## DCCJ 1997/2024

[2025] HKDC 449

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

CIVIL ACTION NO 1997 OF 2024

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BETWEEN

CHAN LONG NING, CHRISTINE Plaintiff

and

DRAGON GUARD SECURITY LIMITED Defendant

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Before: Deputy District Judge Ng Man Sang Alan in Chambers (Open to Public)

Dates of Hearing: 16 & 20 January 2025

Date of Decision: 26 March 2025

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DECISION

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1. This is my decision after the substantive hearing of the Notice of Appeal filed by the Plaintiff (“**P**”) on 15 November 2024 (the “**NoA**”).
2. By the NoA, P seeks the following Orders: -
3. To extend time for P to appeal against the Order of Master Andrea Yu dated 20 September 2024 (the “**20/9/2024 Order**”) to strike out P’s claim and dismiss this action.
4. To set aside the 20/9/2024 Order;
5. To reinstate P’s claim;
6. Costs be in the cause.
7. It is trite that the prerequisite of an application to extend time is a clear statement as to the reasons for the time limits not having been observed and for any delay in then applying for an extension. [[1]](#footnote-1) Notwithstanding the trite law as aforesaid, P has failed to file any affirmation in support of her application for an extension of time for her to appeal against the 20/9/2024 Order.[[2]](#footnote-2) Neither has P filed any skeleton as required under Practice Direction 5.4.
8. On 14 January 2025, Defendant (“**D**”) filed its Submissions notwithstanding P’s failure to file her Skeleton.
9. On 16 January 2025 when the instant appeal had its first appearance before me, P sought an adjournment for health reason. She informed the Court that she felt unwell on 14 January 2025 and that she visited a doctor on 15 January 2025 and the doctor diagnosed her as suffering from a fever and influenza. During her oral submission on 16 January 2025, P informed the Court that she was still feeling unwell and was still suffering from a high temperature. I therefore adjourned the hearing to 20 January 2025 at 2:30 pm and directed P to provide the Court with a medical certificate verifying her medical consultation on 15 January 2025 with the doctor’s diagnosis (the “**Required Certificate**”) by way of a letter with copy to D by 12:00 noon on 20 January 2025.
10. On 20 January 2025, P failed to provide the Court with the Required Certificate but provided the Court with her written Skeleton Submission and List of Authorities (mentioning no legal authorities relied on by P). When the substantive hearing was resumed before me on 20 January 2025, P accepted her failure to provide the Court with the Required Certificate. D was represented by Ms Joanne Szeto and did not object to P’s reliance on her written Skeleton Submission and List of Authorities.

***BACKGROUND & PROCEDURAL HISTORY***

1. D is a company providing security guard and concierge services and was, at the material time, engaged by MTR, the owner of The Southside Shopping Mall (“**The Southside**”), to provide security guard services at The Southside.
2. At the material time, P was employed by D as concierge supervisor.
3. On 16 April 2024, P issued a generally indorsed Writ of Summons against D “seeking compensation from a breach of employment contract act done by [D], including but not limited to violation of privacy, unreasonable termination and constructive dismissal.” The quantum of compensation P sought to recover from D was about HK$240,000.00.
4. On 19 April 2024, P filed her Statement of Claim (the “**SoC**”).
5. On 23 May 2024, D filed its Summons applying for, *inter alia*, P’s Indorsement of Claim and the SoC to be struck out on various grounds and this action to be dismissed (the “**Summons**”). In support of the Summons, D filed the Affirmation of Ng Siu Man, Vincent[[3]](#footnote-3) (“**VN’s Affirmation**”).
6. On 31 May 2024, P filed her Affirmation in opposition.
7. On 2 July 2024, Master Charmaine Lo (盧康慧聆案官) directed parties to file a second round of affirmations and imposed the timeline for filing and serving their respective submissions and list of authorities for the substantive hearing of the Summons (the “**2/7/2024 Order**”). In the 2/7/2024 Order, Master Charmaine Lo directed that D should file its submissions and list of authorities not later than 72 hours and P not later than 48 hours before the substantive hearing of the Summons.
8. Neither P nor D has filed any further affirmation.
9. On 16 September2024, both P and D filed their respective submissions and list of authorities for the substantive hearing of the Summons.
10. On 20 September 2024, Master Andrea Yu heard the Summons and made the 20/9/2024 Order (the “**20/9/2024 Hearing**”).

***THE GROUNDS OF APPEAL***

1. In the NoA, P has advanced 2 grounds of appeal:
2. Serious procedural unfairness in that:
3. D’s legal representatives failed to serve their written submissions on the compliance date;
4. D’s written submissions were only served on P by hand 15 minutes before the 20/9/2024 Hearing;
5. the aforesaid late service of D’s written submissions severely prejudiced P’s ability to:

(aa) properly review and respond to D’s arguments;

(bb) prepare adequate counter arguments; and

(cc) fairly present her case before the Court; and

1. The learned Master proceeded with the hearing despite the aforesaid clear prejudice to P. (the “**Procedural Unfairness Ground**”)
2. The learned Master erred in striking out the claim under *Ord. 18, r. 19 of the Rules of District Court* (“***RDC***”). (the “**General Ground**”)

***WHETHER DISCRETION SHOULD BE EXERCISED TO EXTEND TIME FOR P TO APPEAL AGAINST THE 20/9/2024 ORDER***

1. Under *Ord. 58, r 1(3) of RDC*, the notice of appeal for an appeal from the decision of a master to a judge in chambers must be issued within 14 days after the judgment, order or decision of the master was given or made.
2. As the 20/9/2024 Order was made on 20 September 2024, the NoA should have been issued on or before 4 October 2024. Therefore, the NoA was filed 42 days late and an extension of time for appealing is required.

