CACV 341/2022, [2025] HKCA 220

On appeal from [2022] HKCFI 2234

**in the high court of the**

**hong kong special administrative region**

**court of appeal**

CiviL Appeal no 341 of 2022

(on appeal from hcmp NO 932 of 2020)

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IN THE MATTER of an application on behalf of the Plaintiff HIGH FASHION NEW MEDIA CORPORATION LIMITED (suing on behalf of itself and also in its capacity as the sole shareholder of the 2nd Defendant) against the 1st Defendant LEONG MA LI in HCA 1953/2014 for an Order for Committal

and

IN THE MATTER of Order 52 Rules 1 & 3 of the Rules of the High Court

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###### BETWEEN

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| HIGH FASHION NEW MEDIA CORPORATION LIMITED (suing on behalf of itself and also in its capacity as the sole shareholder of LONGFORD INFORMATION AND TECHNOLOGY CO., LIMITED)  (上海梁富信息科技有限公司) | | | | Plaintiff |
| and | | |  |
| LEONG MA LI | | | Defendant |
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Before: Hon Kwan VP, Chu VP and G Lam JA in Court

Date of Judgment: 5 March 2025

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| J U D G M E N T |

Hon Kwan VP (giving the Judgment of the Court):

1. On 18 November 2024, the Court of Appeal dismissed the appeal of the defendant, Leong Ma Li (“**CA Judgment**”)[[1]](#footnote-1), against the judgment of Deputy High Court Judge H Au-Yeung on 26 July 2022 (“**CFI ‍Judgment**”)[[2]](#footnote-2), by which he found her guilty of contempt of court in failing to comply with an order for interlocutory injunction in HCA 1953/2014 made by Chow J on 5 December 2014 (“**Injunction Order**”). We ordered the defendant to pay the plaintiff’s costs on an indemnity basis.
2. By an amended Notice of Motion (“**ANOM**”) (re-filed on 30 **‍**December 2024), the defendant applies for leave to appeal to the Court of Final Appeal against the CA Judgment.
3. The ANOM contained 13 unusually long questions (numbered A1 to A3 and 1 to 10) that are raised as questions of great general or public importance (“**GPI**”) for consideration on further appeal. Leave to appeal is also sought under the “or otherwise” limb of section**‍** 22(1)(b) of the Hong Kong Court of Final Appeal Ordinance (Cap **‍**484) (“**HKCFAO**”).
4. The 13 questions fall into four categories:
   1. Questions in relation to the applicability of *Hone v Page* principles[[3]](#footnote-3) to prohibitive injunctions (QA1);
   2. Questions in relation to the judge’s finding of agency relationship on the facts (Qs A2 to A3);
   3. Questions in relation to the pleading requirements as to agency relationship in contempt proceedings (Qs 1, 2, 3, 4, 5, 8, 9 and 10);
   4. Questions in relation to the burden of investigating into foreign law in committal proceedings (Qs 6 and 7).
5. As discussed below, we do not consider any of them to be questions of GPI that ought to be submitted to the Court of Final Appeal for decision.
6. We would like to remind practitioners that questions framed in a Notice of Motion for an application under section 22(1)(b) of HKCFAO ought to be succinct and concise. Questions raised should be issues of law and should not be specific to the factual circumstances of the case, nor should they be hypothetical or academic. The submissions should state clearly why the matters are of such importance. Practitioners are reminded to heed the requirements under Practice Direction 2.1. Failure to do so would risk rejection by the Registrar and incur adverse costs consequences.

Background: the Injunction Order and previous contempt proceedings

1. The plaintiff, High Fashion New Media Corporation Ltd, is a joint venture company, incorporated in Hong Kong. Longford Information and Technology Co Limited (“**Longford**”) is the wholly owned subsidiary of the plaintiff, incorporated in the PRC. At the material time, the defendant was the chairman of the board of directors and the legal representative of Longford.
2. On or about 28 April 2014, contrary to an agreed protocol between the directors of Longford (“**Longford Account Protocol**”), the defendant made herself the sole signatory of the Longford Capital Account maintained with ICBC in Shanghai (“**Capital Account**”), such that only her personal seal “个人簽章” (bearing the defendant’s name in Chinese “梁马利”) (“**Leong Seal**”) and Longford’s dedicated finance seal “财务专用章” (bearing the characters “上海梁富信息科技有限公司資本金财务专用章”) (“**Finance Seal**”) would be required to operate it. In August 2014, the defendant attempted to withdraw sums from the Capital Account.
3. In September 2014 and October 2014, the plaintiff initiated ‍proceedings for interim injunction against the defendant (HCMP ‍2336/2014) and a derivative action against the defendant and Longford (HCA 1953/2014). On 5 December 2014, Chow J granted the Injunction Order against the defendant in these terms:

