#### DCCJ 1988/2017

[2018] HKDC 445

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## CIVIL ACTION NO 1988 OF 2017

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BETWEEN

LEE CHICK CHOI Plaintiff

and

BEST SPIRITS COMPANY LTD. Defendant

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##### Before: His Honour Judge Andrew Li in Chambers (open to public)

Dates of Hearing: 3 January 2018

Date of Decision: 24 April 2018

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## DECISION

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*INTRODUCTION*

1. By a summons dated 10 May 2017 (“the Summons”), the defendant applies to (i) strike out the plaintiff’s writ of summons filed in these proceedings; and (ii) for a restrictive proceedings order (“RPO”) pursuant to Practice Direction 11.3 (“PD 11.3”).

*BACKGROUND*

1. The plaintiff is a well-known litigant in our courts. Since 2011, he, together with his wife, have commenced multiple actions and proceedings against the defendant. So far, they have lost each and every single one of them and have repeatedly been criticized by the courts at different levels for having abused the court’s process.
2. The present claim against the defendant is for a ridiculous sum of HK$14,475,849.00 purportedly under section 66 of the Personal Data (Privacy) Ordinance, Cap 486 (“PDPO”).It involves a re-litigation of a dispute which has been rejected by the courts on multiple occasions. The defendant submits that this claim is doomed to fail and therefore ought to be struck out.
3. The $14.4m claim was first raised by the plaintiff over5 years ago, by way of writ in HCA 2045/2012 commenced on 2 November 2012 (“the HCA Action”). By a summons dated 18 November 2014(some 2 years after the issue of the writ), the plaintiff, *inter alia,* applied to “replace” the statement of claim in the HCA Action by a “proposed” statement of claim, under which the $14.4m claim was framed as a claim under s 66 of the PDPO (the “PDPO Claim”).
4. The defendant applied to strike out the $14.4m claim in the HCA Action by summons dated 17 July 2013. By the decision of Deputy High Court Judge Kent Yee (“DHCJ Yee”) dated 1 December 2014[[1]](#footnote-1), the HCA Action was struck out and his proposed statement of claim to advance the PDPO Claim was disallowed (“DHCJ Yee’s Decision”). DHCJ Yee also refused to transfer the claim to the District Court given his “dim view of the merit” of the claim (§§19-20).
5. In DHCJ Yee’s Decision, he made the following observations in relation to the PDPO Claim in §18:-

“... I fail to see any *causal link* between the alleged breach of DPP5 on the one hand and the alleged income loss sustained on the other. The alleged breach had nothing to do with the dismissal of [the plaintiff] to start with. It is also *far-fetched* to attribute his inability to secure a similar job to his dismissal by [the defendant]. As the proposed/draft Statement of Claim now stands, I am convinced that it would also be doomed to failure” (emphasis added).

1. Subsequently, the plaintiff made an application for leave to appeal against DHCJ Yee’s Decision, which was refused by the Court of Appeal (“the CA”) in HCMP 371/2015[[2]](#footnote-2). In its Decision, the CA observed the following in respect of the PDPO Claim:-

“**[**25] We find the judge’s reasoning in §18 of his judgment unassailable. He is obviously right there is no conceivable *causal link* between the defendant’s breach of DPP5 and the events which led to the defendant maintaining the stance that the plaintiff was dismissed for misconduct. He is right to say that it is *far-fetched* to attribute the plaintiff’s failure to secure a similar job in future to his dismissal by the defendant. *Besides, the Labour Tribunal had decided the plaintiff was dismissed for valid reasons* because it was dissatisfied with the plaintiff’s performance and his rude outburst during a meeting on 4 November 2010. *The plaintiff cannot re-litigate an issue already decided against him.*

[26] The plaintiff contended that the judge should not have formed his view on the draft pleading without giving him an opportunity to substantiate his claim with proofs and evidence. We do not think there is any error in the judge’s approach, as *it is clear beyond peradventure that the claim for damages for loss of earnings for the rest of the plaintiff’s working life is unsustainable at law as being far too remote*.

...

[28] ... The lack of a causal link between the contravention of DPP5 and the damages allegedly suffered in the new claim is still *an insurmountable hurdle*.” (emphasis added).