***The Law***

1. There should be a clear statement as to the reasons for the delay in order for the court to exercise its discretion to extend time, see *Chiu Sin-Chung v Yu Yan Yan and Another* (*supra*) at p. 288(1). In *Chiu Sin-Chung*, Keith J at 227-228 set out a number of principles applicable to the exercise of the court’s discretion to extend time for appealing an order of a Master which includes:

“(i) ‘The rules of court must prima facie be obeyed, and in order to justify a court in extending the time during which some step in procedure requires to be taken there must be some material upon which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules, which is to provide a time table for the conduct of litigation’…

(ii) Accordingly, the prerequisite of an application to extend time is a clear statement as to the reasons for the time limits not having been observed and for any delay in then applying for an extension. …”

1. If there was no clear statement as to why the time limit for issuing the notice of appeal had not been observed by the intended appellant, there is simply no sufficient basis for this court to exercise its discretion to extend time for appeal and on this basis alone, the court can dismiss the application for extension of time to appeal, see *Amber Properties Limited v Airguard Industries (HK) Limited* [2024] HKDC 2055, at [8].
2. It is well established that in considering whether to extend time to appeal, the court will take into account the following factors:
3. the length of the delay;
4. the reasons for the delay (in terms of firstly why the original time limit was not complied with and secondly why the extension of time could not have been made earlier);
5. the chances of the appeal succeeding if an extension of time is granted; and
6. the degree of prejudice to the other party if the application is granted.[[4]](#footnote-4)
7. As for the merits, where the delay is inexcusable or where the delay is substantial and not wholly excusable, the applicant must show a real prospect of success (ie a strongly arguable case), not merely a reasonable prospect of success.[[5]](#footnote-5)
8. Furthermore, in *Postwell Ltd* (*supra*) at [35], it was held that in applications for extension of time to appeal an adverse order or adjudication, as opposed to extension of time to remedy other procedural default, the court should be slow to accede to the application in the absence of an acceptable reason for the delay.
9. Although prejudice to the other party is a ground for refusing to extend time, the absence of prejudice is not a ground for extending time.[[6]](#footnote-6)

***Analysis***

1. As I have said, P has failed to file any affirmation in support of her application for an extension of time for her to appeal against the 20/9/2024 Order[[7]](#footnote-7) and neither has P filed any skeleton as required under Practice Direction 5.4[[8]](#footnote-8).
2. In the present case, there was a delay of 42 days in issuing the NoA. The delay is substantial.[[9]](#footnote-9)
3. At the hearing on 16 January 2025, P attributed her delay to her unfamiliarity with the legal procedure and that she did not study the procedural rules thoroughly. P submitted from the Bar table that she mistakenly filed her notice of appeal with the High Court on 31 October 2024. It was only after she received a reply letter from the High Court on 14 November 2024 that she began to know that she had filed her notice of appeal with the wrong court. On 15 November 2024, P filed the NoA with the District Court. At the resumed hearing on 20 January 2025, P corrected herself by submitting the following:
4. On 18 October 2024, P incorrectly and mistakenly filed judicial review application with the High Court, seeking to review the 20/9/2024 Order.
5. P was unaware of the 14-day period for lodging the *Ord. 58* appeal and got confused with the public law remedy.
6. On 7 November 2024, the Hon. Coleman J. handed down the Decision, dismissing P’s application for judicial review (the “**JR Decision**”).
7. On 11 November 2024, P received the JR Decision.
8. All along, P has had genuine intention to challenge the 20/9/2024 Order and has not abused or deliberately attempted to delay the legal process.
9. On 15 November 2024, P filed the NoA, applying for leave to extend time to appeal against the 20/9/2024 Order.
10. The aforesaid reasons advanced by P at the resumed hearing were not contained in her affirmation. Even if I would have to pay regard to her bare assertions as to why she did not file the NoA within time, I do not find her explanation excusable. There was no excuse for P to say that she was not legally represented and did not know the relevant procedural law. As held by the Hon Marlene Ng J in *Tsui Yuen (formerly known as Ho Wai Hung) v Ho Tse Wai, Philip Li & Partners (A Firm) (formerly known as Ho, Tse & Wai & Partners)* [2019] HKCFI 2431 at [14], upon receipt of an adverse judgment, it was incumbent upon even those legally unrepresented to take prompt steps to ascertain the proper procedure and time frame for appeal. Otherwise, the fact that a party is unrepresented will, in my view, become the charter for not complying with the legal procedural rules.
11. Hence, P has to show a real prospect of success on the merits of her intended appeal.