“[the defendant] be restrained by herself, her servants, her agents or on her own behalf or on the behalf of any other person, firm or company, whether as employee, officer, agent or otherwise howsoever dealing with the capital bank account which Longford maintained with ICBC Shanghai (account no […]), except in accordance with …[i.e. the Longford Account Protocol]:

* + - 1. For transactions involving less than RMB 1,000,000, the signatures of [the defendant] and [Yau] must be obtained, in addition to the application of the Finance Chop of Longford; and
      2. For transactions involving RMB 1,000,000 or above, the signatures of [the defendant] and [Will Lam] must be obtained, in addition to the application of the Finance Chop of Longford.”

1. In 2016, the plaintiff brought contempt proceedings (HCMP ‍108/2016 and HCMP 1707/2016) against the defendant alleging that she failed to comply with the Injunction Order. By a judgment dated 8 August 2017, Chow J was satisfied beyond reasonable doubt that the defendant deliberately, intentionally and voluntarily acted in breach of the Injunction Order and committed contempt of court in relation to transactions involving the Capital Account. The defendant was fined the sums of $400,000 and $150,000 and ordered to pay costs to the plaintiff on an indemnity basis.

The present contempt proceedings and the judgment below

1. In June 2020, the plaintiff commenced the present contempt proceedings against the defendant in relation to alleged further breaches of the Injunction Order. The Amended Originating Summons and Order ‍52 ‍Statement stated that the defendant was guilty of contempt of court in that “she, either by her own conduct or that of her agents or both, have failed to observe and comply with the Longford Account Protocol … [The defendant] did not seek [Yau] or [Will Lam’s] approval/signatures before the transactions took place.” The defendant by her affirmation dated 11 January 2021 claimed that, by an email dated 23 October 2017 (“**2017 Email**”), she gave formal notice to Longford’s accountant, 唐魯‍華 (“**Tong**”), that she would cease involvement in the operation of Longford’s daily operations. She also claimed to have surrendered possession of Longford’s Leong Seal and Finance Seal to Tong on 9 November 2017. She however remained as legal representative of Longford and as sole signatory to the Capital Account, such that the Leong Seal remained essential for any withdrawal from the Capital Account.
2. By the CFI Judgment dated 26 July 2022, DHCJ H Au-Yeung found the defendant guilty of contempt of court in failing to comply with the Injunction Order.
3. The judge found that the characteristics of an agency relationship were present, in that the defendant apparently authorised Tong to affix her legal representative chop in relation to the Capital Account on her behalf, which affected the defendant’s relationship with ICBC ‍Shanghai, and the defendant had the ability to exercise control over Tong in relation to the usage of the Leong Seal ([44]-[45] of CFI Judgment).
4. The judge rejected the defendant’s evidence that she had informed Tong about the Longford Account Protocol ([33]-[37]; [48] of CFI Judgment). On the basis of such finding, there was no evidence that Tong had any knowledge about the requirements imposed by the Injunction ‍Order at all ([47] of CFI Judgment). The judge found that in the circumstances, the defendant could reasonably have foreseen the possibility of Tong failing to comply with the Injunction Order, and the defendant had failed to take all reasonable steps to prevent such acts on the part of Tong ([46]-[49] of CFI Judgment).
5. The judge further found that the Injunction Order would have been breached in any event even if Tong complied with the 2017 Email ([50]-[54] of CFI Judgment).

