LDMP 6/2023

[2024] HKLdT 87

**IN THE LANDS TRIBUNAL OF THE**

# **HONG KONG SPECIAL ADMINISTRATIVE REGION**

MISCELLANEOUS PROCEEDINGS NO.6 OF 2023

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

|  |  |  |
| --- | --- | --- |
| BETWEEN | | |
|  | 嘉信大廈業主立案法團 | Applicant |
|  | and |  |
|  | 張笑媚 | Respondent |

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

|  |  |
| --- | --- |
| Before: | Deputy District Judge S. H. Lee,  Presiding Officer of  the Lands Tribunal, in Court |
| Date of Hearing & Decision: | 21 October 2024 |
| Date of Reasons for Decision: | 25 October 2024 |

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

REASONS FOR DECISION

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*Background*

1. By a judgment written in Chinese handed down on 23 August 2024 (**the Judgment**)[[1]](#footnote-1), this Tribunal found the respondent Madam Cheung guilty of contempt in these proceedings (**the Verdict**) for failing to comply with judgment entered by this Tribunal against her on 10 January 2023 (**the Previous Judgment**) after trial of LDBM No.106/2022 (**the Previous Action**) brought by the applicant incorporated owners (**IO**) against her (see paragraphs 1 and 134 of the Judgment).
2. As I found in the Previous Judgment, the respondent was the chairman of the management committee (**MC**) of IO who retired from her office at an annual general meeting held on 14 January 2022 (**the AGM**) (see paragraphs 2, 3(1) to (3) of the Judgment).
3. On 9 September 2024, this Tribunal ordered the respondent to pay IO costs of these proceedings on indemnity basis, and summarily assessed them at $150,000. For the said contempt proven, this Tribunal sentenced the respondent to 1-month imprisonment (**the Sentence**). This Tribunal gave oral reasons for the said costs order and the Sentence on the same day.

*The Application*

1. Dissatisfied with both the Verdict and the Sentence, the respondent applied on 24 September 2024 for leave to appeal to the Court of Appeal (**the Application**). Attached to the Application is a draft Notice of Appeal settled by respondent’s solicitors.
2. This Tribunal heard the Application on 21 October 2024. Counsel Mr Billy Mok (**Mr Mok**) appeared for the respondent while Mr Samuelson T.L. Choi (**Mr Choi**) of counsel was instructed to appear for IO. Mr Choi also appeared for IO at the trial of these proceedings on 16 and 17 April 2024.
3. After the above hearing, this Tribunal dismissed the Application with costs to IO and made further stay of execution of the committal order made on 9 September 2024 for another 14 days or until further order, with liberty to IO to apply to enforce the said committal order after expiry of such stay.
4. This Tribunal now gives its reasons for the dismissal of the Application.

*The Previous Judgment*

1. Paragraph 5A of Schedule 2 of Building Management Ordinance (**BMO**)[[2]](#footnote-2) reads in Chinese as follows:

【根據第4(2) 或 (4) 段**停任**管理委員會**委員**或根據第5(1) 段**卸任**且不尋求再獲委任的**委員**，須在其**停任**或**卸任**（視屬何情況而定）**後的14天內**，將在其**控制**下或在其**保管**或**管有**下的*與建築物的控制、管理及行政事宜有關的****任何****帳簿、帳項紀錄、文據、文件及其他紀錄，連同屬於法團的****任何****動產* ，**移交**管理委員會**秘書**或（**如秘書**的職位**出缺**）**主席**。（粗體及斜體後加作強調）】

1. In the Previous Judgment, I found the requirements of the above paragraph 5A satisfied (see paragraph 4 of the Judgment) and made the Previous Judgment (see paragraph 5 of the Judgment) whose paragraph 1 is as follows: -

“答辯人須按照《建築物管理條例》（香港法例第344章）附表2第5A段的規定，於本判決**送達她後14天內**，將在其**控制**下或在其**保管**或**管有**下的*與建築物的控制、管理及行政事宜有關的****任何****帳簿、帳項紀錄、文據、文件及其他紀錄，連同屬於法團的****任何****動產* ，**移交**申請人現時之管理委員會**秘書或主席**（粗體及斜體後加作強調）。”

1. At paragraph 22 of the Judgment, this Tribunal referred “與建築物的控制、管理及行政事宜有關的**任何**帳簿、帳項紀錄、文據、文件及其他紀錄，連同屬於法團的**任何**動產” as “**IO’s Properties** (法團物件)”.
2. At the trial of these proceedings, the Previous Judgment had not been stayed or overturned on appeal (see paragraphs 7 to 9, 49 to 51 of the Judgment).