***Merits of the Appeal***

*The Procedural Unfairness Ground*

1. In P’s written Skeleton Submission, P stressed the following:
2. P faced significant procedural disadvantages due to D’s incomplete service of its written Submissions and List of Authorities.
3. Only List of Authorities was served within time.
4. Written Submissions was only served on her 15 minutes before the 20/9/2024 Hearing.
5. P only received the Hearing Bundle for the 20/9/2024 Hearing in her mail box on 20 September 2024’s afternoon.
6. The aforesaid incomplete and late service of the D’s documents severely prejudiced P by: -
7. preventing her from a proper review of D’s arguments;
8. denying P the opportunity to prepare counter-arguments; and
9. limiting P’s effective participation in hearing.
10. The aforesaid incomplete and late service of the D’s documents were impactful on the fairness of the 20/9/2024 Hearing in that P was unable to properly understand D’s arguments and given no reasonable time to prepare her response. This was particularly disadvantageous to P who was a litigant in person.
11. I agree with D’s submission that the Procedural Unfairness Ground is a red herring and completely irrelevant to the merits of P’s claim.
12. Under *Ord. 65, r 5(1) of RDC*, service of any document, not being a document which by virtue of any provision of these Rules is required to be served personally or a document to which *Ord 10, r 1* applies, may be effected (a) by leaving the document at the proper address of the person to be served, or (b) by post.
13. D has filed the 2nd Affirmation of Service of Wu Yuk Shing which stated that D’s Skeleton Submissions, List of Authorities and the relevant Authorities referred to therein for use at the 20/9/2024 Hearing were served on P by ordinary post at the address for service of P on 16 September 2024.[[10]](#footnote-10) Pursuant to *Practice Direction 19.2*, service by ordinary post shall be deemed to have been effected on 17 September 2024.
14. D has effected good service of the aforesaid documents on P on 17 September 2024. The procedural unfairness ground is a non-starter. As said before, D’s Skeleton Submissions, List of Authorities and the relevant Authorities referred to therein were posted to the address for service of P on the same day. It is unbelievable for P to say that she has only received the List of Authorities (not the Skeleton Submissions and the relevant Authorities) within time.
15. This is not a ground of appeal having a real prospect of success.

*The General Ground*

The SoC

1. The SoC filed by P[[11]](#footnote-11) is a home-made document, containing relevant and irrelevant facts, evidence, submission and law. In a broad outline, the SoC was divided into the following sections:
2. Paras 1 to 4 are the introductory paragraphs, stating generally the causes of action against D and describing D and P. Generally speaking, P claims for loss and damages against her employer in connection with a series of severe violation of privacy and a constructive dismissal happened since her employment, especially on 15 April 2024[[12]](#footnote-12) in a conference room on the 3/F of The Southside (the “**Conference Room**”). P and all her colleagues working in The Southside were Security Personnel Permits holders.
3. Paras 6-10 pleaded P’s employment with D, some terms of her employment contract with D (the “**Employment Contract**”) and P’s direct supervisor as follows:
4. On 22 March 2024[[13]](#footnote-13), P was employed by D as a concierge supervisor and deployed to work at The Southside. The Southside was managed by the principal employer “MTR Corporation Limited” (“**MTR**”);
5. Some of the terms of the Employment Contract, in particular clause 11(ii) stating that if there is no probation period required, the parties may serve 1-month notice or payment in lieu of notice to terminate the Employment Contract; and
6. P’s direct supervisor was Sonia Sun, the customer service manager.
7. Paras 11 to 24 pleaded P’s case on constructive dismissal happened on 15 April 2024:
8. On 15 April 2024 at 1330 hours, Karson, a managerial staff from D, interrupted the daily briefing and brought P to the Conference Room wherein Karson, in the presence of some other managerial staff including Sonia Sun, told P that D and the MTR Management Office were not satisfied with P’s performance and decided to terminate P’s employment. A Chinese termination notice was prepared.
9. P refused to sign the document, but requested to take it home for consideration. Karson informed P that if she refused to sign the document, she would not be allowed to take it away and that there was no option for her not to sign.
10. P then used her smartphone to make a scan of the document and told Karson and other managerial staff that she would like to leave the Conference Room now. Karson stopped P from leaving and claimed that if she refused to sign the document, she would be obligated to work at another site as provided for in the Employment Contract. Karson specifically instructed P to work in LOHAS Park the following day and to take the mid-shift.
11. P did not see any terms and conditions in the Employment Contract whereby D could instruct her to work at another site.
12. Paras 25 to 27 pleaded P’s claim on criminal confinement happened on 25 April 2025 as follows:
13. P cautioned Karson that by stopping her leaving the Conference Room due to her refusal to sign the document, Karson’s conduct had already constituted criminal confinement. After the warning, Karon’s tone softened and he advised P not to take the issue too seriously. He inquired about P’s work experience and residence, stating that he could try to arrange alternative work site, including Four Seasons Hotel, for her.
14. Finally, Karson gave P another offer, telling P to return to D’s head office at 1000 hours to report to duty first after her rest day on 16 and 17 April 2024.
15. P did not answer Karson. She just got changed and returned the locker and keys to Sonia Sun before she left.
16. Para 28 pleaded a conclusion that P was hence treated unfairly and constructively dismissed by D and MTR. The same paragraph introduced P’s plea of severe violation of her fundamental human right to privacy during her employment.
17. Paras 29 to 31 pleaded D’s use of security surveillance to monitor the performance of its employees.
18. On 25 March 2024, Sonia Sun told P that the security guards in the control room complained that she was not standing up to serve the customers and the concierge desk was messy. P was very shocked as she was not aware that she had been under illegal surveillance all the time when she was working at the concierge desk.
19. Sonia Sun announced in the concierge WhatsApp group the MTR Management Office’s arrangement of 2 April 2024 to install an audio recorder to monitor all the conversations between customers and employees to assess the employees’ performance. Sonia Sun further reminded all the staff not to use smartphone and maintain good gesture all the time and photos would be taken to record prohibited behaviours.
20. Paras 32 to 40 pleaded the incident happened to P’s new teammate Joey Lui regarding Joey Lui being surreptitiously filmed by a MTR’s staff resulting in Joey Lui being strongly condemned in the concierge WhatsApp group.
21. Paras 41 to 47 pleaded P’s another new teammate Yin Law informing P of the negative comments against her and the incident happened to Yin Law leading to Yin Law being removed from the concierge WhatsApp group.
22. Para 48 pleaded the relentless barrage of messages from 17 WhatsApp work groups to P, leading to dispersed communication within the security team and compromised resilience.
23. Para 49 pleaded that P felt exhausted when she was working with the “Jove” parking system because of its high malfunctioning frequency causing a lot of customers’ feedback and the lack of risk and good control under IT governance and the business continuity plan.
24. Paras 50 to 52 pleaded the incident happened at around 1915 hours on 14 April 2024 when P needed to stand by the concierge desk and received a call from duty phone, telling her to leave the concierge desk as Yin Law was already on duty there. P explained why she needed to stand by and promised to leave before 1930 hours. This was another incident showing that the MTR Management Office was using surveillance system to monitor P’s performance.
25. Para 53 pleaded P being a patient of severe depression episode and her regular meeting with the mental specialist.
26. Paras 54, 59 to 61 pleaded the issue of 2 Writs of Summons by P against D and MTR at the District Court on 16 April 2024 and their case numbers.
27. Paras 55 and 56 pleaded that on 16 April 2024, D served on P a 1-month notice of termination and informed her to work in another work site and P was reminded to report duty on 18 April at 1000 hours.
28. Para 62 pleaded that D was liable to P and P sought compensation for her health, emotional and financial loss and damage. Paras 63 to 75 pleaded the reasons why D was liable to P.
29. Paras 64 to 66 and 72 related to violation of privacy and, in essence, D’s failure to provide preventive measures or policy against violation of privacy;
30. Paras 67 to 70 related to failure to provide safe workplace, safe and proper system at the workplace and risks assessment;
31. Paras 71 and 74 related to unfair act towards P;
32. Para 73 related to exposing P to risk of damage that D knew or ought to have known; and
33. Para 75 related to D’s awareness of the incidents occurring in the course of P’s employment.
34. P prayed for quantum to be assessed and costs.

