## DCCJ 4891/2016

[2021] HKDC 648

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

CIVIL ACTION NO. 4891 OF 2016

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##### BETWEEN

TSANG PO MANN (曾宝雯) Plaintiff

and

TSANG KA KIT (曾家傑) 1st Defendant

SO SIU KI also known as SUKIE SO 2nd Defendant

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Before: His Honour Judge Kent Yee (Paper Disposal)

Dates of Written Submissions: 19 April, 3 and 17 May 2021 (the Plaintiff and the 1st and 2nd Defendants)

Date of Decision: 28 May 2021

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DECISION

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1. This court handed down a judgment of this action after trial on 19 February 2021 (“**the Judgment**”). Subsequently, both parties took out summonses for their respective applications and this Decision will dispose of all the summonses.

2. In this Decision, I shall adopt the abbreviations used in the Judgment and I shall refer to the same for the background facts.

3. First, on 4 March 2021, each of Madam Tsang and the Couple took out a summons for an application to vary the costs order *nisi* (“**Variation Application**”) in the Judgment.

4. On 18 March 2021, the Couple further took out a summons for their application for leave to appeal (“**Leave Application**”).

5. I shall first deal with the Leave Application before I turn to the parties’ respective Variation Applications.

*Leave Application*

6. The parties have no debate about the well-established principles relating to an application for leave to appeal to the Court of Appeal. Both Mr Chung for Madam Tsang and Mr Singh for the Couple set out the relevant principles in their respective written submissions. I can simply adopt those passages here.

7. The starting point is section 63A(2)(a) of the District Court Ordinance, Cap. 336 (“**DCO**”). Leave to appeal shall not be granted unless the court is satisfied that the intended appeal has a reasonable prospect of success or there is some other reason in the interest of justice why the appeal should be heard. A reasonable prospect of success means an appeal with prospects that are more than fanciful without having to be probable: *SMSE ‍v KL* [2009] 4 HKLRD 129 §17.

8. Regarding an appeal against the exercise of discretion of the trial judge, the following dictum of Kwan JA in *Waddington v Chan Chun Hoo Thomas & Others* (unreported, HCMP 1327/2017, 18 October 2017) is relevant:

“It is trite that an appeal against the exercise of discretion will not be entertained unless it is shown that the discretion was not exercised at all, or that the judge made some error of law or facts or was in disregard of principle, or that he took into account irrelevant matters, or that the decision was ‘plainly wrong’ or was ‘outside the generous ambit within which a reasonable disagreement is possible’ (*Hong Kong Civil Procedure 2018*, vol 1, §59/0/54).”

9. As will be explained below, most of the draft grounds of appeal concern the factual findings of this court. It is pertinent to note that the appellate court will only interfere with the trial judge’s primary finding of facts (as opposed to finding of facts made by a process of inference) if it is satisfied that the conclusion reached by the trial judge on the facts was plainly wrong. *Ting Kwok Keung v Tam Dick Yuen & Others* [2002] 3 HKLRD 1.

10. Attached to the summons for the Leave Application is the draft Notice of Appeal. It contains 6 grounds. I shall deal with each of them in turn.

11. To recap, by the Judgment, this court dismissed the defamation claim and allowed Madam Tsang’s claim for compensation pursuant to the PDPO. The Couple’s intended appeal concerns the latter only.

12. Grounds 1 to 4 are actually challenges to my factual findings contained in paragraphs 128 to 131 of the Judgment but I do not find them to be arranged in a logical order. I shall deal with them together.

13. In the said paragraphs of the Judgment, I first set out the relevant evidence of Madam Tsang in her witness statement concerning her reaction upon her discovery of the Letter (§129):

(1) she had been unable to sleep well;

(2) she always felt paranoid;

(3) she feared that she would be watched and filmed all the time;

(4) whenever she heard noises outside her window she became very nervous; and

(5) she had to seek medical assistance and was prescribed

sleeping pills on one occasion.

14. Then, in the next paragraph (§130), I expressly accepted her foregoing factual allegations. I gave explanations for the acceptance. I could well understand the injury feelings because some of the 10 CCTV cameras installed at the flat of the Couple actually cover the residence of Madam Tsang. She could not have expected that the Couple would make pictures out of the CCTV footages and use such pictures to her detriment. Such a misuse must have hurt her feelings and to her the threat that the Couple would misuse the CCTV footages again (“**the Threat**”) is not unreal.

