DCCJ 2829/2023

[2025] HKDC 372

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

CIVIL ACTION NO 2829 OF 2023

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BETWEEN

Licksun Company Limited Plaintiff

and

Occupiers of Sub-Section 2 of

Section B of Lot No 1016 in DD19

which is also known as

DD19 LOT No 1016 B2 1st Defendant

Yu Siu Kwan 2nd Defendant

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Before: Deputy District Judge Kenneth KY Lam in Chambers

Date of Hearing: 3 March 2025

Date of Decision: 3 March 2025

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DECISION

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*Introduction*

1. This is the substantive hearing of an Order 19 summons (**“the Summons”**) taken out by the plaintiff Licksun Company Limited (**“P”**) on 8 January 2025 seeking to enter judgment against the 2nd defendant Yu Siu Kwan (**“D2”**), summarily, on the basis that D2 never filed any Defence.
2. According to the Summons, P sought a final judgment against D2 which shall include (1) a proprietary declaration on its interests in land; (2) a permanent injunction; (3) a sum of HK$1 million; (4) HK$50,000 per month from 9 January 2025; plus (5) damages, interests and costs.
3. A natural person alleged to be a director of P for the purposes of Order 5A rule 2(2) of the Rules of the District Court (Cap 336H) showed up. D2 never showed up. Neither of them lodged any written submissions of any kind.

*My View*

1. Entering a final judgment against a defendant without hearing from her is a serious matter. As I had mentioned in *Chan Kang Hung Bovis v Chan Kang Kong, the Executor of the Estate of Chan Sun Chi, Deceased* [2023] HKDC 933 *(§§5 & 24, per DDJ Kenneth KY Lam)*, in a case where a plaintiff is asking for a proprietary declaration vis-à-vis interests in land, or a permanent injunction vis-à-vis usage of land, apart from scrutinizing the relevant affidavit evidence on service, a responsible and conscientious judicial officer should also ask himself two questions: -
   1. Is the plaintiff’s case, as pleaded, strong, or shadowy?
   2. Having read everything, do I have evidential queries to make, or should there be further investigations?
2. In this connection, as I mentioned in *Lei Yukang v Lin Youjun* [2023] HKDC 568 *(§20, per DDJ Kenneth KY Lam)*: -

“Practitioners are reminded of what was said by DHCJ Herbert Au-Yeung in *JTM324 Strategic Advisors, Inc v Permex Co Ltd* [2023] 1 HKLRD 1437 [2023] HKCFI 403 (at §18). A court of law is *not* a rubber-stamp. All parties to all civil actions and their legal representatives should assist the court by making all necessary inquiries, and placing all relevant materials before the court, in a timely and helpful manner.”

1. Litigants who choose to act in person have the same duties as represented litigants. See, for example, what the Court of Appeal had said in *梁銓勤 訴 周俊為* (CACV278/2004, 25 April 2006, §20), or in *莊裕安 訴 郭瑞熙* (CACV62/2014, 21 August 2015, §28). I agree with all of their sage remarks in relation to this.
2. Coming back to our case, having scrutinized all papers, I take the view that P’s case, as pleaded, is shadowy. P’s Amended Statement of Claim is too simplistic. It is unclear whether P is a Hong Kong or overseas corporation and in either case when was it incorporated. I am not even sure whether P actually exists – there being no real evidence that it does. It was alleged P rented some land under strange circumstances at HK$10,000 per month for a term of 3 years but was denied entry. P’s alleged consequential loss was pleaded to be HK$50,000 per month *(5 times of the rent under the alleged fixed term lease)* but that was without particulars or explanation of any kind whatsoever. On these peculiar, unexplained and bold allegations, P asked for HK$ 1 million. It is also unclear to me why the Summons was for final judgment instead of interlocutory judgment on liability only with the quantum of damages being assessed by a Master separately. A person identifying himself as a director of P showed up but was entirely unable to explain P’s case in a satisfactory manner. I could only see an *“Affidavit of Yeung Hon Keung Larry”* in support of the Summons in the Court File, but there was no affirmation of service for the Summons itself. In such strange circumstances, I am *not at all* satisfied I should be entering either final or interlocutory judgment against D2 today as doing so would in my view be wholly irresponsible. The declaration sought, in particular, should *not* be granted at all.
3. Adopting the observations of Fok J *(as Fok PJ then was)* in *Top One International (China) Property Group Co Ltd v Top One Property Group Ltd* [2011] 1 HKLRD 606 *(§§78 to 85)*: -

“In the absence of a judgment reached after hearing evidence, a declaration could be based only on unproved allegations and the Court ought not to declare as fact that which might not have proved to be such, had the facts been investigated.”

1. What I am left with is therefore a choice between dismissing the Summons or adjourning it *sine die* with liberty to restore it.
2. To be fair to P, it seems *possible* for P to fix at least *some* of the problems with its defective case by an amendment exercise, or by filing further affidavit evidence. Accordingly, after careful consideration, I take the view I should give P a second chance to get its own house in order and try again. P should be allowed to file further affidavit evidence, if P really wants to. It also seems possible for D2 to oppose the Summons. D2 should also have leave to file affidavit evidence.

*Conclusion*

1. By reason of the above, my order for today is: -
2. The Summons be adjourned *sine die*;
3. Liberty to restore the Summons before any Judge of the District Court with 2 hours reserved;
4. Parties should lodge and exchange written submissions 14 days before the next hearing;
5. Leave to file affidavit evidence as to the substance and service of the Summons, within 28 days from today, be granted to both P and D2;
6. Costs of today be reserved.
7. I thank all parties.

( Kenneth KY Lam )

Deputy District Judge

The plaintiff appeared in person

The 2nd defendant was not represented and did not appear