The Legal Principles Applicable to Strike-Out Applications

1. The legal principles on striking out are trite and sourced from *Ord. 18, r.19 of RDC*.
2. In *Polyline Development Limited v Ching Lin Chuen* [2021] HKCFI 483, Mr Recorder Manzoni SC held at [11]-[15] as follows:

“11. Insofar as the application is premised upon the proposition that there is no reasonable cause of action, I must proceed on the basis that the facts alleged in the statement of claim will be established. No evidence is admissible in relation to this limb of the applications and I must address the matter simply on the basis of what is pleaded. Where a pleading is defective only in not containing particulars to which the other side is entitled the correct approach is to order particulars rather than strikeout the pleading.

12. Insofar as the pleading is alleged to be scandalous, it will only be struck out if it is degrading, indecent and irrelevant to matters which are material.

13. Insofar as “frivolous or vexatious” is concerned, the object of the rule is to stop cases which ought not to be launched. A proceeding is frivolous when it is not capable of reasoned argument or is without foundation or cannot possibly succeed. A proceeding is vexatious when it is oppressive or lacks bona fides. In *Yifung Properties Ltd v Manchester Securities Corp* (unreported., HCA 1341 and 1359/2014) Au-Yeung J stated:

“12. Where a litigant brings a claim knowing that there is no substance in it or that it is bound to fail, or if the claim is on its face so manifestly misconceived that it can have no prospect of success, it may be deemed frivolous and abuse of process: see ET Marler Ltd v Robertson [1974] ICR 72 at 76D-E …

1. Vexatiousness implies the doing of something over and above that which is necessary for the conduct of the litigation, and suggests the existence of some spite, or desire to harass the other side to the litigation, or some other improper motive.
2. To decide that the litigant has been frivolous or vexatious and thus abused the process of the court is a serious finding to make, for it will generally involve bad faith on his part and one would expect the discretion to be sparingly exercised. ET Marler Ltd v Robertson [1974] ICR 72 at 76G-H”

14. Insofar as it is said that the statement of claim may “*prejudice, embarrass or delay the fair trial of the action*”, the court will generally give a liberal interpretation to these words but they are aimed at identifying pleadings which are unnecessary in a way which will cause undue difficulty at trial or undue difficulty to the other side because it is unable to understand the case that it has to meet. However, it is not the purpose of this rule to dictate to a party the way in which it should frame its case, and the court will generally not strikeout a claim on this ground merely because it is unnecessarily long or complicated provided that it pleads the necessary elements of the relevant causes of action and does not offend against the general rules of pleading. The rule is therefore aimed at genuine embarrassment in dealing with the case or at matters which are wholly immaterial or irrelevant and which may involve expense trouble or delay in the overall resolution of the action.