The appeal to the Court of Appeal

1. The defendant’s appeal against the CFI Judgment was heard on 1 November 2024. The CA Judgment was handed down on 18 ‍November 2024. The grounds of appeal relevant to our discussion below are highlighted.
2. The “Dealt with” Ground: We rejected a ground of appeal where the defendant claimed she ought not to have been considered as having “dealt with” the Capital Account based on the handing over of the Leong Seal and Tong’s use of the Leong Seal (Ground 3 of the Notice of Appeal; “**NOA**”). We cited the dictum of Slade J in *Hone v Page* [1980] FSR 500 at 507 on the principles regarding whether an individual enjoined by an order has breached it by that individual’s agent:

“In the absence of authority, I am prepared to assume in favour of the defendant that the form of undertaking does not expose the giver of the undertaking to absolute liability for the acts of its servants or agents. Nevertheless, again in the absence of authority, I think that a man must be deemed to do a relevant act ‘by his servants or agents,’ within the meaning of an undertaking given in this form, if (a) the persons who did the acts were his servants or agents, (b) the acts were done in the course of the service or agency, and (c) he either (i) authorized the acts or (ii) could reasonably have foreseen the possibility of such acts and failed to take all reasonable steps to prevent them.”

1. *Hone v Page* has been applied in the English Court of Appeal in *A-G for Tuvalu v Philatelic Distribution Corporation Ltd* [1990] 1 WLR 926 at 936H to 937B; *In re Supply of Ready Mixed Concrete* [1992] QB 213 at 236F to G and 243A to B; and in Hong Kongin *Crown Times International Ltd v Chan Yim Ping & Others* (HCA 1313/2006, 25 ‍January ‍2007) at [9] and *China Metal Recycling (Holdings) Limited (in* ‍*compulsory liquidation) v Chun Hei Man & Ors* (HCMP 3396/2015, 18 November 2016) at [57(7)] and [109].
2. We considered that the defendant would thus be held to be vicariously liable if (i) she authorised Tong’s act of operating the Capital Account not in accordance with the Longford Account Protocol, or (ii) could reasonably have foreseen the possibility of such acts of Tong and failed to take all reasonable steps to prevent them. The latter was found to be the case by the judge below (See [100] of CA Judgment).
3. The exercise of control and relationship with ICBC Shanghai Ground: We rejected a ground of appeal raised by the defendant that the judge should not have made the finding that the defendant had the ability to exercise control over Tong as to the usage of the Leong Seal or that defendant (as opposed to Longford) had legal relations with ICBC ‍Shanghai. We found that there is no basis to interfere with the judge’s findings of fact. We agreed with the judge that, by handing over the Leong Seal and remaining as sole signatory of the Capital Account, the defendant must be able to control Tong’s use of the Leong seal ([82] of CA ‍Judgment). We also agreed with his finding that ICBC Shanghai accepted the withdrawal requests on the basis that the transactions were authorized by the defendant as the legal representative of Longford ([85] of CA Judgment).
4. The “reasonably foreseeable” ground: We rejected a ground of appeal that the judge erred in finding that it could reasonably be foreseen that Tong would not comply with the Injunction Order (Ground 4 of the NOA). The high threshold for the appeal court to disturb such a finding is plainly not met; and in any event, there was solid support for the finding that it could be reasonably foreseen that Tong would not comply with the Injunction Order. As found by the judge, the Injunction Order would have been breached even if Tong had acted in full compliance with the defendant’s instructions in the 2017 Email ([105] of CA Judgment).
5. The “insufficient pleading” ground: Lastly, we rejected the defendant’s arguments that the pleading requirements as to agency relationship in contempt proceedings were not met (Grounds 1, 2, 4 and 5 of the NOA):
   1. The defendant complained there was no plea that Tong was acting as her agent or there was a lack of alleged particulars supporting an agency relationship (Ground 1 of NOA). We considered that the plaintiff would not have known the defendant’s defence at the time of the Originating Summons and it would not have been possible to plead the alleged particulars. Further, there was no unfairness given that the issue was raised in affirmation in full and there was no suggestion that the defendant was hampered in pursuing her defence or counter-allegation. If committal orders are to be set aside on purely technical grounds which have nothing to do with the justice of the case, this has the effect of undermining the system of justice and the credibility of the court orders and is contrary to the interests of justice ([52] of CA Judgment).
   2. The defendant asserted that the proper law governing the agency relationship must be PRC law and complained that the plaintiff had failed to discharge its burden of proof due to the lack of inquiry into the role and powers of the legal representative under PRC law (Grounds 1 and 2 of NOA). We considered this is a new point that should not be allowed to be pursued on appeal as it would clearly impact the course of evidence. Further, where the matter was not raised, the “default rule” (as set out in *Brownlie v F S Cairo (Nile Plaza) LLC* [2020] EWCA Civ 996) applies. We were not persuaded that the default rule should operate in a different manner when it comes to contempt proceedings ([59]-[64] of CA Judgment). We further considered the defendant’s reliance on the lack of plea of PRC law misplaced, as that does not require any inquiry into the role and power of the legal representative based on the facts before the Court ([66]-[67] of CA Judgment).
   3. We similarly rejected a ground of complaint that the judge was precluded from finding that it was reasonably foreseeable that Tong would not comply with the Injunction Order where this was not pleaded (Ground 4 of NOA). We considered there was no unfairness or prejudice (for reasons mentioned in relation to Ground 1 of the NOA). In any event, as mentioned in the discussion in relation to Ground 4 of the NOA, we agreed with the judge’s finding there was solid basis for finding that it could be reasonably foreseeable that Tong would not comply with the Injunction Order ([104]-[105] of CA Judgment).
   4. Lastly, we rejected a pleading complaint in relation to the lack of alleged *mens rea* in relation to the finding of contempt (Ground 5 of NOA). We considered the pleading of mental state of the defendant adequate and it was open to the judge to ‍make the findings of knowledge ([109]-[111] of CA ‍Judgment).

