policy, MPF documentation and other documents which one ordinarily expects to arise from an employer-employee relationship. Indeed, no documentation in relation to the employment of the maid service is discovered at all. The plaintiff has also given no particulars of the maid or maids engaged over the relevant periods.
8. The interrogatories, broadly speaking, are directed at gathering information on these aspects. I have reminded myself that the overriding principle for granting leave to issue interrogatories is that they must be necessary either for disposing fairly of the case or matter or for saving costs. Fishing, oppressive, prolix or imprecise interrogatories should not be allowed. Ultimately, the matter is for the court’s discretion, and in the exercise of such discretion, the court should take into account all the circumstances.
9. In light of the above background, I cannot say that items 1, 2 and 4 of the draft interrogatories are inappropriate. On the other hand, I consider such interrogatories necessary for disposing fairly of the cause or matter.
10. The plaintiff is over 80 years old but such interrogatories cannot be said to be oppressive. Miss Ng said that she may not be able to remember all the fine details, but if interrogatories are appropriate and ought to be administered, then it is up to the plaintiff to answer as best as she can.
11. Miss Ng submits that interrogatories should not be administered with the intention of discrediting the plaintiff, which usurps the function of cross-examination. However, the present case is a far cry from the factual circumstances of *Kwong Wah v Woo Sik Ling trading as Shun Tat Engineering Company & Ors* HCPI463 of 1995. Not only does that case deal with the matter of the credibility of the plaintiff, but it was held that even if the interrogatories were administered, the answers would not have assisted the court.
12. Here, I believe that the answers to the interrogatories will facilitate the court in considering and assessing the claim for past and future maid expenses. However, it is not a function of interrogatories to identify witnesses and I do not see how the residential address of the domestic helper is probative of the issues of the present case.
13. Miss Ho, very sensibly, decides not to pursue item 3 of the draft interrogatories. Leave is therefore granted to the defendant to administer the interrogatories as per paragraphs 1, 2 and 4 of the draft submitted to the plaintiff.

(Discussion re time needed for reply)

1. The plaintiff do provide answers thereto by filing and serving an affidavit within 3 days from the date of service of the interrogatories. In the circumstances, the warned date of trial cannot stand and I will hear the parties on the appropriate revision.

(Discussion re warned date of trial)

1. Having heard the parties’ submissions, this case should not be warned before 18 September 2006.

(Discussion re costs)

1. Costs of the application to serve interrogatories be in the cause.

(Discussion re further directions)

1. So leave to the plaintiff to file and serve the re-revised statement of damages within 3 days from the date hereof; leave to the defendant to file and serve answer to re-revised statement of damages, if so desired, within 3 days thereafter. Costs of and occasioned by the further revision of the revised statement of damages be paid by the plaintiff to the defendant, to be taxed if not agreed in any event.

(Further discussion re costs)

1. So the defendant’s summons dated 30 August 2006 be costs in the cause.

# (Marlene Ng)

# District Court Judge

Ms Gladys Ng, of Messrs Tang & So, for the Plaintiff

Ms Ho Veng Ian, of Messrs W K To & Co., for the Defendant