15. Insofar as “Abuse of the process of the court” is concerned, this is designed to ensure that the machinery of the courts is used for a bona fide purpose, and is not abused. A claim can be struck out as an abuse of the process of the court where it is groundless, including where the claim is obviously and plainly time-barred: see *Ronex Properties Ltd v John Laing* [1983] QB 398 at 408B-D, per Stephenson LJ:

“There are many cases in which the expiry of the limitation period makes it a waste of time and money to let a plaintiff go on with his action. But in those cases it may be impossible to say that he has no reasonable cause of action. The right course is therefore for a defendant to apply to strikeout the plaintiffs’ claim as frivolous and vexatious and an abuse of the process of the court, on the ground that it is statue barred. Then the plaintiff and the court know that the Statute of Limitations will be pleaded; the defendant can, if necessary, file evidence to that effect; the plaintiff can file evidence of an acknowledgement or concealed fraud or any matter which may show the court that his claim is not vexatious or an abuse of process; and the court will be able to do so, in I suspect most cases, what was done in *Riches v Director of Public Prosecutions* [1973] 1 WLR 1019: strike out the claim and dismissed the action…”

Criminal Confinement / Tort of False Imprisonment

1. Although P pleaded criminal confinement in para 25 of the SoC, her plea comes nowhere near to any tenable cause of action.
2. P predicated her case on *section 42 of the Offences against the Person Ordinance (Cap 212)*[[14]](#footnote-14)(“***OAPO***”) which provides that “[a]ny person who, by force or fraud, takes away or detains against his or her will any man or boy, woman or female child, with intent to sell him or her, or to procure a ransom or benefit for his or her liberation, shall be guilty of an offence triable upon indictment, and shall be liable to imprisonment for life.”
3. Needless to further elaborate, *section 42 of OAPO* does not create and its breach does not give rise to any civil cause of action. In effect, paras 25 to 27 of the Statement of Claim contradict the plea of criminal confinement.
4. Even if one looks at P’s case through the prism of the tort of false imprisonment, this tort does not avail P of a cause of action. Imprisonment is complete deprivation of liberty for any time, however short, without lawful excuse.[[15]](#footnote-15) The constraint may be actual physical force, amounting to a battery, or merely the apprehension of such force, or it may be submission to a legal process. [[16]](#footnote-16) Absent the plea of use of physical barriers, actual physical force or threatened use of physical force to exert constraint on P, P’s cause of action in false imprisonment cannot get off the ground. On the contrary, it was pleaded that P was free to leave the Conference Room even though P had not signed the document or given any answer to Karson’s offer.
5. P’s cause of action in the tort of false imprisonment is doomed to fail.

Violation of P’s Privacy

1. There is no over-arching, all-embracing cause of action for “invasion of privacy”.[[17]](#footnote-17)
2. P’s claim for violation of P’s privacy is premised on breach of *section 4 of the* *Personal Data (Privacy) Ordinance (Cap 486)* (“***PD(P)O***”) and data protection principles 1 and 3.[[18]](#footnote-18) P also needs to engage *section 66 of PD(P)O* as well.
3. In a nutshell, P’s complaint lies in D’s use of the security surveillance (i.e. the CCTV cameras) and audio recorder installed by MTR to monitor the performance of D’s employees.
4. The CCTV cameras and audio recorder were installed and controlled by MTR in a public area near the concierge counter where P was stationed. They were installed for normal business operations. To monitor the performance of the security guards and concierges stationed at MTR malls, regular meetings are held between MTR and D to discuss the performance of those personnel.[[19]](#footnote-19)
5. Data protection principle 1 provides, *inter alia*, that personal data shall not be collected unless the data is collected “for a lawful purpose directly related to a function or activity of the data user who is to use the data”, and “the collection of the data is necessary for or directly related to that purpose”.
6. Data protection principle 1(2) provides further that personal data shall only be collected by means which are “lawful” and “fair in the circumstances of the case”.
7. It is beyond argument that the use of the CCTV cameras and audio recorder by D was to monitor the performance of D’s employees at the concierge counter. At the material time, P was employed by D as concierge supervisor. P’s work performance in particular her hospitable manner towards the visitors at The Southside must relate to her employment with D. The CCTV and audio recording of P at the concierge counter was obviously for a “lawful purpose” directly related to P’s employment with D. As regards the means of collection, the CCTV and audio recording were conducted near the concierge counter in the public area of The Southside. Anyone near the concierge counter could see and hear what P was doing and saying at the concierge counter if she was on duty thereat. There can be no reasonable expectation of privacy on the part of P when she was working and serving visitors at the concierge desk. According to para 31 of the SoC, P was informed of the installation of the audio recorder by MTR to monitor all customer-and-employee conversations to assess D’s employees’ performance. In the circumstances of the present case, there was nothing unfair about how P’s personal data was collected *via* the CCTV cameras or audio recorder[[20]](#footnote-20).[[21]](#footnote-21)
8. P has contended that the CCTV cameras and audio recorder were installed to monitor the work performance and conversation of D’s employees without her consent.[[22]](#footnote-22) There is however no requirement of consent from the data subject to be sought on or before collection of the data. Data protection principle 1(3) only requires that all practicable steps shall be taken to ensure that the data subject is explicitly informed, on or before collecting the data, of the purpose (in general or specific terms) for which the data is to be used and the classes of persons to whom the data may be transferred. Furthermore, if to comply with data protection principle 1(3) would be likely to prejudice the purpose for which the data was collected and that purpose is specified in *Part 8 of PD(P)O* as a purpose in relation to which personal data is exempt from the provisions of data protection principle 6, the data user is exempt from data protection principle 1(3). [[23]](#footnote-23)
9. In the present case, P was informed of the installation of the audio recorder by MTR to monitor all customer-and-employee conversations to assess D’s employees’ performance. Hence, inasmuch as audio recording is concerned, there is no contravention of data protection principle 1(3). Insofar as CCTV recording is concerned, the purpose for which D put the CCTV recording to use[[24]](#footnote-24) would likely be prejudiced if P was informed of such purpose on or before the CCTV recording. CCTV recording therefore falls within the exemption to data protection principle 1(3).
10. There having been no plea by P that her personal data collected by the CCTV cameras or audio recorder have been put to new use, data protection principle 3 cannot be engaged in the present case.
11. P’s claim against D for violation of P’s privacy must fail *in limine* and cannot possibly succeed.