*Parties’ rival cases and evidence at trial*

1. IO’s case (and evidence of 趙敏湘女士 (**Ms Chiu**) in her 3 affirmations) is summed up at paragraphs 18 to 30 of the Judgment.
2. Respondent’s case (and her evidence in opposition affirmation and in the box) is summed up at paragraphs 31 to 40, 77 and 78 of the Judgment.

*Three stages to prove contempt followed*

1. It is trite law that one approaches allegation of contempt by 3 stages (paragraph 52 of the Judgment).
2. This Tribunal followed suit in the Judgment and found the respondent having failed to comply with the Previous Judgment (paragraph 60 and 128 of the Judgment) as construed with the requisite punishable state of mind for contempt (paragraphs 129 and 133 of the Judgment).

*Two Grounds of Appeal*

1. There are 2 grounds of appeal in the draft Notice of Appeal attached to the Application. Using instead abbreviations of this Reasons for Decision, they are rephrased as follows.

*The First Ground*

1. **First**, it is complained that this Tribunal **erred in applying the standard** in **considering whether the respondent indeed had possession, custody or control of IO’s Properties at the material times**:-

(a) This Tribunal **wrongly drew an “only irresistible inference”** that the respondent had IO’s Properties at the material times;

(b) There is a **lurking doubt on whether this Tribunal has in fact applied the criminal standard, and if so, whether he did it properly**;

(c) This Tribunal **failed to exclude the following irrelevant facts/ allegations**:-

(i) The incidents before 16 January 2023 (paragraphs 104, 106 to 112 of the Judgment);

(ii) What the respondent told Ms Chiu on 16 January 2023 that “我不交，你們自己找” (paragraphs 113 to 115 and 124 of the Judgment)；

(iii) The statement in the reply letter from the respondent on 12 May 2023 in relation to her legal aid application that “所以你們要求2023年5月17日或以前移交文件未能做到，感謝。” (paragraphs 122 and 123 of the Judgment); and

(iv) That the respondent “did not deny” possession, custody or control of IO’s Properties (paragraph 124 of the Judgment); and

(d) This Tribunal **failed to give due consideration to the following material facts/allegations**:-

(i) That the respondent consistently and repeatedly insists that she did not have IO’s Properties, and that the respondent never made a positive assertion that she had IO’s Properties at the material times; and

(ii) That the respondent claims the management company would hold IO’s Properties for IO.

(e) There is **no evidence sufficient or other findings relied upon** by this Tribunal **to show that the respondent has the requisite state of mind** necessary to establish punishable contempt (**the First Ground**).

*The Second Ground*

1. **Second**, it is complained that the Sentence is wrong in principle and/or manifestly excessive. In particular:-

(a) **Wrong in Principle**: Punishment under civil contempt is only ordered for the purpose of enforcing the order in the civil action. A one-month imprisonment does not so serve the purpose.

(b) **Manifestly Excessive**: The imprisonment term is disproportionate to the gravity and culpability of the alleged contempt, particularly in light of the absence of evidence demonstrating the alleged contemptuous actions or omissions have resulted in any major difficulties, dangers and/or negative impact to the management of IO (**the Second Ground**).

*Applicable law & principles on appeal*

1. Under s.11(2) of Lands Tribunal Ordinance (**LTO**)[[3]](#footnote-3), any party to proceedings before the Tribunal may appeal to the Court of Appeal against a judgment, order or decision of the Tribunal on the ground that such judgment, order or decision is **erroneous in point of law**.
2. S.11AA(1) of the LTO requires leave to be granted by the Tribunal or the Court of Appeal before an appeal under s.11(2) can be made.S.11AA(5)(a) of LTO provides that leave to appeal may be granted in respect of a particular issue arising out of the judgment, order or decision.S.11AA(6) of LTO further provides that leave to appeal **shall not be granted unless** the Tribunal is **satisfied** that:

(a) the appeal has a **reasonable prospect of success**; or

(b) there is some other reason **in the interests of justice** why the appeal should be heard.

