## DCCJ 1998/2024

[2025] HKDC 450

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

CIVIL ACTION NO 1998 OF 2024

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BETWEEN

CHAN LONG NING, CHRISTINE Plaintiff

and

MTR CORPORATION LIMITED Defendant

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

Date of Hearing: 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. The substantive hearing of the Notice of Appeal was fixed on 16 January 2025 at 2:30 pm. On the same day at 9:30 am, P had a substantially similar case against Dragon Guard Security Limited (“**Dragon Guard**”) intituled under DCCJ 1997/2024 (the “**1997 Action**”) before me. In the 1997 Action, P issued a writ of summons with the same general indorsement and filed a substantially similar statement of claim against Dragon Guard. Thereafter, on Dragon Guard’s application, Master Andrea Yu struck out and dismissed the 1997 Action. Like the present case, P filed her notice of appeal late, and therefore applied to extend time for her to appeal against the strike-out order of Master Andrea Yu.
10. When P appeared before me in the 1997 Action at 9:30 am on 16 January 2025, I granted her application for an adjournment of the hearing for health reason. Through my clerk, I also informed the legal representatives of D over the phone that due to P’s sickness, the hearing at 2:30 pm on 16 January 2025 was required to be adjourned and, in consultation with the diaries of D’s legal representatives, adjourned the hearing to 20 January 2025 at 3:30 pm.
11. On 20 January 2025, the substantive hearing of the NoA was resumed[[3]](#footnote-3) and, after hearing the parties’ submissions, I reserved my judgment.

***BACKGROUND & PROCEDURAL HISTORY***

1. D owned and managed THE SOUTHSIDE which is located at No 11 Heung Yip Road, Wong Chuk Hang, Hong Kong (“**The Southside**”). The Southside is a five-storey shopping centre interfacing the Wong Chuk Hang station.
2. D has engaged Dragon Guard as the contractor to provide customer services and security guarding services for The Southside for a period of 3 years from 1 June 2023 to 31 May 2026, including to provide competent and properly trained personnel to perform the services required.
3. At the material time, P was employed by Dragon Guard as concierge supervisor.
4. 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.
5. On 19 April 2024, P filed her Statement of Claim (the “**SoC**”).
6. On 25 June 2024, D filed its Summons applying for, *inter alia*, the P’s claim in the SoC to be struck out on various grounds (the “**Summons**”). In support of the Summons, D filed the Affidavit of Tong Man Yee[[4]](#footnote-4) (“**Tong’s Affidavit**”).
7. On 28 June 2024, P filed her Affirmation in opposition.
8. On 2 July 2024, Master Charmaine Lo (盧康慧聆案官) directed, *inter alia*, that the parties should not file any further affirmation without leave of the court and imposed a timeline for the parties to file and serve 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.
9. On 20 September 2024, Master Andrea Yu heard the Summons and made the 20/9/2024 Order to strike out P’s Indorsement of Claim, the SoC and to dismiss this action (the “**20/9/2024 Hearing**”).

***THE GROUNDS OF APPEAL***

1. In the NoA, P has advanced 3 grounds of appeal:-
2. Significant new evidence emerged during the hearing of Dragon Guard’s strike-out application before Master Andrea Yu on 20 September 2024 in the 1997 Action (the “**Dragon Guard’s strike-out Hearing**”) materially affects the present case in that: -
3. evidence that D was the data user and Dragon Guard was merely the data processor;
4. this new information fundamentally changes the legal relationship between the parties; and
5. this evidence directly impacts the determination of liability under the *Personal Data (Privacy) Ordinance (Cap 486)* (“***PD(P)O***”) (the “**New Evidence Ground**”).
6. Procedural unfairness arose because:-
7. neither P nor D’s legal representatives had adequate opportunity to address the new evidence;
8. the Court raised substantial questions about the relationship between D and Dragon Guard which remained unaddressed;
9. the implications of the new evidence on the respective roles and responsibilities of D and Dragon Guard require proper consideration; and
10. the 20/9/2024 Order was made without full exploration of this crucial evidence. (the “**Procedural Unfairness Ground**”)
11. The learned Master erred in striking out the claim under *Ord 18, r 19 of the Rules of District Court* (“***RDC***”) when:-
12. material facts regarding data control and processing were still emerging;
13. the legal relationship between D and Dragon Guard remained unclear; and
14. the full implication of the new evidence needed proper examination. (the “**Wrapping-up 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.[[5]](#footnote-5)
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.[[6]](#footnote-6)
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.[[7]](#footnote-7)

