##### HCA 276/2024

[2025] HKCFI 751

**IN THE HIGH COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**COURT OF FIRST INSTANCE**

ACTION NO. 276 OF 2024

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BETWEEN

|  |  |  |  |
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|  | PLAINVIM INTERNATIONAL SCIENCE INDUSTRIAL PARKS HOLDINGS LIMITED (previously known as PLAINVIM INTERNATIONAL PROPERTIES DEVELOPMENT HOLDINGS (CAYMAN) LIMITED) | | Plaintiff |
|  |  |  | |
|  | and |  | |
|  |  |  | |
|  | HAN FENG | Defendant | |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Before: Hon Tam J in Chambers (Open to Public)

Date of Hearing: 23 January 2025

Date of Judgment: 4 March 2025

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| DECISION ON COSTS |

*Introduction*

1. On 9 February 2024, the Plaintiff (“P”) commenced this action by filing a Writ of Summons with a general indorsement of claim, seeking reliefs from this Court including damages against the Defendant (“D”) for alleged wrongful disclosure of confidential information. On 3 May 2024, P filed its Statement of Claim (“SoC”). On 28 June 2024, D filed his Defence.
2. D did not seek further and better particulars of P’s claim. On 27 August 2024, D filed a Summons to strike out P’s SoC (“D’s Summons”) under Order 18, rule 19(1) of the Rules of the High Court on the basis, *inter alia*, that it disclosed no reasonable cause of action. On 23 September 2024, P filed its Reply.
3. On 8 November 2024, Master Frances Lok SC heard D’s Summons and dismissed it with P’s costs of the Summons ordered to be in the cause (“Master’s Decision”). On the same date, D filed a Notice of Appeal with the Court to appeal against the Master’s Decision (“Striking-Out Appeal”) and served it on P on 11 November 2024. On 12 November 2024, P informed D by letter that it intended to amend the SoC.
4. The Striking-Out Appeal was set down to be heard on 23 January 2025. On 10 January 2025 (less than two weeks before the hearing and just over one week before D was due to file his Skeleton Submissions), P filed a Summons with the Court and served it on D, seeking to substantially amend its SoC (“Amendment Application”). That was the first time when D had sight of the full proposed amendments to the SoC.
5. On 16 January 2025, in light of the proposed amendments, D wrote to P and invited P to consent to an order in terms of the Amendment Summons and an order for the withdrawal of the Striking-Out Appeal on condition that there be no order as to costs of the appeal. On 17 January 2025, P wrote to D and indicated its disagreement with D’s proposal as to costs and demanded that D bear the costs of the appeal.
6. In his Skeleton Submissions dated 20 January 2025 filed with the Court, D indicated that he was prepared to consent to the Amendment Application and to withdraw the Striking-Out Appeal. D emphasized that his withdrawal was not the result of any acknowledgement of likely defeat. The only issue remaining for the Court was that of the costs of the Striking-Out Appeal.
7. On 23 January 2025, a hearing was held before this Court. P’s Amendment Application was not opposed nor was D’s application for leave to withdraw the Striking-Out Appeal. The Court heard submissions from the parties on the only remaining issue of costs of the Striking-Out Appeal and reserved its decision to be handed down. This is the Court’s decision.