1. Such criterion of “reasonable prospect of success” was described in *SMSE v KL* [2009] 4 HKLRD 125 at [17] by Le Pichon JA (as she then was) as involving the notion that the prospect of succeeding must be “reasonable” and therefore more than “fanciful” without having to be “probable”.

*The Application made within time*

1. By way of preliminary point, following ***ZQA & Others v SCC & Another*** [2021] HKCA 194 in treating the Verdict and the Sentence as a composite judgment such that time for taking out leave to appeal application started to count as from the date of the sentence and not earlier, I agree with Mr Mok (and disagree with Mr Choi) that the Application was made within 28-day time limit counting from the date of the Sentence on 9 September 2024.

*The First Ground against the Verdict*

1. Mr Mok noted at paragraph 5 of his written submissions that this Tribunal had correctly stated in the Judgment that the applicable standard of proof for IO to satisfy at the trial of these proceeding is the criminal standard of proof beyond reasonable doubt (e.g. paragraphs 53, 60, 62, 128, 129 and 133 of the Judgment).
2. Mr Mok, however, submitted that this Tribunal had **not** **in fact** **applied** the **criminal** standard in the Judgment and, even if it did, this Tribunal **had not** **done so properly**.
3. He stressed that the Verdict was premised upon the crucial factual finding that the respondent had possession, custody or control of IO’s Properties between 16 January 2023[[4]](#footnote-4) and 30 January 2023[[5]](#footnote-5) (**the Crucial Finding**) and that this Tribunal had drawn “the only and irresistible inference” to reach the Crucial Finding at paragraph 127 of the Judgment (**the Crucial Inference**).
4. Mr Mok cited paragraphs 115 to 117 of the Court of Final Appeal judgment of ***Winnie Lo v HKSAR*** (2012) 15 HKCFAR 16 and emphasized that there are 3 requirements for drawing an inference i.e.

(1) It must be grounded on clear findings of primary fact.

(2) The inference must be a logical consequence of those facts.

(3) Beyond being logical, the inference must be irresistible, that ie, it must be the only inference that can reasonably be drawn on the basis of those facts. The inference must be compelling that no reasonable man could fail to draw from the direct facts proved.