***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[[8]](#footnote-8) and neither has P filed any skeleton as required under Practice Direction 5.4[[9]](#footnote-9).
2. In the present case, there was a delay of 42 days in issuing the NoA. The delay is substantial.[[10]](#footnote-10)
3. At the resumed hearing on 20 January 2025, P submitted 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. Upon realisation of her mistake, P filed the NoA, applying for leave to extend time to appeal against the 20/9/2024 Order.
8. P was not deliberately non-compliant with the time requirement. All along, she had had genuine intention to challenge the 20/9/2024 Order and had not abused or deliberately attempted to delay the legal process.
9. P asked the Court to exercise leniency to her since she had a job and used her extra time to prepare this case. She promised she would double her effort in reading through everything in her case preparation in the future.
10. P agreed that there was significant delay in issuing the NoA, but the delay was excusable.
11. 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.
12. Hence, P has to show a real prospect of success on the merits of her intended appeal.

***Merits of the Appeal***

*The 3 Grounds of Appeal*

1. The New Evidence Ground, the Procedural Unfairness Ground and the Wrapping-up Ground advanced by P in the NoA essentially boil down to the following:-
2. Significant new evidence during the Dragon Guard’s strike-out Hearing would materially affect the present case.
3. Procedural unfairness arose when P and D did not have adequate opportunity to address such “new evidence”.
4. Master Andrea Yu should not have struck out P’s claim because the full implications of the new evidence needed proper examination.
5. The foregoing grounds are all red herrings. There is a lapse of 4 months between the 20/9/2024 Hearing and the resumed hearing on 20 January 2025. Nothing prevents P to apply for leave to adduce such new evidence at the substantive hearing of P’s appeal against the 20/9/2024 Order. More so, P could have suggested to amend the SoC (with the draft Amended SoC proposed) in light of the new evidence emerged during the Dragon Guard’s strike-out Hearing.
6. I have read the transcript of the 20/9/2024 Hearing[[11]](#footnote-11). Master Andrea Yu has clarified with the parties as to the relationship between D and Dragon Guard[[12]](#footnote-12). P said at the 20/9/2024 Hearing that although the legal representatives of Dragon Guard at the Dragon Guard’s strike-out Hearing expressed that D was the only data user, she nevertheless submitted that D and Dragon Guard were data users according to *section 2 of PD(P)O*[[13]](#footnote-13)and that the use of her personal data was unauthorized because D and Dragon Guard used the CCTV surveillance and audio recorder to monitor and assess her job performance[[14]](#footnote-14).
7. In fact, Master Andrea Yau has inquired and P expressed her view as to the impact of such new evidence on her case against D during the 20/9/2024 Hearing. After hearing the submissions of P and D’s Counsel, Master Andrea Yu gave the 20/9/2024 Order.
8. In my view, there is nothing in the New Evidence Ground, the Procedural Unfairness Ground and the Wrapping-up Ground. P has failed to show a real prospect of success on the merits of the foregoing grounds of appeal.[[15]](#footnote-15)
9. Since the intended appeal would be by way of a rehearing as though the application had come before me for the first time. [[16]](#footnote-16) *Ex abundanti cautela*, I now visit the SoC to decide whether P has a real prospect of success on some other grounds in her intended appeal.