*Discussion*

1. As this is not a decision on D’s Striking-Out Appeal and it relates only to the issue of costs following its withdrawal, I will only adopt a broad brush approach and will not seek to give a fully reasoned judgment on the merits or otherwise of the appeal which has now become academic.[[1]](#footnote-1) It suffices for me to indicate that even if I had had to rule on the appeal, I would have upheld the Master’s Decision to dismiss D’s Summons.
2. The legal principles applicable to a striking-out application are trite and well established. Striking out is a drastic remedy, and the court will not strike out a claim unless it is satisfied that the legal basis of the claim is unarguable or almost incontestably bad; where the legal viability of the cause of action is sensitive to the facts, an order to strike out should not be made; and it is only in plain and obvious cases that the court should exercise its summary powers to strike out the pleadings.[[2]](#footnote-2) The court does not insist on perfect pleadings and the defendant should be reasonable in treating the pleadings as a whole.[[3]](#footnote-3)
3. In short, it does not appear to me that the present case is such a “plain and obvious” case for striking-out, and that treating P’s pleadings as a whole, the legal basis of its claim is unarguable or incontestably bad.
4. Counsel for D, Mr. Fung, accepted in D’s Skeleton Submissions that the general rule is that an applicant or appellant who withdraws his application or appeal has to pay the other side’s costs but it is not an absolute rule. In order to depart from the general rule, the most direct way is to show that the applicant or appellant would have succeeded if the application or appeal had proceeded. In this regard, as pointed out above, this Court is not persuaded that the Striking-Out Appeal would have succeeded had it proceeded. When dealing with costs, the overriding objective is to do justice between the parties without incurring unnecessary court time and consequently additional costs.[[4]](#footnote-4)
5. I shall therefore order costs of the appeal against D. However, I also noted that P had taken some 8 weeks to formulate the proposed amendments and only filed its Amendment Application less than two weeks before the scheduled hearing; whereas D already proposed to withdraw the Striking-Out Appeal within six days of having had sight for the first time of the rather substantial proposed amendments. I was told that by that time Senior Counsel for the Plaintiff and his juniors had just been briefed to attend the appeal hearing. Had P supplied to D the details of the proposed amendments much earlier, the appeal would probably have been withdrawn earlier, with the consequence of the costs of briefing counsel being substantially saved. For this reason, I shall take this into account as a discounting factor in the award of costs in favour of P.
6. At the hearing, I was invited by Leading Counsel for P, Mr. Wong SC, to make a summary assessment of the costs of the appeal and I was given a statement of costs for that purpose. Mr. Wong SC also asked for certificate for two counsel (Leading Counsel and his senior junior). Given that at the hearing before the Master, both sides were represented by Leading Counsel with junior counsel, I shall grant the certificate being sought by Mr. Wong SC.

*Order*

1. Having taken out the brief fees charged by the junior counsel (Mr. Joshua Yeung) from P’s total proposed costs of HK$643,440 (thereby resulting in a balance of HK$598,440) and applied the aforesaid discounting factor, I shall award approximately 60% of that balance to P, making a total sum of HK$359,000 (inclusive of Leading Counsel’s and his senior junior’s fees). By way of summary assessment, I shall order D to pay P that total sum as costs of the appeal.
2. I therefore make the following orders:
   1. Leave be granted to the Plaintiff to amend the Statement of Claim filed on 3 May 2024 in the manner as shown in red as per the draft Amended Statement of Claim annexed to the Plaintiff’s Summons filed on 10 January 2025 (“Amendment Summons”);
   2. The Plaintiff do file and serve its Amended Statement of Claim within 7 days hereof;
   3. Leave be granted to the Defendant to make consequential amendments to his Defence, if so advised, and to file and serve the Amended Defence within 28 days thereafter;
   4. Leave be granted to the Plaintiff to make consequential amendments to its Reply, if so advised, and to file and serve the Amended Reply within 28 days thereafter;
   5. Costs of and occasioned by the Amendment Summons be to the Defendant in any event, to be taxed if not agreed;
   6. Leave be granted to the Defendant to withdraw its Notice of Appeal to Judge in Chambers filed on 8 November 2024; and
   7. Costs of the appeal (including costs of the hearing on 23 January 2025) be to the Plaintiff in any event, to be summarily assessed at HK$359,000, with certificate for two counsel.
3. Lastly, I thank Leading Counsel for P and Counsel for D for their assistance.

(William Tam)  
 Judge of the Court of First Instance  
 High Court

Mr. William Wong, SC leading Mr. Look-Chan Ho and Mr. Joshua Yeung, instructed by So, Lung and Associates, Solicitors for the Plaintiff

Mr. Jonathan Fung, instructed by DLP Piper Hong Kong, Solicitors for the Defendant

1. See *Deepak Pagarani & Ors v Michel Morren & Ors*, HCA 88/2018, [2020] HKCFI 587 at §§9-13. [↑](#footnote-ref-1)
2. See *Re Lui Ming Lok v Ng Im Fong Loretta, the executrix of the estate of LUI Kwan Cheung (Deceased),* HCAP 28/2019, [2020] HKCFI 1243 at §§13-14. [↑](#footnote-ref-2)
3. See *Cheng Hung Kit v Jim Yiu Ming*, HCA 2037/2011, unreported and dated 8 January 2016, at §10. [↑](#footnote-ref-3)
4. See *Deepak Pagarani & Ors v Michel Morren & Ors*, HCA 88/2018, [2020] HKCFI 587 at §§9-13. [↑](#footnote-ref-4)