15. Lastly I reject Mr Singh’s submission that Madam Tsang’s claim is not genuine and that she has suffered no injury to her feelings. I find no culpable delay in her complaint to the Commissioner (3 months after the discovery of the Letter only) which can show that her claim is invalid. This is essentially a factual conclusion.

16. Grounds 3 and 4 are targeted at my factual finding that Madam Tsang suffered injury to her feelings as a result of the misuse of the Photos. They are bound to fail. I cannot see how my acceptance of Madam Tsang’s evidence can be faulted.

17. To start with, I expressly found Madam Tsang, and indeed all her witnesses including her sister Tsang-Parry Ann (“**Ann**”), to be honest and straightforward. The same cannot be said about the Couple. I accept Madam Tsang’s description of her injured feelings without hesitation.

18. On the other hand, such feelings were not inherently improbable. Quite on the contrary, I have set out the reasons why they were actually understandable. The genuineness of the Threat explains her anxiety.

19. In cross-examination, Mr Singh put to Ann that the paranoid of Madam Tsang was self-induced and not caused by anyone. I disallowed this question for obvious reasons. Curiously enough, Mr Singh did not raise this issue with Madam Tsang when cross-examining her.

20. Mr Singh did not dispute the foregoing the factual allegations about Madam Tsang’s injured feelings by way of cross-examination at all.

21. Now, Mr Singh seeks to challenge the factual findings based on unchallenged evidence in reliance of tenuous grounds. None of the criticisms of Mr Singh has any merit.

22. His primary complaint is that Madam Tsang did not say anything about her injured feelings in her complaint form submitted to the Commissioner dated 15 February 2016 (“**the Complaint Form**”) and the letter issued by her solicitors dated 27 June 2016 to Mr Tsang (“**the 27/6 Letter**”).

23. The Complaint Form is a pro-forma document. A complainant is required to fill in the information requested for the Commissioner’s consideration as to whether an investigation would be commenced against an alleged data user. It is not a document for the purpose of a claim to be made under section 66 of the PDPO. In the Complaint Form, there is no room for complaint about any injured feelings at all.

24. In the reply letter dated 18 February 2016, the Commissioner asked Madam Tsang for further information in specific areas. Nothing was asked about her feelings, which must be irrelevant for his purpose.

25. The core complaint in the 27/6 Letter was the libel by way of

the Letter. There was an allegation that Madam Tsang was deeply hurt and perturbed by the publication of the Letter. No mention was made about the breach of the PDPO but it does not mean that Mr Tsang did not commit any contravention. Indeed, the Commissioner confirmed that Mr Tsang did. By the same token, the fact that Madam Tsang did not say how her feelings were injured by the misuse of the Photos infringing her privacy does not mean that there were no injuries to her feelings. It was only natural that her feelings were hurt.

26. I cannot see how the subsequent addition of the claim under the PDPO shows that it is not a bona fide claim. Even the Commissioner in view of the breach of the PDPO, saw fit to issue a warning letter to Mr Tsang against further breach.

27. Mr Singh further picked up the evidence of Ann and submits that it contradicts that of Madam Tsang. I do not find any meaningful contradictions at all. Madam Tsang could have told Ann that she was anxious about one thing and indeed she was anxious about another. She could be anxious about both things. It was, after all, a conversation between sisters only and it is unrealistic to expect that Madam Tsang should give a full account of everything with precision.

28. Again, Mr Singh did not deal with this alleged contradiction with Madam Tsang in her cross-examination.

29. Next, Mr Singh points out that Ann testified that she had advised Madam Tsang strongly to seek consultation with a psychologist, Madam Tsang was too stressed and did not want to waste time and heed her advice. However, Madam Tsang’s own evidence is that she had seen a doctor several times and was given sleeping pills on one occasion.

30. I am unable to see any conflict in their evidence. Mr Singh should have worked on this in his cross-examination to make good his contention.

31. I find no substance in Mr Singh’s complaint about the lack of supportive medical evidence of Madam Tsang. To begin with, Madam Tsang does not need to prove any psychotic illness to substantiate her claim under the PDPO. An injury to her feelings suffices. I would say that it is simply incredible that there was none in all the circumstances of the present case. Moreover, even in the absence of any documentary evidence, I accept the evidence of Madam Tsang that she did go to see a doctor a few times. Mr Singh did not challenge this at trial.

32. Now I turn to Grounds 1 and 2. The focus of these grounds is on the causal link between the injury to the feelings of Madam Tsang and the use of the Photos. Mr Singh submits that this court should have found there is no such link and that, in any event, I failed to explain adequately my decision as to which part of her injury was causally based on the Photos and not the Words.