1. However, notwithstanding the very clear findings made by the CA and DHCJ Yee, the plaintiff nevertheless proceeded to issue a fresh claim in this present action on 26 April 2017, essentially seeking to re-litigate the PDPO Claim for the sum of $14.4 million.
2. In fact, in *Yuen Oi Yee Lisa v. Charoen Sirivadhavanabhakdi and Others,* DCCJ 1914/2015 (unrep, 16 November 2015), the plaintiff’s wife had already pursued an unsuccessful claim for and on behalf of the plaintiff under the PDPO against the defendant. This claim was described by the court as an attempt “to rerun Mr Lee’s [ie the plaintiff’s] case in LBTC 588/2011 in the guise of her own claim under s 66 of PDPO”, as it was “dependent on her husband’s future of earnings”and was “identical to Mr Lee’s claim in HCA 2045/2012” (at §51). Not surprisingly, the said claim was struck out as an abuse of process (see§§41-66).

*DISCUSSION*

*Relevant Legal Principles*

1. It is trite that a defendant is entitled to strike out a plaintiff’s indorsement of writ under O 18, r 19 of the Rules of the District Court (“RDC”), on the grounds that (a) it discloses no reasonable cause of action; (b) it is scandalous, frivolous or vexatious; and/or (c) it is otherwise an abuse of the process of the court: *see* *Hong Kong Civil Procedure 2018,* §§18/19/5-7, 9.
2. Further, a plaintiff’s case may be struck out on the basis of re-litigation or *res judicata*,where a party seeks to “litigate matters which have, or could have, been decided in earlier proceedings”: *Hong Kong Civil Procedure 2018*, §§18/19/10, *see* also *Yuen Oi Yee Lisa, supra*, at §§45-46.