The questions in the ANOM

1. The ANOM contained 13 questions which are said to be, by reason of their GPI, or otherwise, ought to be submitted to the Court of Final Appeal for decision pursuant to section 22(1)(b) of the HKCFAO. They are as follows:
   1. In relation to the applicability of *Hone v Page* principles to prohibitive injunctions:

“Question A1:- Where:

(a) the terms of a prohibitory injunction prohibit specific future acts, and do not require the taking of any positive steps, including to cause the cessation of a particular state of affairs; and

(b) an alleged agent of the alleged contemnor has committed an act prohibited by the injunction, but that act was not directed by the alleged contemnor;

Whether the alleged contemnor would be in breach of the injunction, and in particular whether the principles in *Hone v Page* [1980] FSR 500 at p507 would apply”

* 1. In relation to the judge’s finding of agency relationship (QA2-‍A3):

“Question A2: Where a corporate officer relinquishes or delegates to an employee of the company the ability and power to do an act for the company, would the aforesaid employee become an agent of the aforesaid corporate officer?”

“Question A3: Where a corporate officer is a signatory of a bank account which is in the name of a company and the withdrawal of monies from such bank account depends on inter alia the affixation of a seal or chop which belongs to the aforesaid company, (a) would the aforesaid corporate officer necessarily have any legal relations with the bank; and (b) would the affixation of the seal or chop affect the legal relations (if so, what relations) between (i) the corporate officer and the bank or (ii) the account holder (i.e. the company) and the bank?”

* 1. In relation to the pleading requirements as to an agency relationship in contempt proceedings (Qs 1, 2, 3, 4, 5, 8, 9 and 10):

In relation to particulars of agency relationship in committal proceedings:

“Question 1: Where, in committal proceedings, the necessary particulars of an averment which became the thrust of the plaintiff’s case only surfaced in the evidence of the defendant, and the plaintiff would not have knowledge of the same prior to that time, whether that would affect the requirements as to what has to be pleaded in the Originating Summons and the Statement for leave to apply for committal under Order 52 rule 2 of the Rules of the High Court (the ‘**Order 52 Statement**’), or whether an amendment ought to be sought by the plaintiff?”

“Question 2: Where, in committal proceedings, the necessary particulars of an averment are contained in the evidence of the parties filed before the hearing, as opposed to in the Originating Summons and the Order 52 Statement, whether that would affect the requirements as to what has to be pleaded in the Originating Summons and the Order 52 Statement, or whether an amendment ought to be sought by the plaintiff?”

“Question 3: Whether, in committal proceedings, the requirements of pleadings in the Originating Summons and the O 52 Statement are different from (i.e. more, or less, exacting than) the requirements of pleadings in ordinary civil proceedings by reason of the Court’s interest in seeing that its orders are upheld.”