*The SoC*

1. The SoC filed by P[[17]](#footnote-17) 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 Dragon Guard[[18]](#footnote-18) 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[[19]](#footnote-19) 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 Dragon Guard, some terms of her employment contract with Dragon Guard (the “**Employment Contract**”) and P’s direct supervisor as follows: -
4. On 22 March 2024[[20]](#footnote-20), P was employed by Dragon Guard[[21]](#footnote-21) as a concierge supervisor and deployed to work at the Southside. The Southside was managed by the principal employer, D.
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.
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 Dragon Guard, 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 Dragon Guard 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 Dragon Guard 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 Dragon Guard’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 Dragon Guard and D. 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 Dragon Guard’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 Dragon Guard and D at the District Court on 16 April 2024 and their case numbers.
27. Paras 55 and 56 pleaded that on 16 April 2024, Dragon Guard 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 being the principal employer was liable to P and sought compensation for her health, emotional and financial loss and damage. Paras 63 to 75 pleaded the reasons why P was alleging faults.
29. Paras 64 to 66 and 72 related to violation of privacy and, in essence, 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 …

13. … 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.

14. 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. 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.[[22]](#footnote-22) 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. [[23]](#footnote-23) 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.
3. 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”.[[24]](#footnote-24)
2. P’s claim for violation of P’s privacy is premised on breach of *section 4 of PD(P)O* and data protection principles 1 and 3.[[25]](#footnote-25) P also needs to engage *section 66 of PD(P)O* as well.
3. In a nutshell, P’s complaint lies in Dragon Guard’s use of the security surveillance (ie the CCTV cameras) and audio recorder installed by D to monitor the performance of Dragon Guard’s employees.
4. At the material time, D has engaged Dragon Guard as the contractor to provide customer services and security guarding services for The Southside, including to provide competent and properly trained personnel to perform the services required.
5. The CCTV cameras and audio recorder were installed and controlled by D in a public area near the concierge counter where P was stationed. They were installed to monitor and assess the performance of the security guards and concierges stationed at MTR malls.
6. 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”.
7. 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”.
8. It is beyond argument that the use of the CCTV cameras and audio recorder by Dragon Guard was to monitor the performance of Dragon Guard’s employees at the concierge counter. At the material time, P was employed by Dragon Guard as concierge supervisor. P’s work performance in particular her hospitable manner towards the visitors at The Southside must relate to her employment with Dragon Guard and the business operation of 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 Dragon Guard and the business operation of 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 D to monitor all customer-and-employee conversations to assess Dragon Guard’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[[26]](#footnote-26).[[27]](#footnote-27)
9. P has contended that the CCTV cameras and audio recorder were installed to monitor the work performance and conversation of Dragon Guard’s employees without her consent.[[28]](#footnote-28) 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). [[29]](#footnote-29)
10. 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 Dragon Guard’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 Dragon Guard put the CCTV recording to use[[30]](#footnote-30) 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).
11. 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.
12. 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. If P’s unsafe work environment claim relates to her claim for violation of her privacy, her unsafe work environment claim must also fail together with her claim against D for violation of her privacy.
3. If P’s unsafe work environment claim does not relate to her claim for violation of P’s 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.
4. There is equally no plea that D was in breach of any duty of care and that such breach 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 Dragon Guard. 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.

1. P’s unsafe work environment claim is unsustainable and cannot be rescued by giving P an opportunity to amend the SoC.
2. 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.[[31]](#footnote-31)
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. First and foremost, D was not the employer of P; only Dragon Guard was P’s employer. Furthermore, 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, Dragon Guard had asked P to return to duty after her rest days from 16 to 17 April 2024.[[32]](#footnote-32)
5. On 16 April 2024,
6. P was reminded to report duty on 18 April 2024 at 1000 hours[[33]](#footnote-33); and
7. Dragon Guard served on P a 1-month notice of termination and informed her to work in another work site.[[34]](#footnote-34)
8. Since the 1-month notice had been served, P cannot possibly argue that there was any breach of the Employment Contract.
9. 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, P does not have a real prospect of success on any other grounds which I can perceive from the SoC. 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. D has not yet lodged/served its statement of costs. Accordingly, I grant the following directions for summary assessment of costs:-
6. D do within 14 days from the date hereof file with court and serve on P a statement of costs for summary assessment;
7. P do within 14 days after receipt of the D’s statement of costs file with court and serve on D a succinct summary of objections to D’s statement of costs of not more than 2 pages; and
8. 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 appeared in person