1. Mr Mok’s detailed complaints under this ground is on two fronts. He first submitted at paragraph 9 of his written submissions that this Tribunal erred in law by **failing to exclude as irrelevant** those 4 matters identified at paragraph [17](c)(i) to (iv) above.
2. For such matters *prior to* 16 January 2023 at paragraph [17] (c)(i) above, Mr Mok stressed that, even if the respondent had possession, custody or control of IO’s Properties at certain point(s) of time ***before*** 16 January 2023, it does not *necessarily* follow that the respondent *must still* retain them *on* or ***after*** 16 January 2023.
3. I have to disagree with Mr Mok.
4. These facts prior to 16 January 2023 as found by this Tribunal (and on respondent’s own admissions) are **relevant** **circumstantial evidence**, including respondent’s *motive*, that *allowed* this Tribunal to draw the Crucial Inference to reach the Crucial Finding at the end of the day.
5. For example, respondent’s dissatisfaction with the holding of the AGM and its re-election results as upheld by the Previous Judgment (as evidenced by her leave to appeal, and legal aid application, in the Previous Action to overturn the same) certainly provides, one thinks, possible *motive* for her **not to comply** with Paragraph 5A of Schedule 2 of BMO and the Previous Judgment (paragraph 104 of the Judgment)
6. By way of another example, respondent’s access to IO’s chop (and to cupboard where it was kept) and her use of IO’s chop to issue circulars to challenge the AGM results on 1 June 2022 is a clear instance of her ***having been*** in possession, custody or power of IO’s Properties (paragraphs 92, 95, 97, 109 and 110 of the Judgment).
7. On the basis of the above and other findings and evidence at trial, the Crucial Finding could, I think, be reached by the Crucial Inference because, there was, as this Tribunal pointed out in the Judgment, **no admissible evidence** that the respondent had ***returned*** IO’s Properties **to any third party** at any point in time (paragraphs 125 and 126 of the Judgment). The respondent admitted to Mr Choi that she had ***never* done so**, **because** she has, she *claimed*, ***never* been in possession, control or custody of IO’s Properties** at any point in time (paragraphs 77 and 78 of the Judgment). So, these pre-16 January 2023 matters are, I think, plainly relevant matters to be considered in the Judgment.
8. Mr Mok next submitted that it also does not *necessarily* follow from respondent’s words of “我不交，你們自己找” made to Ms Chiu *on* 16 January 2023 that she *must* have IO’s Properties at the time of such saying.
9. The above words are, Mr Mok submitted at paragraph 9(2) of his written submissions, consistent with the respondent’s case that she does not have IO’s Properties such that she would not deliver. In his oral address before me, Mr Mok submitted instead that the above words are *ambiguous*. They could mean that the respondent *had* IO’s Properties or that she did *not* have them.
10. I have to disagree with Mr Mok again.
11. The respondent did not reply in the above words saying “I *cannot* deliver” or “I have *nothing* to deliver (italics supplied)”.
12. And the respondent **never** **explained** at trial that she *meant* to say that she did not have IO’s Properties by the above words. The simple reason is that she ***never*** **said on oath at trial** she *did utter* the above words of “我不交，你們自己找” (see paragraphs 98, 99 and 124 of the Judgment).
13. The above words uttered by the respondent *as I found from Ms Chiu’s evidence* is, I think, perfectly ***consistent*** with the respondent *having* IO’s Properties in her possession, custody or power on 16 January 2023. At any rate, on *one* view of Mr Mok’s oral address, it *could* be so read and hence it must be **relevant** matters to be considered in the Judgment.
14. Mr Mok also made similar submissions in his written submissions that it does not *necessarily* imply that the respondent *must* have IO’s Properties at the time of her statement to IO’s solicitors on 12 May 2023, when ***in reply to their demand for IO’s Properties***, she replied that “所以你們要求2023年5月17日或以前移交文件未能做到，感謝.” He stressed that it does not contradict respondent’s case that she does not have IO’s Properties.
15. Again, I cannot agree with Mr Mok.
16. The incoming letter from IO’s solicitors to the respondent on 10 May 2023 was like an *ultimatum*, threatening the respondent with committal proceedings *if she does not hand up IO’s Properties within 7 days* (paragraph 27 of the Judgment).
17. Again, the respondent did not *simply* reply saying she did not have IO’s properties. She replied declining demand from IO’s solicitors by reference to her *pending legal aid application to* ***reverse*** *the Previous Judgment* **requiring her to hand over IO’s Properties** (paragraphs 100 and 101 of the Judgment).
18. This Tribunal was therefore of the view that the above reply to IO’s solicitors on 12 May 2023 was ***consistent*** with respondent *still* having IO’s Properties in her *possession*, *custody* or *power* (see also paragraph 94 of the Judgment) and, therefore, **relevant** matter to be considered in the Judgment.
19. Regarding paragraph [17](c)(iv) above, I am afraid Mr Mok had misquoted paragraph 124 of the Judgment at paragraph 9(4) of his written submissions. This Tribunal simply observed at the said paragraph that “*there was no evidence at trial*[[6]](#footnote-6) that the respondent had *previously* denied having possession, custody or power IO’s Properties to members of existing MC or IO’s solicitors[[7]](#footnote-7) (italics supplied) “.
20. Hence, there is no substance of Mr Mok’s first complaint that this Tribunal had taken into account alleged irrelevant matters at paragraph [17] (c)(iv) above.
21. For the sake of completeness, this Tribunal has at all times remembered in the Judgment that the respondent bears no burden of proof at all (paragraph 54 of the Judgment).
22. On his second front, Mr Mok submitted at paragraph 10 of his written submissions that this Tribunal **erred in law** by **failing to give due consideration** to the 2 matters identified at paragraphs [17](d)(i) and (ii) above.
23. With respect, the above submissions of Mr Mok are also, I think, without merit.
24. Respondent’s **repeated** *denials* of possession, custody or power of IO’s Properties (and that she ***never*** had them as the same was ***never*** *passed* by the management company *to her*) made *under cross-examination* had **plainly** been **considered**, **but *rejected***, by this Tribunal in the Judgment (paragraphs 78, 85, 86, 90, and 102 of the Judgment). This Tribunal was, I think, perfectly entitled to reject *all* ***exculpatory*** answers given by the respondent in the stand. And Mr Mok had made no complaint that this Tribunal was wrong to do so.
25. On the basis of the aforesaid two-fold submissions (or all of them combined), Mr Mok stressed that the Crucial Inference is not so compelling that no reasonable man could fail to draw. He submitted that there are reasonable doubts that IO’s Properties were with **other previous MC members** or **the management company** such that the respondent **never** had them *at all* as she claimed.
26. I have considered all the individual submissions made by Mr Mok and found them all unmeritorious above.
27. Regarding the two possibilities in [51] above raised by the respondent for the *first* time in the *box*, as said above, I have rejected her *all* her **exculpatory** answers *to the above effect*.
28. This Tribunal had also considered the inherent probabilities of these 2 so-called possibilities against the undisputed background facts and respondent’s own admissions, and the odds are against the respondent (see paragraphs 79 to 88, 105, 107 and 108 of the Judgment)
29. On the **totality** of trial evidence as a whole, including Ms Chiu’s evidence of having made enquiry of IO’s Properties with other previous MC members and the management company (see paragraphs 63 to 76, 106, 111 and 118 of the Judgment) and respondent’s own admissions, no reasonable man could fail, I think, to draw the Crucial Inference to reach the Crucial Finding (paragraph 127 of the Judgment). IO has therefore discharged its burden proving the 2nd stage requirement beyond reasonable doubt. The submission that this Tribunal had not applied the applicable criminal standard or applied it improperly in the Judgment is, I think, equally unmeritorious.
30. At paragraph 12 of his written submissions, Mr Mok further made a bare submission that there is no evidence sufficient or other findings relied upon by this Tribunal to show that the respondent had the requisite state of mind necessary to establish punishable contempt. In his oral address, he submitted that such state of mind required at stage 3 was not proven as IO has failed to overcome the 2nd stage requirement.
31. As I have demonstrated above, there is ample evidence (and valid grounds) to prove the 2nd stage requirement.
32. Accordingly, there are pertinent evidence and findings in the Judgment that allowed this Tribunal to find for the requisite state of mind required at stage 3 (see paragraphs 104, 114, 116, 120, 121, 130 and 132 of the Judgment). This last complaint made by Mr Mok under the First Ground has no substance either.
33. The entire First Ground therefore has no reasonable prospect of success on appeal.