“Question 4: Whether, in committal proceedings, the requirements of pleadings in the Originating Summons and the O 52 Statement are affected by whether prejudice has been caused by the lack of a necessary plea?”

“Question 5: Where:-

(a) an injunction order restrains the defendant from committing certain act(s) by herself or through her agents; and

(b) the plaintiff alleges in committal proceedings that the defendant acted in breach of the said injunction order vicariously through an agent, as opposed to acting personally;

is the plaintiff required to plead in the Originating Summons and the Order 52 Statement the particulars of the agency and acts in the course of agency, including the name and identity of the alleged agent (the ‘**Alleged Agent**’), the acts by which the defendant allegedly appointed the Alleged Agent as agent, and the acts by which the Alleged Agent is said to have breached the injunction order in the course of agency?”

“Question 8: in committal proceedings, where a defendant is charged with vicariously liability for an Alleged Agent’s acts, whether it is required to be pleaded with particulars in the Originating Summons and the O 52 Statement that she either (i) authorized the agent’s relevant acts; or (ii) could reasonably have foreseen the agent’s acts and failed to take all reasonable steps to prevent them, and in the case of (ii), the reasonable steps that she is said to have failed to take.”

In relation to the *mens rea* element:

“Question 9: As to the necessary mental state in committal proceedings, where an individual defendant is charged with vicarious liability for an Alleged Agent’s acts:

(1) And where the defendant is alleged to have authorized the Alleged Agent’s acts: whether it is sufficient for the plaintiff to plead and prove the Alleged Agent’s acts were intentional, not casual or accidental, or whether the plaintiff is required (instead of or additionally) to plead and prove the defendant’s alleged act of authorization was intentional, not casual or accidental (or not due to any honest mistake or inadvertence): *Adams Phone Ltd v Goldschmidt* [1994] 4 ALL ER 486 at 494; *Kao Lee & Yip v Donald Koo Hoi Yan* (2009) 12 HKCFAR 830 at [48]?

(2) And where the defendant is alleged to have failed to take all reasonable steps to prevent the Alleged Agent’s acts when the possibility of such acts could reasonably have been foreseen: whether the plaintiff is required to plead and prove the defendant’s alleged failure was intentional, not casual or accidental (or not due to any honest mistake or inadvertence): *Adams Phone Ltd v Goldschmidt* [1994] 4 All ER 486 at 494; *Kao Lee & Yip v Donald* ‍*Koo* ‍*Hoi Yan* (2009) 12 HKCFAR 830 at [48]?”

“Question 10: In committal proceedings, where an element of contempt is the defendant’s knowledge of facts which would make her act or omission a contempt of court, and where the defendant is charged with vicarious liability for an Alleged Agent’s acts or omissions, what are the facts that the defendant must be proved to have knowledge of, and does such knowledge have to be pleaded in the Originating Summons and the O 52 Statement?”

In relation to the burden of pleading applicable PRC Law in committal proceedings:

“Question 6: Where, in committal proceedings, the plaintiff alleges that the defendant had breached an injunction by the acts of an Alleged Agent, and such agency is governed by foreign law, whether the plaintiff or the court has the burden to investigate into the contents of foreign law, or more generally, where an injunction prohibits conduct in a foreign jurisdiction (e.g. Mainland China), whether the plaintiff or the court has the burden to investigate into the relevant contents of foreign law (in this case Mainland law)?”

“Question 7: Where, in committal proceedings, the plaintiff alleges that the defendant had breached an injunction by the acts of an Alleged Agent by the handing over and authorization of the ‍use of something unknown to Hong Kong law, e.g. a‍ ‘Legal ‍Representative Chop’, whether it is the plaintiff’s burden to plead and prove the applicable law?”

1. The defendant further claims that leave to appeal ought to be granted under the “or otherwise” limb of section 22(1)(b) of the HKCFAO based on the improperly pleaded allegations in the contempt proceedings.
2. We will deal with the questions by categories below.