Mr Francis Chung, instructed by Deacons, 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. Some hours before the resumed hearing, P filed her Skeleton Submission and List of Authorities (mentioning no legal authorities relied on by P) without leave. [↑](#footnote-ref-3)
4. Senior Shopping Centre Manager of D. [↑](#footnote-ref-4)
5. See *Postwell Ltd v Cheng Kap Sang* [2004] 2 HKLRD 355 at [33]. [↑](#footnote-ref-5)
6. 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-6)
7. See *The Hongkong and Shanghai Banking Corporation v Sy Shun Wu & Ors* (*supra*) per Lam VP (as he then was) at [10]. [↑](#footnote-ref-7)
8. 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-8)
9. Though P filed her written Skeleton Submission and List of Authorities on 20 January 2025. [↑](#footnote-ref-9)
10. 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-10)
11. See Hearing Bundle at pp. 55-73. [↑](#footnote-ref-11)
12. See Hearing Bundle at pp. 57G-58L & 62P-64J. [↑](#footnote-ref-12)
13. See Hearing Bundle at pp. 65I-67E. [↑](#footnote-ref-13)
14. See Hearing Bundle at pp. 66J-68B, 69O-S & 70M-P. [↑](#footnote-ref-14)
15. I am alive to P’s submission at the resumed hearing on 20 January 2025 that D was the data user whilst Dragon Guard was the data processor. [↑](#footnote-ref-15)
16. See *Hong Kong Civil Procedure 2025, Vol 1*, at p 1237, para 58/1/2. [↑](#footnote-ref-16)
17. See Hearing Bundle at pp. 12-25. [↑](#footnote-ref-17)
18. Dragon Guard was mistakenly described as the Defendant in para 2 and D was mistakenly described as being governed by *Security and Guarding Services Ordinance (Cap 460)*. [↑](#footnote-ref-18)
19. The date was mistakenly typed out as 15 April 2023 in the SoC. [↑](#footnote-ref-19)
20. The date was mistakenly typed out as 22 March 2022 in the SoC. [↑](#footnote-ref-20)
21. Dragon Guard was mistakenly typed out as the Defendant in para 6 of the SoC. [↑](#footnote-ref-21)
22. See *Clerk & Lindsell on Torts (23rd Ed.)* at para 14-23. [↑](#footnote-ref-22)
23. See *Clerk & Lindsell on Torts (23rd Ed.)* at para 14-23. [↑](#footnote-ref-23)
24. 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-24)
25. P has not specified her reliance on *PD(P)O* in the SoC, but P’s reliance on data protection principles 1 and 3 was clear at the 20/9/2024 Hearing, see Hearing Bundle at pp 63F-M & 72F-73H. [↑](#footnote-ref-25)
26. 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-26)
27. 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-27)
28. See P’s answer to Master Andrea Yu’s query at the 20/9/2024 Hearing at Hearing Bundle at p. 65B-F. [↑](#footnote-ref-28)
29. See *section 55(2)(a)(i)(B) and (C) of PD(P)O*. [↑](#footnote-ref-29)
30. 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-30)
31. See *Weng Chi Cheong v Barclays Capital Asia Ltd* (unrep, HCA 741/2016, 6 December 2016) at [42] & [43]. [↑](#footnote-ref-31)
32. See para 26 the SoC at Hearing Bundle at p. 16. [↑](#footnote-ref-32)
33. See para 55 the SoC at Hearing Bundle at p. 20. [↑](#footnote-ref-33)
34. See para 56 the SoC at Hearing Bundle at p. 20. [↑](#footnote-ref-34)