HCLA 19/2013

**IN THE HIGH COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**COURT OF FIRST INSTANCE**

LABOUR TRIBUNAL APPEAL NO 19 OF 2013

(ON APPEAL FROM LABOUR TRIBUNAL CLAIM NO 588 OF 2011)

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BETWEEN

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| LEE CHICK CHOI (李積才) | Appellant  (Claimant) |
| and | |
| BEST SPIRITS CO LTD | Respondent  (Defendant) |

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Before: Deputy High Court Judge B Chu in Chambers

Date of Hearing: 13 January 2015

Date of Decision: 11 February 2015

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J U D G M E N T

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1. Before this court were the applications of the applicant (“**A**”) for leave to appeal to the Court of Appeal against this court’s order and ruling handed down on 21 October 2014 (“**21.10.14** **Ruling**”).
2. A was employed by the respondent (“**R**”) as a General Manager in July 2006, but such employment was agreed to be terminated by way of A resigning from R on 4 November 2010. Subsequently after the termination, A filed a claim in the Labour Tribunal to claim various outstanding payments from R. Eventually, A’s claim was dismissed by the Presiding Officer Ms Susan Wong under an order of 10 October 2011 (“**10.10.11 Order**”). His application for leave to appeal was subsequently dismissed on 6 June 2013 by M Chan J.
3. On 9 August 2013, A applied to the Labour Tribunal for a review of the 10.10.11 Order, to vary the costs part thereof. His application for review was refused on 16 August 2013 as it was out of time (“**16.08.13 Order**”). A then made an application for leave to appeal out of time against the costs part of the 10.10.11 Order and against the 16.08.13 Order. Master Ho allowed an extension of time, but only in relation to A’s leave to appeal against the 16.08.13 Order.
4. After obtaining extension of time from Master Ho, A then filed his leave to appeal against the 16.08.13 Order on 25 October 2013 (“**Leave Application**”). This was followed by A’s summons for stay issued on 15 January 2014, pending the result of the hearing of his Leave Application (“**Stay Application**”).
5. The Stay Application was heard on 15 October 2014, and was dismissed by this court by the 21.10.14 Ruling.
6. A’s Leave Application was later heard on 11 November 2014, and was dismissed by this court on 18 November 2014 (“**18.11.14** **Decision**”). On the same day, this court summarily assessed the costs to be paid under the 21.10.14 Ruling and ordered A to pay the assessed amount (“**18.11.14 Costs Order**”).
7. A issued a summons on 4 November 2014 for leave to appeal against the 21.10.14 Ruling, which was originally scheduled to be heard on 2 December 2015, a hearing date which apparently was fixed by A himself. A then issued another summons on 25 November 2014 for leave to appeal against the 18.11.14 Costs Order, and a further summons on 7 January 2015, again seeking leave to appeal against the 21.10.14 Ruling and to vacate the hearing date on 2 December 2015.
8. All A’s 3 summonses were eventually fixed for hearing before this court on 13 January 2015. First of all, A wanted to vacate the hearing date on 2 December 2015 and to bring forward to 13 January 2015, his application for leave to appeal against the substantive part of the 21.10.14 Ruling and for leave to appeal against the 18.11.14 Costs Order. There was no objection by Mr Vincent Lam, who appeared on behalf of R, to A’s leave applications to be brought forward to be heard that day.
9. A had submitted written skeleton submissions, and he had said the main ground for his application leave to appeal against the 21.10.14 Ruling was the letter dated 16 May 2013 sent by the Privacy Commissioner to R (“**16.05.13 Letter**”) which was referred to in paragraph 19 of the 21.10.14 Ruling. The 16.05.13 Letter was sent to R, as a result of a complaint by A’s wife Ms Yuen Oi-Yee, Lisa in relation to collection and use of *her personal data* stored in A’s computer which had been referred to in R’s witness statements in the proceedings before the Tribunal. As a result of investigation, R was found to have contravened DPP 5.