33. The gist of Mr Singh is that, as observed by this court in the Judgment, the Photos, *per se*, were not particularly offensive. He submits that the injury to the feelings was actually caused by the Words and not by the Photos. He highlighted that, as observed by this court, the Photos were blurred. He further relies on the negative answer of Madam Tsang to this court’s question whether the Photos were damaging to her.

34. I cannot accept this blinkered approach advocated by Mr Singh. The Letter consisted of the Photos and the Words. The Photos were intended to support the allegations of the Words though they could not capture exactly the complaints in the Words. The unchallenged evidence of Madam Tsang is that Ms Yip said that Madam Tsang looked fierce in one of the Photos (§50(3) of the Judgment). A dog was depicted and it seemingly related to, though being unable to support, the allegation about dogs’ excretions. A metal gate was depicted and apparently it related to the allegation about Madam Tsang’s opening of the gate of others without permission.

35. The Couple went through the CCTV footages and picked those images to be converted into the Photos. The Photos were published together with the Words. They were an integral part of the Letter though they themselves might not depict anything offensive in nature. They tended to lend support to the allegations in the Words. Such a use of the Photos constituted a breach of the PDPO. The publication of the Letter without her knowledge and consent caused injuries to her feelings.

36. I had little doubt that the Letter as a whole hurt the feelings of Madam Tsang. The misuse of the Photos added another kind of injury in the form of anxiety.

37. The reliance on Madam Tsang’s answer is misplaced. The question this court posed to Madam Tsang was whether she agreed that the damaging part was the Words but not the Photos as she did not do anything untoward or unusual in the Photos. Madam Tsang replied in the affirmative and added that someone had said that she looked fierce in one of the Photos.

38. Despite the Photos themselves do not show any damaging matters of Madam Tsang, the Couple used them to be part of their weapon behind her back. Naturally, the feelings of Madam Tsang were injured.

39. Mr Singh relies heavily on *Campbell v MGN Ltd* [2002] WHC 499 to support his submission that the requisites causal link is lacking in the present case.

40. It is trite that every case is decided on its own facts and I fail to see how the *Campbell* case can show that my factual findings in the present case are plainly wrong. I refuse to further discuss the *Campbell* case, the facts of which are very different, save that I would point out that Madam Tsang had long been uneasy about the many CCTV cameras of the Couple with some of them covered her residence. It turned out that the images captured by those CCTV cameras were indeed used to her detriment. Her anxiety is only understandable.

41. Ground 5 is about the Threat. Mr Singh submits that I erred in my consideration of the Threat and failed to explain its relevance to the issue of causal link and the quantum of damages under section 66 of the PDPO.

42. I have already explained why Madam Tsang justifiably feels anxiety about the misuse of the Photos made from the CCTV footages. The anxiety is serious because the Threat is real. The more serious Madam Tsang’s anxiety is, the more compensation she should be entitled to.

43. Mr Singh relies on the closing of the investigation of the Commission and the lack of any follow action to submit that there is no evidence that the Couple would reoffend in the future and the Threat is non-existent.

44. I disagree. The Couple did not appear to have an ounce of remorse at the trial. They were not apologetic. Madam So even said she published the Letter for a noble cause. Their animosity towards Madam Tsang is obvious. I believe the Threat exists.

45. On Ground 6, Mr Singh submits that the amount of compensation this court ordered (HK$70,000) is excessive and this court did not consider or take into account that (1) the Photos were of poor quality (2) the Photos were not offensive (3) only two people received the Photos and neither of them treated Madam Tsang differently after seeing them (4) the Commissioner regard the incident as minor by resolving it through a warning letter to Mr Tsang and (5) Madam Tsang agreed that a warning was sufficient and was not necessary to pursue the matter further.

46. I should not repeat myself here. The amount of HK$70,000 represents the compensation for the injured feelings of Madam Tsang and nothing else. She has suffered from anxiety exacerbated by the Threat. The Threat originated from the Couple’s misuse of the Photos. The circumstances warrant a substantial amount of compensation and I believe HK$70,000 would be within the range of an appropriate award.

47. In his closing submissions Mr Singh simply asked this court to dismiss the claim in view of zero evidence of any damage suffered by Madam Tsang. He did not render any assistance on the quantum accordingly.