*The Second Ground against the Sentence*

1. Citing paragraph 37 of the judgement of ***Choy Bing Wing v Hong Kong Institute of Engineers***, unreported, CACV 275/2015, 5 October 2016, Mr Mok first submitted that punishment under civil contempt is *only* ordered for the purpose of *enforcing* the order in a civil action. The Sentence served, he submitted, **no purpose of *enforcing* the Previous Judgment whereas a *suspended* sentence may do**.
2. In terms of *gravity* and *culpability*, there does **not**, Mok also submitted, **appear to be sufficient evidence to show that the proven contempt has resulted in any major difficulties, dangers and/or negative impact to the management of IO**. For instance, IO has been able to commence and prosecute these proceedings and the Previous Action. Nor is there, submitted Mr Mok, any evidence pointing otherwise that the applicant could not locate IO’s Properties from the management company (he referred to paragraph 86 of the Judgment, where it was noted by this Tribunal that the respondent had received documents from the management company).
3. In the circumstances, argued Mr Mok, the Sentence is **disproportionate** and **manifestly excessive**.
4. The above complaints are, I think, of no substance either.
5. With respect, ***Choy Bing Wing***, supra, is not a case of sentencing for contempt and inapplicable to our context. The passage cited by Mr Mok touched upon the issue on appeal therein whether or not criminal contempt amounted to conviction of a criminal offence for the purpose of professional disciplinary proceedings.
6. On 9 September 2024, this Tribunal in giving its oral reasons for sentencing cited the authority of ***Chan Ka Ho Abraham v Tung Yin Ling Cora & Another*** [2024] HKCFI 1642 to remind myself the relevant principles on sentencing for contempt.
7. Deputy High Court Judge H. Au-Yeung (as he then was) has cited at paragraphs 6 to 9 of his judgment in ***Chan Ka Ho Abraham***, supra, previous authorities pertinent to the point.
8. Among them, Madam Justice Au-Yeung had in ***Arboit v Koo Siu Ying (No.2)*** [2016] 3 HKLRD 154 summed up the starting point and object of sentencing as follows:

“2. The **starting-point** is to acknowledge that **contempt of civil court orders** is a **serious matter** and that court orders are made to be obeyed.  A **prime consideration** of the court in sentencing contempt is to **‘signal importance of demonstrating to litigants that the orders of these courts are to be obeyed’**.  By ‘litigants’, it is clearly referring to **litigants in general** and not just the contemnor himself...