*Findings of this Court*

1. *The Striking-out Application*
2. In my judgment, the plaintiff’s claim herein as contained in the writ of summons bound to fail and ought to be struck out for the following reasons.
3. First, this claim is clearly a disguised fresh claim to re-litigate on the PDPO Claim which the plaintiff had lost before DHCJ Yee and the CA. It is a clear abuse of the process of the court for the plaintiff to re-litigate on the matter and therefore the claim should be struck out on this count alone.
4. Second, this claim is obviously another foolhardy attempt to re-run the claim brought by the plaintiff’s wife in *Yuen Oi Yee Lisa, supra*, which was struck out and found to be an abuse of process by His Honour Judge Ko in November 2015.
5. Third, in my view, the PDPO Claim in this case is doomed to fail due to a complete lack of merits. Based on the same reasons identified by the CA and DHCJ Yee, viz., (a) there being no “conceivable causal link” between any breach of DPP under the PDPO and the alleged income loss; (b) the plaintiff’s inability to secure a similar job to his dismissal is “far-fetched”;and (c) the Labour Tribunal had already decided that the plaintiff was dismissed for valid reasons: seeDecision in LBTC 588/2011[[3]](#footnote-3) at §62, I simply cannot see how the plaintiff will able to succeed in this action at all.
6. In the aforesaid circumstances, I find the plaintiff’s claim discloses no reasonable cause of action, is frivolous and vexatious, and otherwise amounts to an abuse of the court’s process.
7. I should also briefly deal with the plaintiff’s grounds of opposition to the defendants’ striking out application here.
8. First, I find the plaintiff’s grounds of opposition incoherent and difficult to understand. I agree with Mr Martin Kok, the defendant’s counsel, that the only discernible argument appears to be that the Labour Tribunal and DHCJ Yee did not actually deal with the PDPO Claim[[4]](#footnote-4). Such argument in my view has been totally misconceived.
9. I agree with Mr Kok that, both the CA and DHCJ Yee made clear findings against the plaintiff’s PDPO Claim, and in particular, I accept the following submissions made by Mr Kok contained in his written submissions:-
   1. Even though DHCJ Yee found that the plaintiff’s PDPO Claim “should be dealt with in the District Court” (*see* §17), the learned judge went on to make the pertinent observation that the plaintiff’s claim is “doomed to failure”, and in turn rejected the plaintiff’s “proposed” Statement of Claim (*see* §18).
   2. It is trite law that where the court provides more than one reason for decision, *both* decisions would form part of the *ratio* of the decision: *Jacobs v London County Council* [1950] AC 361, §369, *per* Lord Simonds. It is not open for the plaintiff to disregard DHCJ Yee’s finding in respect of the (lack of) merits of the PDPO Claim. In any case, the CA in its Decision went on to make clear observations which amounted to a wholesale rejection of the plaintiff’s PDPO Claim.
   3. Insofar as any technical point is taken that the District Court should have jurisdiction over the PDPO Claim, DHCJ Yee was well aware of the point, but nevertheless refused to transfer the HCA Action to the District Court (see DHCJ Yee’s Decision, §§19-20). Hence, the plaintiff’s present fresh claim is clearly an abuse of process, and is a mere attempt to side-step DHCJ Yee’s findings.
10. In my judgment, another reason why this claim should be struck out is based on the plaintiff’s current status as a bankrupt. Upon his bankruptcy, the plaintiff’s rights of action became vested in his trustee in bankruptcy: seeSS 12, 58 and 61(b) of the Bankruptcy Ordinance, Cap 6. In this case, the plaintiff’s trustees have already indicated that (save as the plaintiff’s claim is for injury to feelings only which does not vest in the trustees[[5]](#footnote-5)) they do not agree to the issue of these proceedings against the defendant. As stated above, the present claim is a mere re-run of the claim in *inter alia* HCA 2045/2012, and is in fact a claim for compensation of loss of income. As such, in the absence of the trustees’ consent, the plaintiff as a bankrupt has no *locus standi* at all to commence the present action. Thus, the claim should be dismissed on this ground also.
11. For the above reasons, I am of the view that the plaintiff’s writ of summons against the defendant in the present case should be struck out and the action dismissed, with costs of the action and the Summons in favour of the defendant on an indemnity basis.
12. *The Plaintiff’s Appeal on Costs*
13. The plaintiff’s notice of appeal dated 1 September 2017 consisted of no substance and can be quickly disposed of here.
14. The plaintiff appeals against a costs order made by Master D To, namely, that there be no order as to costs on the plaintiff’s application for the amendment of Court Orders and the plaintiff seeks an order that such costs be paid to the plaintiff by the defendant forthwith.
15. I agree with Mr Kok that the plaintiff’s appeal is completely misconceived and ought to be dismissed for the following reasons:-
    1. As stated above, upon the plaintiff’s bankruptcy, his rights of action became vested in his trustee in bankruptcy, and hence the plaintiff has no *locus standi* to pursue the appeal by way of notice of appeal, in the absence of consent from his trustee in bankruptcy.
    2. In any event, it is trite that a judge “will not allow an appeal from a master’s costs order unless it is unreasonable or the master erred in law”: *Hong Kong Civil Procedure 2018*, §58/1/6. In this case, Master D To in fact dismissed the plaintiff’s summons dated 16 August 2017, but made an order on its own motion that the relevant orders be amended. Further and more pertinently, the court regarded the plaintiff’s allegations that the defendant had acted maliciously as “unnecessary” and “completely groundless”[[6]](#footnote-6).
16. In the premises, it was neither unreasonable nor an error in law for the master to make no order as to costs on the plaintiff’s application.
17. Based on the above, I would also dismiss the plaintiff’s appeal to Master D To’s costs order, with costs to the defendant.

*(C) Defendant’s Application for RPO*

1. In the Summons, the defendant also seeks an RPO against the plaintiff pursuant to PD 11.3. It relies on the CFA decision in *Ng Yat Chi v Max Share Ltd* [2005] 1 HKLRD 473.
2. As Mr Kok has rightly pointed out in his submissions, in determining whether the RPO should be made, the issues are:-
   * 1. “Is the plaintiff a vexatious litigant who has abused and is likely to continue abusing the process of the court?”
     2. “If the answer to (1) above is yes, what is the class of actions to be prohibited under the RPO?”

*See*: *Wong Yu Cho Rolly v Louie Wong* DCCJ 145/2007 (*unrep*., 12 November 2017), §5, *per* HHJ Mimmie Chan (as she then was), following *Ng Yat Chi*, *supra*.