48. Mr Singh now submits that any award should not exceed HK$30,000. He relies on the *Campbell* case and *Yuen Sha Sha v Tse Chi Pan* [1999] 1 HKC 731.

49. In the *Campbell* case, the lack of frankness in the evidence of claimant was a consideration in the computation of compensation. I am unable to conclude that Madam Tsang’s evidence of her injured feelings is in any way less than frank. I was very impressed by Madam Tsang’s straightforwardness in fact.

50. As observed above, the facts of the *Campbell* case are very different and I do not find it of any relevance to the amount of compensation.

51. In the *Yuen Sha Sha* case, the defendant placed a camcorder in the room of the plaintiff at their university hostel. Video tapes containing images of the plaintiff changing her clothes were made as a result. The plaintiff succeeded in her claim under the Sex Discrimination Ordinance, Cap. 480 (**“SDO”**).

52. Judge HC Wong awarded HK$50,000 as damages for injury to feelings, HK$20,000 as exemplary damages and HK$10,000 as aggravated damages.

53. Mr Singh submits that the plaintiff was entitled to HK$70,000 in damages to her feelings. This is factually incorrect. He submits that the injuries suffered by Ms Yuen are far more egregious and long-lasting than those of Madam Tsang.

54. The plaintiff in the *Yuen Sha Sha* case was shocked, upset and distressed on her discovery of the camcorder in her room. She felt violated, exploited, betrayed, humiliated and hurt. She regarded the defendant as one of her good friends.

55. The judge considered that the fact that the plaintiff was a student without enjoying a reputation in the community, the injuries done to her were mainly to her feelings and the videos were not published in her assessment of compensation.

56. I cannot accept the submission of Mr Singh and I do not think the injury to the feelings of Madam Tsang was substantially less serious. Given the inflation over the two decades since the award in the *Yuen Sha Sha* case was made, the compensation of HK$70,000 is hardly excessive. I do not believe that my discretion was exercised erroneously.

57. In the premises, I come to the conclusion that none of the grounds advanced by the Couple has any merit and I do not believe that their intended appeal enjoys any reasonable prospect of success. There is no other reason why leave to appeal should be granted in the interest of justice. Leave to appeal should not be granted.

*Variation Applications*

58. The costs order *nisi* made is that the Couple should pay 70% of the costs of Madam Tsang, including any costs previously reserved, with certificate for counsel, to be taxed if not agreed.

59. The reasons for the costs order *nisi* are set out in §145 of the Judgment in the following terms:

“Costs in this case is not a straightforward issue. Being given an award of compensation under the PDPO, Madam Tsang is the ultimate winner though the amount of the compensation is on the low side and her defamation claim is dismissed. Madam Tsang’s defamation claim took up the lion share in this action but I am mindful of the overlapping issues in both of her claims. I should also consider the conduct of the Couple in their defence to her claims and, in particular, their readiness to allow untruth statements to be pleaded in their pleadings despite their respective Statements of Truth.”

60. The Couple, by their summons, ask for a costs order that (1) Madam Tsang do pay them costs of the action, (2) alternatively, Madam Tsang do pay them such costs of the action as this court thinks fit and (3) in further alternative, there be no order as to costs of the action or they do pay such portion as less than 70% of Madam Tsang’s costs as this court deems fit. They further ask for certificate for counsel.

61. Madam Tsang is also not contented with the costs order *nisi* and by her summons she seeks a costs order that the Couple do pay her costs of and incidental to these proceedings, including all costs reserved, on an indemnity basis, to be taxed of not agreed, with certificate for counsel.

62. I shall first deal with the Couple’s application. I agree with Mr Singh that the costs issue in respect of the defamation claim and the costs issue in respect of the PDPO claim call for different considerations. The latter is specifically governed by section 73F(3) of the DCO (“**the Provision**”), which provides,

“Each party to any proceedings in the Court in the exercise of its jurisdiction under section 66 of the Personal Data (Privacy) Ordinance (Cap.486) bears its own costs unless the Court otherwise orders on the ground that -

(a) the proceedings were brought maliciously or frivolously; or

(b) there are special circumstances which warrant an award of costs”

63. A costs provision similar to the Provision can be found in all those Ordinances dealing with discriminations such as the SDO.