Unsafe Work Environment Claim

1. The relevant plea can be found in paras 67 to 69 and 73 of the SoC.
2. P relies on *section 6 of the Occupational Safety and Health Ordinance (Cap 509)* (“***OSHO***”) to substantiate her claim on this aspect. [[25]](#footnote-25)
3. Generally speaking, *section 6(1) of OSHO* provides that every employer must, so far as reasonably practicable, ensure the safety and health at work of all the employer’s employees. *Section 6(2) of OSHO* further provides for various manifestations of the employer’s duty under *section 6(1)*.
4. In the SoC, there is no plea of (a) *section 6(1) and (2) of OSHO*, (b) breach of *section 6(1) and (2)* and (c) P’s loss and damage caused by the breach.
5. P’s unsafe work environment claim is unsustainable and cannot be rescued by giving P an opportunity to amend the SoC.
6. If P’s unsafe work environment claim relates to her claim for D’s violation of her privacy, her unsafe work environment claim must also fail together with her claim against D for violation of her privacy.
7. If P’s unsafe work environment claim does not relate to her claim for violation of her privacy, it is difficult to discern how para 48 of the SoC about the relentless barrage of messages from the 17 WhatsApp work groups “leading to dispersed communication within the security team and compromised resilience” could cause P any injury. By the same token, it is difficult to discern how para 49 of the SoC about an IT parking system with high malfunctioning frequency resulting in P feeling exhausted when she was working with the parking system could cause P any injury. At any rate, there is no such plea in the SoC.
8. There is equally no plea that D’s breach of statutory duty or any duty of care has caused P any of the symptoms pleaded in para 53 of the SoC. In any event, D could not have caused those symptoms as P has pleaded that she had been “meeting mental specialist regularly and under prescribed drugs treatment for almost 1 year” which is before her employment with D. P’s claim in para 53 of the SoC that she found herself in anxiety and insomnia “after the incident” is not related to the relentless barrage of messages and the IT parking system respectively pleaded in paras 48 and 49 of the SoC.
9. P’s unsafe work environment claim is unsustainable and cannot be rescued by giving P an opportunity to amend the SoC.
10. In sum, P’s unsafe work environment claim is frivolous, baseless, bound to fail and an abuse of the process of the court.

Constructive Dismissal Claim

1. The relevant plea can be found in paras 11 to 28 of the SoC.
2. Under *sections 7(1) and (2) of the Labour Tribunal Ordinance (Cap 25)* (“***LTO***”) and *para 1(a) of the Schedule* thereto, the Labour Tribunal has exclusive jurisdiction to hear and determine monetary claims arising from breach of employment contracts.
3. Under *para 3 of the Schedule to LTO*, the Labour Tribunal shall not have jurisdiction to hear and determine a claim for a sum of money (whether liquidated or unliquidated), or otherwise in respect of a cause of action, founded in tort whether arising from a breach of contract or a breach of duty imposed by a rule of common law or by any enactment.
4. If any claim is within the exclusive jurisdiction of the Labour Tribunal, then such claim must be commenced in the Labour Tribunal as it is not actionable in any other court in Hong Kong, and then it is for the Labour Tribunal to exercise its discretion to decline jurisdiction and/or to transfer such claim to another court. If the claim is within the exclusive jurisdiction of the Labour Tribunal, the only option is for that other court to strike out the claim.[[26]](#footnote-26)
5. In *Woo Kwok Ping v The Incorporated Management Committee of Tsuen Wan Trade Association Primary School* [2020] 1 HKLRD 717, Hon Au Yeung J enunciated the proper approach to be adopted in dealing with strike-out applications on jurisdiction ground at [19]-[23]:

“19. In deciding the jurisdiction issue, the Court should look at both the pleaded causes of action and reliefs sought.

20. Mixed claims founded both in employment contracts and torts are excluded from the Labour Tribunal: *Uferahal Limited & anor v Hansen Larry Douglas* [2015] 2 HKLRD 683 at §20, Au-Yeung J.

21. Similarly, a mixed claim for monetary and non-monetary reliefs, even though based on breach of contract or of the Employment Ordinance, fall outside the jurisdiction of the Labour Tribunal: *Gain Hill (Hong Kong) Ltd v Li Kin Yip* [2006] 4 HKLRD 186, §§27-28, Sakhrani J.

22. **The proper approach of the Court is to look at the substance of the dispute and not the labels put on the pleadings. The Court should assess whether the other claims brought by the plaintiff are merely for “window dressing”**, such that the real claim left is one that falls within the Labour Tribunal’s exclusive jurisdiction: *Ho Chee Sing James v Secretary for Justice* [2015] 4 HKLRD 311, §§32-34, DHCJ Saunders.