1. In *Ng Yat Chi, supra*, the CFA referred to the activities of a vexatious litigant, against whom RPOs can be made. The CFA referred to persons who will pursue abusive proceedings as usually exhibited some of the following features (at §2, cited in *Wong Yu Cho Rolly* (*supra*), §6):-

“Hopeless claims are instituted. Totally misconceived appeals are launched. Judgments of the court, both interlocutory and at trial and both first instance and appellate, may not be accepted. There are likely to be attempts, often repeated, to re-litigate the same matters as have already been determined. The materials filed will often be irrelevant, incoherent or scandalous.” (emphasis added)

1. Further, the CFA explained the problems caused by vexatious litigants who repeatedly and consistently engage in the abuse of the court’s process, and pointed out that there are many variants of such abuse and what motivates it: *Ng Yat Chi,**supra,* §48, cited in *Wong Yu Cho Rolly,* *supra*, §7:-

“It may represent a calculated attempt by a defendant to delay an inevitable judgment or its execution. Or it may be a malicious campaign of harassment directed against a particular adversary. Actions which are unintelligible or wholly frivolous may be commenced by litigants who are unfortunately mentally unbalanced. Sometimes the vexatious conduct springs from some deeply-felt sense of grievance left unassuaged after unsuccessful litigation. *The vexatious litigant typically acts in person and characteristically refuses to accept the unfavourable result of the litigation, obstinately trying to re-open the matter without any viable legal basis. Such conduct can become obsessive with the litigant not shrinking from making wild allegations against the court, or against the other side’s legal representatives*or targeting well-known public personalities thought to be in some way blameworthy.*Numerous actions may be commenced and numerous applications issued within each action*.” (emphasis added)

1. From the history of this case, I find the plaintiff has displayed most, if not all, the classic features of a vexatious litigant as identified by the CFA in *Ng Yat Chi.* In my judgment, the plaintiff is indeed a vexatious litigant who has abused, and is likely to continue abusing the process of the court. In my view, this action itself is a good example of how the court’s process has been used and abused by the plaintiff.
2. The defendant has further relied on the following judgments previously handed down by different courts:-
   1. In a Decision dated 24/2/2017 in CACV 138/2015[[7]](#footnote-7) (“the CACV Decision”), the CA found the plaintiff’s appeal against his bankruptcy order was “wholly unmeritorious” and is “an abuse of process, deployed by [the plaintiff] to defy the Costs Order and to resist payment of the costs”. The CA awarded indemnity costs against the plaintiff in that case (§36).
   2. The plaintiff made two further (unmeritorious) applications for leave to appeal to the CFA against the CACV Decision, both as to the CA’s dismissal of the appeal[[8]](#footnote-8) and as to the costs order[[9]](#footnote-9). Both applications were dismissed.
   3. In a more recent Decision dated 22 June 2017 in CACV 25/2015[[10]](#footnote-10), the CA observed that the plaitniff’s appeal against the Court’s dismissal of his application to set aside the defendant’s statutory demand had “no merit whatsoever” and was “vexatious and an abuse of process”. The CA proceeded to awarded costs against the plaintiff on an indemnity basis (§§6-9).
   4. Further, a (non-exhaustive) table of actions and applications bought by the plaintiff against the defendant since 2011 is set out in an annex to the defendant counsel’s submission. As can be seen from that table, the plaintiff has lost each and every legal battle it has initiated against the defendant.
3. Further, the plaintiff has made (and is continuing to make) wild and unsubstantiated allegations against both judges and legal professionals alike, in particular:-

(a) In the CACV Decision, the CA recorded the plaintiff’s serious allegation that Kwan JA had “maliciously and intentionally delayed in delivering judgment” in a related action. Unsurprisingly, the CA found that there was “no substance whatsoever in this entirely groundless allegation” (§19).

(b) By the plaintiff’s “Written Reply” dated 17 August 2017, he appears to be suggesting that Mr Vincent Lam of the defendant’s solicitors “was/is” the “son or relative” of Lam VP, and that for this alleged relationship would somehow impact on whether his leave to appeal application would be granted. This of course is untrue.

(c) In the same document, the plaintiff makes the serious but unsubstantiated allegation that there was “certainly a private and secret communication between the court (a judge) and Mr. Vincent Lam [of the defendant’s instructing solicitors] in secret without doubt”[[11]](#footnote-11).