The applicability of Hone v Page principles to prohibitory injunctions (QA1)

1. Mr Bernard Man SC[[4]](#footnote-4) submitted there is a question of GPI as to whether the principles in *Hone v Page* should apply to prohibitive injunctions of the present type. He argued that the *Hone v Page* principles should be restricted to cases where there was an undertaking to the Court for a pre-existing practice to be stopped, and that such principles should not be applied to all prohibitory injunctions which prohibit acts rather than require positive steps to be taken to stop a practice. Hence, the defendant should not be taken as “dealing with” the Capital Account, otherwise, the effect would have been to “revolutionize the law” by holding a defendant in breach of a prohibitory injunction when he had neither done the prohibited act nor asked or directed that the prohibited act be done, and the pre-existing state of affairs did not require the defendant to do any positive act to bring herself in line with the Injunction Order.
2. We agree with the submissions of Ms Rachel Lam SC[[5]](#footnote-5) that this question does not raise any question of GPI. It is a well-established principle that a defendant can be in breach of a prohibitive injunction order by their agents. The defendant did not cite any authority refuting the applicability of *Hone v Page* principles to prohibitive injunctions in general, or put forward any public policy reasons against it or what principles should be applicable instead. We do not accept there are any good reasons to challenge the applicability of *Hone v Page* to prohibitive injunctions in general.
3. In any event, we do not agree the facts are distinguishable from *Hone v Page* as contended. Despite her claim to have ceased involvement in Longford, the defendant remained as sole signatory under the mandate of the Capital Account and as legal representative of Longford. The wording of the Injunction Order required compliance “in accordance with the [Longford Account Protocol]”. In the circumstances, there is no room for argument that the defendant was not required to do any positive act to bring herself and her agents in line with the Injunction Order when she passed the Leong Seal to Tong. Any argument of inapplicability of *Hone v Page* principles to prohibitory injunctions where there is no pre-‍existing practice/actionable steps required is hypothetical and irrelevant to the present case.

Questions as to the judge’s finding of agency relationship (QA2-QA3)

1. Mr Man submitted there are questions of GPI where a corporate officer relinquishes or delegates to an employee her ability and power, whether an employee becomes an agent of the officer (QA2); and where a corporate officer was a sole signatory for the company bank account in the company’s name, whether affixation of the seal would affect the legal relations between the corporate officer and the bank (QA3).
2. These questions are plainly not of GPI. They are veiled attempts to challenge the judge’s findings of an agency relationship between the defendant and Tong. A question is not of GPI where it is essentially a fact-sensitive challenge relating to the specific circumstances of the case.

Questions relating to the pleading requirements as to agency relationship in contempt proceedings: name, acts of agent, reasonable foreseeability and failure to take reasonable steps (Qs 1, 2, 3, 4, 5, 8)

1. By Questions 1, 2, 3 and 4, the defendant essentially repeats her contentions on pleading and asserts that a question of GPI exists in relation to the need for amendments to the Originating Summons and Order ‍52 Statement where the evidence of the defendant revealed “necessary particulars of an averment” which would become the thrust of the plaintiff’s case.
2. By Questions 5 and 8, the defendant claims that an issue of GPI exists in the question of whether the name and putative agent and acts of the agent said to have been breached in the course of agency should ‍be ‍pleaded in contempt proceedings; and, insofar as the *Hone* ‍*v* ‍*Page* ‍principles are applicable, whether the plaintiff ought to have pleaded that the defendant would reasonably have foreseen the possibility of such acts and failed to take all reasonable steps to prevent those acts. Mr Man argued that a statement filed pursuant to Order 52 rule 2 should be treated in a similar manner as an indictment in criminal proceedings, and all factual elements relied on to establish contempt should be stated, ‍citing *Cosimo Borrelli (Trustee of SFC Litigation Trust) v Allen* ‍*Tak* ‍*Yuen* ‍*Chan* [2018] 2 HKLRD 496 at 507.
3. It is hard to understand why such pleading questions could constitute matters of GPI. As we observed in the CA Judgment, no prejudice was suffered by the defendant. Procedural challenges on pleading matters where there is no prejudice plainly do not raise any issue of GPI.
4. Further, as mentioned in paragraph 52 of the CA Judgment, it would be contrary to the interests of justice on the facts of the present case to set aside the committal order on purely technical grounds. The questions raised pertain to the court’s application of well-established principles to the facts and plainly cannot constitute any issue of GPI.