23. A distinction should be drawn between jurisdiction and forum for trial. Whether a claim falls within the jurisdiction of the Labour Tribunal is determined at the time the claim is filed. On the other hand, the forum for trial is determined at the time the issues are crystallized or when there are changes in circumstances after filing of the writ.” (**My emphasis**)

1. I have already held that P’s claims for criminal confinement / tort of false imprisonment, violation of P’s privacy and unsafe work environment are hopeless and doomed to fail. Those claims lack substance and are merely labels put on the SoC for window-dressing purpose.
2. In my judgment, P’s remaining constructive dismissal claim falls within the exclusive jurisdiction of the Labour Tribunal and is liable to be struck out.
3. On merits ground, P’s remaining constructive dismissal claim must fail as well. On the facts pleaded by P in the SoC, P’s constructive dismissal claim does not constitute a reasonable cause of action and in any event untenable.
4. After discussion on termination of P’s employment on 15 April 2024, D had asked P to return to duty after her rest days from 16 to 17 April 2024.[[27]](#footnote-27)
5. On 16 April 2024,
6. P was reminded to report duty on 18 April 2024 at 1000 hours[[28]](#footnote-28); and
7. D served on P a 1-month notice of termination and informed her to work in another work site[[29]](#footnote-29).[[30]](#footnote-30)
8. Since the 1-month notice had been served, P cannot possibly argue that there was any breach of the Employment Contract.
9. According to D, it was P who refused to report to work after the said notice of termination.[[31]](#footnote-31) On 19 April 2024, D issued a letter to P, addressing her unauthorised absence and urged P to contact D regarding her job arrangement. [[32]](#footnote-32) In light of P’s lack of response and continued unauthorised absence since 15 April 2024, D issued another letter to P on 29 April 2024, informing her that her failure to contact D before 10 May 2024 would be regarded as her termination of the Employment Contract.[[33]](#footnote-33)
10. In these premises, if I am required to consider the merits of P’s constructive dismissal claim, P’s constructive dismissal claim, in my judgment, must be struck out for disclosing no reasonable cause of action and/or embarrassing the fair trial of the action and/or being frivolous and/or an abuse of the process of the court.

***CONCLUSION***

1. Based on the above reasoning, the General Ground does not have a real prospect of success and I do not think that P’s claim can be improved to get over D’s strike-out application by giving P an opportunity to amend the SoC. In fact, P has not made any proposal let alone submitting a draft as to how the SoC is to be amended.

***DISPOSITION***

1. In the circumstances, P’s application for leave to extend time to appeal against the 20/9/2024 Order is dismissed and the NoA filed without leave is struck out.
2. On 10 March 2025’s afternoon, it was brought to my attention that P submitted the 10/3/2025 Affirmation through “e-lodge Portal” without leave. The filing and submission of documents to the Court for any case is not unregulated and “self-service”. It is part of the cardinal principle of procedural fairness and economy that parties should not be given a free hand to file and submit documents to the Court at their own pleasure. Though P is unrepresented, her recent submission of the 10/3/2025 Affirmation is to be deplored. Otherwise, as I have said earlier on, the fact that a party is unrepresented will become the charter for not complying with the legal procedural rules.
3. At any rate, I have read the 10/3/2025 Affirmation which does add anything to the matters already submitted by P before me and below.
4. There is no reason why costs should not follow the event. I therefore grant a costs order *nisi* that P do pay D costs of her application for leave to extend time to appeal against the 20/9/2024 Order (including all costs reserved if any) with certificate for counsel to be summarily assessed and paid forthwith.
5. Although D had already lodged/served its statement of costs, I nevertheless allow D to lodge and serve a revised statement of costs to take into account the fact that the hearing on 16 January 2025 was adjourned and resumed on 20 January 2025.
6. Accordingly, I grant the following directions for summary assessment of costs:
7. D do within 14 days from the date hereof file with court and serve on P a revised statement of costs for summary assessment;
8. P do within 14 days after receipt of the D’s revised statement of costs file with court and serve on D a succinct summary of objections to D’s revised statement of costs of not more than 2 pages; and
9. Unless otherwise directed, the summary assessment of costs will be dealt with by way of paper disposal.

( Ng Man Sang Alan )