64. These provisions are a departure from the normal starting point of costs following the event in general civil litigation. HH Judge Lok (as he then was) in *Cano-Shearer Anne & Ors. v Cathay Pacific Airways Ltd* [2003] 2 HKC 448 at §18 said this,

“… s. 73B(3) makes it clear that the court should not approach the question of costs in a sex discrimination case in precisely the same way as in an ordinary civil or commercial case. The unusual nature of this costs provision, which is different from the normal litigation rule that costs should follow the event, is clearly designed to permit persons who claim that they have suffered discrimination to pursue an action before the courts without the fear of a costs order being made against them, provided that they do not act frivolously or maliciously, or that there are not some “special circumstances” that would merit the displacement, in the interest of justice, of the basic rule that each party shall bear its own costs.”

65. There, the judge dealt with the question of costs in respect of a rejected claim made under the SDO.

66. I agree with the foregoing remarks of the judge. I believe that these provisions encourage those who genuinely feel discriminated to come forward and speak out and, if necessary, prosecute their claims in court without being deterred by the possibility that they may have to pay the legal costs of the other side if they ultimately fail in their claims.

67. These provisions afford protection to those unsuccessful claimants in discrimination actions. They merely have to bear their own costs without paying the other side so long as their claims were not brought maliciously or frivolously or there are special circumstances.

68. However, I fail to see why those unsuccessful defendants should enjoy the same protection. It seems unreasonable that they do not have to pay costs to the claimants whose claims have been proved against them unless there are special circumstances.

69. That said, clearly the Provision applies to both claimants and defendants, unsuccessful or otherwise.

70. In the present case, I am convinced that there are special circumstances which warrant an award of costs against the Couple.

71. First and foremost, the Couple had utterly no defence to the PDPO claim and they knew it right at the outset. And yet, they contested the claim all the way. The Commissioner had concluded their breach of the PDPO well before the commencement of these proceedings in October 2016. The Couple could not have genuinely believed that Madam Tsang suffered no injury to her feelings as a result of their breach. In fact, they did not make this allegation in their pleadings.

72. The Couple had the knowledge of all the relevant facts to assess their legal position in respect of the PDPO claim in the very beginning. They should have admitted liability and offered to pay compensation, however small it would be. They should not have required Madam Tsang to incur costs and spend time on her prosecution of the PDPO claim against them.

73. Instead, the Couple saw fit to paint a false picture in their pleadings notwithstanding the Statement of Truth signed by Madam So. Mr Tsang persisted in his denial of any involvement in the publication of the Letter and he was fully supported by Madam So in the witness box. This court showed strong disapproval of their conduct and emphatically rejected the testimony of the Couple in this respect: see §§93-124 of the Judgment.

74. In light of the matters set out in those paragraphs of the Judgment, which I shall not repeat here, I am of the opinion that there are

special circumstances which justify an award of costs in favour of Madam Tsang. Without the trial, she would not have established liability against both Mr Tsang and Madam So. Madam Tsang should be allowed to recover her costs in respect of the PDPO claim.

75. Mr Singh submits that as the PDPO award of HK$70,000 falls below the ceiling of the jurisdictional limit of the Small Claims Tribunal, the Couple should only be liable to pay Madam Tsang the costs of her PDPO claim on the scale applicable to the Small Claims Tribunal only. I do not think there is such a scale.

76. I also cannot accept his submission. To begin with, this is not asked for in their summons. It is not open to the Couple to make this suggestion.

77. Moreover, it is not in dispute that Madam Tsang had to first make her PDPO claim in the District Court. The complaint is that she should have applied for a transfer to the Small Claim Tribunal as soon as the increase of the jurisdictional limit of the Small Claim Tribunal took effect on 3 December 2018.

78. I do not think the complaint is valid. It is perfectly understandable that Madam Tsang would not consider prosecuting the PDPO claim and her defamation claim arising from the same subject matter separately in two different levels of court. The Couple could have made the application for a transfer and they did not, either.

79. In any event, it is difficult to have a precise estimate of the amount of compensation and the award is very close to the jurisdictional limit of the Small Claims Tribunal. I think it is justifiable that Madam Tsang continued to proceed with her PDPO claim in the District Court and her costs should be taxed in accordance with the District Court scale accordingly.

80. Mr Singh submits that the PDPO claim was in every sense a minor one only and this court dealt with the whole claim with 3 pages of the Judgment only.

81. This submission ignores the fact that I used 32 paragraphs in 9 pages to dispose of the issue as to whether Mr Tsang was involved in the creation and publication of the Letter thereby contravening Principle 3(1) of the Data Protection Principles (“**the Involvement Issue**”).

