CAMP 82/2023, [2023] HKCA 797

**IN THE HIGH COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

COURT OF APPEAL

MISCELLANEOUS PROCEEDINGS NO. 82 OF 2023

(ON AN INTENDED APPEAL FROM DCCJ NO. 1914 OF 2015)

|  |  |  |
| --- | --- | --- |
|  |  |  |

BETWEEN

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  |  | YUEN OI YEE LISA | | | Plaintiff | |
|  |  | and | | |  | |
|  |  | CHAROEN SIRIVADHANABHAKDI | | | 1st Defendant | |
|  |  | THAPANA SIRIVADHANABHAKDI | | | 2nd Defendant | |
|  |  | MATTHEW KICHODHAN | | | 3rd Defendant | |
|  |  | MICHAEL CHYE | | | 4th Defendant | |
|  |  | LEE MAN HONG ANDY | | | 5th Defendant | |
|  |  | THAI BEVERAGE PUBLIC  COMPANY LIMITED | | | 6th Defendant | |
|  |  | INTERNATIONAL BEVERAGE HOLDINGS LIMITED | | | 7th Defendant | |
|  |  | BEST SPIRITS COMPANY LIMITED | | | 8th Defendant | |
|  |  | |  |  | |

Before : Hon Cheung and G Lam JJA in Court

Date of Decision : 28 June 2023

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  | D E C I S I O N |  |
|  |  |  |

Hon Cheung JA (giving the Decision of the Court) :

**I. Introduction**

This is the plaintiff’s *ex-parte* application by way of summons dated 23 February 2023 (‘Summons’) seeking the following reliefs : ‘1) Leave to file and serve my Writ of Summons against Thai Beverage Public Company Limited listed in Singapore outside jurisdiction of HKSAR and 2) Leave to appeal against the decision of H H Judge Ko given on 9 February 2023 (‘Leave Decision’)’.

By the Leave Decision, the Judge refused to grant the plaintiff leave to appeal against his decision of 17 January 2023 (‘Refusal Decision’).

By a decision dated 16 November 2015, the Judge ordered that the plaintiff’s claim DCCJ 1914/2015 be struck out and made a Restrictive Proceedings Order (‘RPO’) restraining the plaintiff from commencing any fresh proceedings in the District Court concerning any matters involving or relating to or touching upon or leading to those proceedings and the proceedings in LBTC 588/2011 and HCA 2045/2012 against, *inter alios*, any of the defendants in the proceedings below, without leave of the District Court.

The plaintiff’s applications for leave to appeal against the said decision were dismissed by the Court below (by decision dated 9 December 2015 in DCCJ 1914/2015) and by this Court (by decision dated 18 February 2016 in HCMP 3305/2015).

By a fax dated 13 January 2023, the plaintiff applied for leave to commence fresh proceedings against Thai Beverage Public Company Limited (the 6th Defendant in the proceedings below). According to the Indorsement of Claim on the intended Writ of Summons attached to the said application, the intended claim was ‘for Compensation under Section 66 of *Personal Data (Privacy) Ordinance* (Cap. 486) of HK$16,000,000.00’, which is for all intent and purposes identical to that in the proceedings below.

By the Refusal Decision, the Judge dismissed the plaintiff’s application on the ground that the intended claim was a rerun of her case in the proceedings below and hence caught by the terms of the RPO.

By the Leave Decision, the Judge refused to grant leave to appeal against the Refusal Decision.

In the Summons, the plaintiff sought leave to appeal against the Leave Decision. That is procedurally misconceived. When she failed to obtain leave to appeal from the Judge, the only way to obtain leave is by way of renewing the application to the Court of Appeal, not by applying for leave to appeal against the Leave Decision. We shall treat the Plaintiff’s application as an application for leave to appeal the Refusal Decision.

Under Order 59, rule 14A(1) of the *Rules of the High Court,* this Court may determine an interlocutory application without an oral hearing. Having considered the applicant’s summons, written submissions and the accompanying documents, we are of the view that it is appropriate to determine the present application on paper without a hearing.

**II. Discussion**

The principles for granting leave to appeal are well established. Under section 63A(2) of the *District Court Ordinance*(Cap. 336), leave shall not be granted unless the appeal has a reasonable prospect of success, or there is some other reason in the interests of justice that the appeal should be heard. Reasonable prospect involves the notion that the prospects of succeeding must be ‘reasonable’ and therefore more than ‘fanciful’, without having to be ‘probable’: *SMSE v KL* [2009] 4 HKLRD 125, at [17].

In the Refusal Decision, the Judge explained why he considered the intended claim fell within the scope of the RPO after having considered the documents referred to in the plaintiff’s application. We agree.

In addition to the Summons and her written submissions, the plaintiff also provided numerous documents to support her application. Most of those documents are irrelevant. In any event, they do not take her application any further.

Having reviewed all the documents provided by the plaintiff, we are of the view that the intended appeal has no reasonable prospect of success.

In the Summons, the plaintiff also sought leave to file and serve the Writ of Summons on the Intended Defendant out of jurisdiction. That is procedurally misconceived. Leave to issue proceedings out of jurisdiction should only be sought from the Court below if and when leave to issue fresh proceedings under the RPO was granted. Given our decision to dismiss the application for leave to appeal, there is no need to deal with this aspect of the plaintiff’s application.

**III. Conclusion**

For the above reasons, we dismiss the applicant’s application.

As this application is wholly without merit, pursuant to Order 59, rule 2A(8), we further order that no party may under rule ‍2A(7) request the determination to be reconsidered at an oral hearing *inter partes*.

|  |
| --- |
|  |
|  |

|  |  |
| --- | --- |
| (Peter Cheung)  Justice of Appeal | (Godfrey Lam)  Justice of Appeal |

Plaintiff, unrepresented, acting in person