Deputy District Judge

The Plaintiff was acting in person and appear

Ms Joanne Szeto, instructed by Sit, Fung, Kwong & Shum, for the Defendant

1. See *Chiu Sin-chung v Yu Yan-yan and Another* [1993] 1 HKLRD 225 at p. 228 (1). [↑](#footnote-ref-1)
2. It was only about 1.5 month after the substantive hearing that P submitted an Affirmation made by her on 10 March 2025 (the “**10/3/2025 Affirmation**”) through “e-lodge Portal” without leave. I shall come back to this matter later in this judgment. [↑](#footnote-ref-2)
3. The general manager of D. [↑](#footnote-ref-3)
4. See *Postwell Ltd v Cheng Kap Sang* [2004] 2 HKLRD 355 at [33]. [↑](#footnote-ref-4)
5. See *Lee Chick Choi v Best Spirits Co Ltd*, HCMP 371/2015 (Unreported), 21 May 2015 per Kwan JA (as she then was) at [19]; and *The Hongkong and Shanghai Banking Corporation v Sy Shun Wu & Ors* [2018] HKCA 736 per Lam VP (as he then was) at [9]. [↑](#footnote-ref-5)
6. See *The Hongkong and Shanghai Banking Corporation v Sy Shun Wu & Ors* (*supra*) per Lam VP (as he then was) at [10]. [↑](#footnote-ref-6)
7. It was only about 1.5 month after the substantive hearing that P submitted the 10/3/2025 Affirmation through “e-lodge Portal” without leave. I shall come back to this matter later in this judgment. [↑](#footnote-ref-7)
8. Though P filed and D did not object to P’s reliance on her written Skeleton Submission and List of Authorities on 20 January 2025. [↑](#footnote-ref-8)
9. See *Lee Chick Choi v Best Spirits Co Ltd* (*supra*) per Kwan JA (as she then was) at [20] holding that a delay of more than 6 weeks (from 29 December 2014 to 11 February 2015) was substantial. [↑](#footnote-ref-9)
10. See Hearing Bundle of D at pp. 50-35 to 50-38. [↑](#footnote-ref-10)
11. See Hearing Bundle of D at pp. 14-27. [↑](#footnote-ref-11)
12. The date was mistakenly typed out as 15 April 2023 in the SoC. [↑](#footnote-ref-12)
13. The date was mistakenly typed out as 22 March 2022 in the SoC. [↑](#footnote-ref-13)
14. See P’s Submission Opposing D’s Strike-out Application filed on 16 September 2024 at para 3.2.4 at Hearing Bundle of D at p. 50-3; see also P’s List of Authorities filed on 16 September 2024, item 2 at Hearing Bundle of D at p.50-7. [↑](#footnote-ref-14)
15. See *Clerk & Lindsell on Torts (23rd Ed.)* at para 14-23. [↑](#footnote-ref-15)
16. See *Clerk & Lindsell on Torts (23rd Ed.)* at para 14-23. [↑](#footnote-ref-16)
17. See *Campbell v MGN Ltd* [2004] 2 AC 457 at [11]; see also *Wainwright v Home Office* [2004] 2 AC 406 at [30]-[35]. [↑](#footnote-ref-17)
18. See P’s Submission Opposing D’s Strike-out Application filed on 16 September 2024 at para 3.3 at Hearing Bundle of D at p. 50-3; see also P’s List of Authorities filed on 16 September 2024, item 3 at Hearing Bundle of D at p. 50-7. P has not specified her reliance on *PD(P)O* in the SoC. [↑](#footnote-ref-18)
19. See VN’s Affirmation at paras 7(c), 9 and 19(a)-(d) at Hearing Bundle of D at pp. 33, 37 & 38. [↑](#footnote-ref-19)
20. I seriously doubt whether the audio recorded conversations fall within the definition of personal data triggering the protection under *PD(P)O* since it may not be practicable to ascertain the identity of P from the audio recorded conversation, see *section 2 of PD(P)O*. [↑](#footnote-ref-20)
21. Similar case can be found in *Re Chan Hui May Kiu* (unrep., CACV 4/2013, 21 February 2014) where Hon Cheung CJHC (as Chief Justice then was) dismissed the applicant’s appeal from the judgment and refused the applicant leave to apply for judicial review. In that case, the subject matter of complaint was about the video recording of the applicant, a supporting service staff at a hospital, whilst she was taking a nap and the showing of the video recording to 9 nurses without the applicant’s consent. The decision of the Privacy Commissioner for Personal Data that the video recording was not unlawful or unfair in the circumstances of that case and therefore there was no breach of data protection principle 1(2) was upheld. [↑](#footnote-ref-21)
22. See P’s Submission Opposing D’s Strike-out Application filed on 16 September 2024 at para 3.3.1 and 3.3.2 at Hearing Bundle of D at p. 50-3. [↑](#footnote-ref-22)
23. See *section 55(2)(a)(i)(B) and (C) of PD(P)O*. [↑](#footnote-ref-23)
24. The purpose is one of the purposes specified in *Part 8 of PD(P)O*, see *section 55(2)(a)(i) of* *PD(P)O*. [↑](#footnote-ref-24)
25. See P’s Submission Opposing D’s Strike-out Application filed on 16 September 2024 at para 3.4 at Hearing Bundle of D at p. 50-3; see also P’s List of Authorities filed on 16 September 2024, item 4 at Hearing Bundle of D at p. 50-7. P has not specified her reliance on *OSHO* in the SoC. [↑](#footnote-ref-25)
26. See *Weng Chi-Cheong v Barclays Capital Asia Ltd* (unrep., HCA 741/2016, 6 December 2016) at [42] & [43]. [↑](#footnote-ref-26)
27. See para 26 the SoC at Hearing Bundle of D at p. 18. [↑](#footnote-ref-27)
28. See para 55 the SoC at Hearing Bundle of D at p. 22. [↑](#footnote-ref-28)
29. Under clause 2 of the Employment Contract, D may assign P to work at different locations and positions during the term of the contract and there would be different salaries for different positions or different locations, see para 10(b) of VN’s Affirmation at Hearing Bundle of D at p. 34 and the Employment Contract at Hearing Bundle of D at pp. 52-54. [↑](#footnote-ref-29)
30. See para 56 the SoC at Hearing Bundle of D at p. 18; see also the 1-month notice of termination at Hearing Bundle of D at p. 57. [↑](#footnote-ref-30)
31. See para 15(a) of VN’s Affirmation at Hearing Bundle of D at p. 36. [↑](#footnote-ref-31)
32. See para 15(a) of VN’s Affirmation at Hearing Bundle of D at p. 36; see also the 19 April 2024 letter at Hearing Bundle of D at p. 58. [↑](#footnote-ref-32)
33. See para 15(b) of VN’s Affirmation at Hearing Bundle of D at p. 37; see also the 29 April 2024 letter at Hearing Bundle of D at p. 59. [↑](#footnote-ref-33)