82. The Involvement Issue indeed took up a large part of the trial with intensive cross-examinations of both Mr Tsang and Madam So. This is also the overlapping issue with the defamation claim. I do not understand why Mr Singh submits that it is unnecessary to establish Mr Tsang’s liability in light of Madam So’s admission to the publication of the Letter on her own.

83. Mr Chung asks for indemnity costs for the entire action. He mostly relies on the findings and observations of this court relating to the Involvement Issue. In particular, he highlights the untrue averments in the pleadings verified by a Statement of Truth.

84. Insofar as the PDPO claim is concerned, despite my strong disapproval of the conduct of the Couple expressed in the aforementioned paragraphs of the Judgment, I agree with Mr Singh that I am unable to conclude that those conduct of the Couple could make this case one with some special or unusual features: see *Commissioner of Inland Revenue v Poon Cho Ming John* (No.2) (2020) 23 HKCFAR 74 per Bokhary NPJ at §4. Madam So was anxious to exculpate Mr Tsang and Mr Tsang tried hard to evade liability. They were less than truthful. But this is hardly special or usual. They did not act oppressively or wickedly.

85. In the premises, I refuse to grant indemnity costs to Madam Tsang in relation to the PDPO claim.

86. Now I turn to the costs issue of the defamation claim. The starting point is that costs should follow the event and I should have regard to Order 62 rule 5, Rules of the District Court (“**RDC**”) and in particular the conduct of the parties: Order 62 rules 5(1)(e) and 5(2), RDC.

87. Madam Tsang’s defamation claim is dismissed and the Couple is the successful party. *Prima facie*, they should be entitled to their costs.

88. Mr Singh fairly draws to this court’s attention the decision of HH Judge Winnie Tsui in *Chan Hin Keung Henry (Dr) v Apple Daily Ltd* [2019] 2 HKLRD 886. At §13, the judge had this to say,

“On the other hand, it is however clear from recent authorities that post-CJR the courts are more ready to make costs orders that reflect the outcome of different issues. It is well-recognised that it is no longer necessary for the successful party to have acted unreasonably or improperly to be deprived of his costs of a particular issue on which he has failed. In this regard, Chu JA commented that principle no 3 in *Re Elgindata* “should be less generally followed”: *Ko Hon Yue* at para 16.”

89. The defamation claim was poorly formulated and presented. Though the grievance of Madam Tsang, having been stabbed at the back by her uncle and aunt, is understandable, her defamation claim did not actually meet the basic requirements, i.e., the Words under complaint bore no defamatory imputations. The determination of the meanings of the Words, however, did not require live evidence and did not take up much of the trial time.

90. However, I am mindful that the Involvement Issue really took up a lot of the trial time and the manner in which the Couple denied Mr Tsang’s involvement from the pleading stage to their testifying at trial. Moreover, the defences of qualified privilege and fair comment were found to be thoroughly bad and a non-starter respectively. These pleas should not have been made at all.

91. Looking the matter in the round, the Couple should be allowed to recover 50% of their costs in their defence of the defamation claim at most. It must follow that Madam Tsang fails to recover any costs, let alone indemnity costs, in respect of her defamation claim. Her application for variation of the costs order *nisi* must be rejected.

92. Given my conclusion that the Couple should pay Madam Tsang her costs of the PDPO claim, I believe that the fairest order is that each party should bear its own costs of the entire action including any previous costs reserved. I grant the Couple’s Variation Application and allow a variation of the order *nisi* to this effect. All other costs orders previously made do stand.

*Conclusion and disposition*

93. For the three applications, the parties have filed very lengthy written submissions. I have not dealt with all the submissions here. I have considered all of their submissions made before coming to the conclusions in this Decision. I believe the reasons given by me are sufficient to support my conclusions.

94. To sum up, I dismiss the Couple’s summons for leave to appeal for want of a reasonable prospect of success of the intended appeal. I allow their summons to vary the costs order *nisi* to the extent that each party should bear its own costs of the entire action including any previous costs reserved. I dismiss the summons of Madam Tsang for her Variation Application.

95. Costs should follow the event. The Couple should pay Madam Tsang her costs of the Leave Application and Madam Tsang should pay the Couple the costs of the Variation Applications by both her summons and their summons. All such costs are to be taxed if not agreed. I also grant certificate for counsel for all the three applications.

(Kent Yee)

District Judge

Mr. Hylas Chung, instructed by K.Y. Woo & Co., for the plaintiff

Mr. Harprabdeep Singh, instructed by Patrick Chu, Conti Wong Lawyers LLP, for the 1st and 2nd defendants