10. A claimed that the 16.05.13 Letter was “new” evidence not known to him prior to R’s production at the hearing of the Stay Application, and further not known to him prior to his application for leave to appeal against the 10.10.11 Order being dismissed by M Chan J on 6 June 2013.
11. The complainant in the 16.05.13 Letter was not A, but his wife. A had made a separate complaint to the Privacy Commissioner, and as I had mentioned in paragraph 19 of the 21.10.14 Ruling, it was stated in the 20.11.13 Letter from the Privacy Commissioner that A’s complaint did not get to the heart of DPP 5 at all.
12. I had pointed out in the 18.11.14 Decision that under s 32 of the Labour Tribunal Ordinance Cap 25, leave to appeal would only be granted if the order of the Tribunal was erroneous in point of law or outside the jurisdiction of the Tribunal. A had not been able to demonstrate to this court how the 16.05.13 Letter would have resulted in the Presiding Officer’s award/decision whether under the 10.10.11 Order or under the 16.08.13 Order being erroneous in law, bearing in mind A’s original claim in the Tribunal was for certain outstanding payments due to him during his employment by R during his employment. In any event, A’s Stay Application was for stay pending the hearing of the Leave Application which had been dismissed.
13. It would appear that A had previously commenced an action in the High Court under HCA 2045 of 2012 against R over his employment, and R had issued a summons to strike out A’s writ and statement of claim. A then issued a summons to abandon his original statement of claim and to replace it with a new statement of claim, under s 66 of the Personal Data (Privacy) Ordinance, Cap 486. Both A’s summons and R’s summons were heard on 18 November 2014 before DHCJ Yee who under his decision of 1 December 2014 struck out A’s writ and original statement of claim and also dismissed A’s summons to file a new statement of claim.
14. DHCJ Yee had already pointed out that any alleged claims under s 66 of Cap 486 should be brought in the District Court.
15. It would further appear that A had started another new action in the District Court under DCCJ 4962 of 2014 against R.
16. Under s 14 AA (4) of the High Court Ordinance, leave to [appeal](file:///D:\Users\Bebe%20PY%20Chu\AppData\Local\Temp\notesE8DBF2\s2.html#appeal) for the purpose of subsection (1) shall not be granted unless the court hearing the application for leave is satisfied that -
17. the appeal has a reasonable prospect of success; or
18. there is some other reason in the interests of justice why the appeal should be heard.
19. It has been said that leave to appeal under O 59 r 2B will not be lightly granted and that under the test in s 14AA (4) of reasonable prospects of success involve the notion that the prospects of succeeding must be “reasonable” and therefore more than “fanciful”, without having to be “probably”.
20. Having considered A’s grounds of appeal and all the above circumstances, I am not satisfied that A’s appeal against the 21.10.14 Ruling or the order made on that day has a reasonable prospect of success or there is any other reason in the interests of justice why the appeal should be heard. As the 18.11.14 Costs Order arose out of the 21.10.14 Ruling, again I do not see A’s appeal has any prospect of success.
21. I therefore dismiss A’s applications for leave to appeal against the 16.10.14 Order and the 18.11.14 Costs Order.
22. The effect of my order is thus:
23. Paragraph 2 of the Applicant’s summons issued on 7 January 2015, namely for the hearing date on 2 December 2015 be vacated, is allowed;
24. Paragraph 1 of the Applicant’s summons issued on 7 January 2015 to be dealt with at the same time as the Applicant’s Summonses issued on 4 and 25 November 2014, namely on 13 January 2015;
25. Paragraph 1 of the Applicant’s summons issued on 7 January 2015 and Applicant’s summonses issued on 4 and 25 November 2014 are hereby dismissed;
26. Costs of the summonses be summarily assessed and to be paid by the Applicant within 14 days of assessment;
27. The Respondent is to lodge its statement of costs within 14 days and the Applicant is to lodge his list of objections within 14 days thereafter.

(Bebe Pui Ying Chu)

Deputy High Court Judge

The appellant appeared in person

Mr Vincent Lam of Hobson & Ma, for the respondent