1. Besides the above, while waiting for the handing down of this written decision after the hearing in January, the plaintiff’s wife has written 2 lengthy letters (with a number of exhibits totalled over 110 pages) to The Hon Mr Justice Tang PJ of the CFA, with copies to various judges at different levels, including a copy to this court. They consisted of further unsubstantiated and sometimes incomprehensible allegations made against various judges, the solicitors and the counsel representing the defendant in this case.
2. Perhaps the plaintiff’s letter to the defendant’s solicitors dated 26 May 2017 can explain his mentality well. In this letter, he has made it clear that he would continue to pursue his appeals all the way up to the CFA. In his own words:-

“I have nothing to lose since I am a bankrupt by having over HK$1.2 Million as my unsecured liabilities vested with my trustees while I am unemployed and having no other assets at all.”[[12]](#footnote-12)

1. Thus, it is clear to me that the plaintiff is a vexatious litigant who, unless prohibited by the RPO, will continue to issue such unmeritorious claims and unsolicited letters.
2. Further, unless a RPO is issued, I expect that such conduct and behavior of the plaintiff and his wife will continue and much of the limited judicial resources will be wasted to entertain the plaintiff and his wife’s unrelenting campaign against the defendant.

1. The only remaining question left is to determine the class of actions to be prohibited under the RPO.
2. I accept the defendant’s submissions that the RPO ought to prohibit the commencement of any fresh proceedings in the District Court, concerning any matters involving or relating to or touching upon or leading to the proceedings herein and the proceedings in LBTC 588/ 2011, HCA 2045/ 2012 and DCCJ 4962/ 2014. I agree with Mr Kok that this class of actions is properly and proportionately defined, in light of the basis of the RPO to “restrain the vexatious litigant from abusing the court’s process by re-litigating in fresh proceedings, without viable legal grounds, matters which have already been determined by the court”: *Wong Yu Cho Rolly,* *supra,* at §35.
3. Further, in line with the practice and terms of order in *Yuen Oi Yee Lisa, supra*, I agree that specific reference should be made to cover the defendant’s legal representatives within the RPO.
4. In the circumstances, I will make an RPO in terms of the draft prepared by the defendant (with some minor modifications made by me) which is attached to this decision as Annex I. This is modelled on Appendix A to PD 11.3, and the terms of the RPO in *Yuen Oi Yee Lisa, supra* at Annex A.

*CONCLUSION*

1. For the above reasons, I order that the plaintiff’s writ of summons herein be struck out and the action be dismissed, with costs to be borne by the plaintiff on an indemnity basis, with certificate for counsel.
2. I also order the plaintiff’s appeal against Master D To’s order on costs be dismissed, with costs to the defendant.
3. I would further grant an RPO in terms of Annex I attached to this decision.

# ( Andrew SY Li )

# District Judge

Mr Lee Chick Choi, the plaintiff, was not represented and was acting in person

Mr Martin Kok, instructed by Hobson & Ma, for the defendant

1. *Lee Chick Choi v Best Spirits Company Limited* HCA 2045/2012 (unrep., 1 December 2014) [↑](#footnote-ref-1)
2. *Lee Chick Choi v Best Spirits Company Limited* HCMP 371/2015 (unrep., 21 May 2015) [↑](#footnote-ref-2)
3. The plaintiff’s application for leave to appeal was dismissed by M Chan J in *Lee Chick Choi v Best Spirit Co Ltd* HCLA 29/2011 (*unrep*, 6 June 2013) [↑](#footnote-ref-3)
4. *See Lee Chick Choi I*, pp.1-2 [A/22-23]; *Lee Chick Choi II*, §§8-10 **[**A/28-29] [↑](#footnote-ref-4)
5. A bankrupt retains the right to bring or continue proceedings relating to claims which are “personal” to him: *see Chung Kau v Hong Kong Housing Authority & Or* [2004] 2 HKLRD 650, at 654B-H, *per* Ma CJHC (as the Chief Justice then was) [↑](#footnote-ref-5)
6. Transcript of Hearing before Master D To dated 18/8/2017, p.16R-S [B/293-9] [↑](#footnote-ref-6)
7. *Lee Chick Choi v Best Spirits Company Limited* CACV 138/2015 (*unrep*, 24 February 2017) [↑](#footnote-ref-7)
8. *Lee Chick Choi v Best Spirits Company Limited* CACV 138/2015 (*unrep*, 31 May 2017) [↑](#footnote-ref-8)
9. *Lee Chick Choi v Best Spirits Company Limited* CACV 138/2015 (*unrep*, 12 June 2017) [↑](#footnote-ref-9)
10. *Lee Chick Choi v Best Spirits Company Limited* CACV 25/2015 (*unrep*, 22 June 2017) [↑](#footnote-ref-10)
11. See Hearing Bundle [A/334] [↑](#footnote-ref-11)
12. See Hearing Bundle [A/288] [↑](#footnote-ref-12)