Questions relating to the pleading requirements as to agency relationship in contempt proceedings: mens rea element (Q9-Q10)

1. The defendant contends by Questions 9 and 10 that the *mens* ‍*rea* requirement for contempt is of GPI because there is uncertainty in the law as to what precisely needs to be pleaded and proven as regards the alleged contemnor’s mental state. The defendant claims it is unclear how the *mens rea* element would apply to a case of vicarious liability, and it is unclear whether current law requires the plaintiff to plead and prove the defendant’s alleged failure was intentional (and not casual or accidental, and not due to any honest mistake or inadvertence).
2. As submitted by Ms Lam, the legal principles as to the *mens* ‍*rea* in contempt proceedings are clear: see *Kao, Lee & Yip v Donald* ‍*Koo Hoi Yan* (2009) 12 HKCFAR 830 at [43]-[53]. As mentioned in paragraph 109 of the CA Judgment, it is sufficient to plead that the defendant knew the facts which are said to make her act or omission a contempt and that such act or omission was not accidental. We do not consider there is any legal uncertainty as regards its application in a case of vicarious liability.
3. We agree with Ms Lam the effect of finding vicarious liability is that the defendant would be deemed to have committed a relevant act by her servant or agent within the meaning of an undertaking or an injunction, applying the *Hone v Page* principles. There is no room for argument there needs to be a plea of intentional omission from the defendant’s failure to comply with the Injunction Order.

Questions relating to the pleading requirements as to agency relationship in contempt proceedings: PRC law (Q6-Q7)

1. By Questions 6 and 7, the defendant claims there is an issue of GPI in relation to whether the plaintiff bears a burden on raising the issue of foreign law in contempt proceedings (and in respect of the specific facts of the present case) due to the serious threat posed by committal proceedings to the personal liberty of the defendant. Mr Man submitted that where a legal concept is not known to Hong Kong law, even a resort to the default rule should not be sufficient to establish liability.
2. These Questions are plainly academic. As mentioned in the CA Judgment, the issue was not raised in the Court below, and the matter is not allowed to be raised on appeal where it would clearly impact the course of evidence. This Court has also ruled that PRC law is in any event irrelevant as the facts of the case do not require any inquiry into the PRC ‍law on the role and power of the legal representative. We do not consider such questions as questions of GPI.

The “or otherwise” Ground

1. The defendant invokes the “or otherwise” ground based on the pleading complaints. As we do not think these complaints reasonably arguable, there is no basis for this ground. In any event, the granting of leave to appeal under the “or otherwise” ground is for exceptional cases. We do not think this is an exceptional case. It is the practice of the Court of Appeal to defer to the Appeal Committee of the Court of Final Appeal whether leave should be granted on this ground.

Conclusion

1. We do not consider any of the 13 Questions raise any issue of GPI that ought to be considered by the Court of Final Appeal. We refuse to grant leave to appeal and dismiss the ANOM.
2. We agree with the plaintiff that many of the questions ought not to have been submitted for consideration in the first place and are plainly a waste of the Court’s time and resources. We order the defendant to pay the plaintiff’s costs of this application on an indemnity basis.
3. The plaintiff has submitted a statement of costs for summary assessment and the defendant has lodged a list of objections proposing total deductions of $18,770. We decline to make any deductions in the gross sum assessment and award costs to the plaintiff of $265,270.

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| (Susan Kwan)  Vice President | (Carlye Chu) Vice President | (Godfrey Lam)  Justice of Appeal |

Ms Rachel Lam SC and Ms Eva Leung, instructed by Hugill & Ip, for the Plaintiff (Respondent)

Mr Bernard Man SC, Mr Howard Wong and Mr Shaun Elijah Tan, instructed by P C Woo & Co, for the Defendant (Appellant)

1. [2024] HKCA 1067 [↑](#footnote-ref-1)
2. [2022] HKCFI 2234 [↑](#footnote-ref-2)
3. [1980] FSR 500 at 507 [↑](#footnote-ref-3)
4. With Mr Howard Wong and Mr Shaun Elijah Tan [↑](#footnote-ref-4)
5. With Ms Eva Leung [↑](#footnote-ref-5)