3. The **object** of the sentence is **both to punish conduct in defiance** of the court’s order and to **serve a coercive function by holding out the threat of future punishment as a means of securing the protection which the order was primarily there to do**: … The court has to balance the **2 objects**. (bold supplied)”

1. As such, on the authorities, another object of the Sentence is, I think, to punish respondent’s conduct in defiance of the Previous Judgment so as to signal to all litigants that court orders are to be obeyed (in order to protect, not the dignity of this Tribunal, but the public interest of administration of justice).
2. With due respect, suspended sentence suggested by Mr Mok is, I think, out of question in all the circumstances of this case. This Tribunal was fully aware of its discretion to suspend on 9 September 2024. Nonetheless, the respondent elected not to file affidavit of mitigation as suggested in the Judgment prior to that day nor addressed this Tribunal orally in mitigation on 9 September 2024. She elected not to purge the proven contempt prior to that day nor offered to purge the same on the said day. As such, it is wholly meaningless to suspend any imprisonment imposed on the respondent.
3. As Mr Choi had submitted, this Tribunal could have imposed an *unspecified* term of imprisonment *until the contempt is purged* in the **worst** case*.* However, this is, as was orally explained on 9 September 2024, **not the worst case of its kinds**. And an unspecified term could well be complained by the respondent as being disproportionate and/or manifestly excessive.
4. In terms of *gravity* (or prejudice, if any, of contempt to claimant) this Tribunal had in fact said, **in *favour* of the respondent**, on 9 September 2024 that the proven contempt had only *to a certain extent caused inconvenience* to IO, which inconvenience is, I think, fortunately *not irremediable* (see also paragraph 29 of the Judgment for Chiu’s evidence).
5. Hence, the *gravity* point taken by Mr Mok at [61] above was well noted by this Tribunal on the day of the sentencing. His submissions by reference to IO’s continuation of the Previous Action, and of these proceedings, and paragraph 86 of the Judgment are, I think, not entirely appropriate. In particular, this Tribunal *disbelieved* at the said paragraph respondent’s claim of ***never*** **receiving** IO’s Properties at all from the management company by reference to her own admissions under cross-examination.
6. At any rate, the prejudice, if any, to the claimant is, Mr Mok agreed in his oral submissions, only *one* of many relevant factors that needs to be (and have been) considered by this Tribunal in arriving at the Sentence.
7. As Mr Choi well noted in his submissions, this Tribunal also took into account the following relevant factors in its oral reasons as ***Chan Ka Ho Abraham***, supra, required i.e.

(1) the subject civil order is in the nature of a mandatory injunction;

(2) respondent’s breach of the Previous Judgment is not technical;

(3) respondent’s breach was contumacious and intentional (this being an aggravating factor) (paragraph 132 of the Judgment);

(4) there was nothing on the evidence that makes compliance of the Previous Judgment difficult; and

(5) the respondent was not remorseful or cooperative.

1. For the above reasons, the *culpability* of the respondent was, one thinks, certainly no small. And there are no mitigating factors in her favour.
2. As was also quoted by Deputy High Court Judge H. Au-Yeung (as he then was) at paragraph 8 of ***Chan Ka Ho Abraham***, supra, Mimmie Chan J. said the following at ***La Dolce Vita Fine Dining Co Ltd v Zhang Lan***[2019] 2 HKLRD 341, [8] i.e.

“Subject to mitigating factors, if any, the **starting** and primary penalty for contempt of court in breaching an order in the nature of an **injunction** is imprisonment.  The **normal** penalty for breaches of injunction orders is imprisonment **measured in months** (bold and underline supplied)”.

1. At paragraph 9 of ***Chan Ka Ho Abraham***, supra, the following words of B Chu J. from her judgment of ***Willwin Development (Asia) Co Ltd. v. Wei Xing & Others****,* unreported, HCMP 2946/2014, 16 November 2015 were also quoted i.e.

“…in a case where there has been a failure to comply with an order of the court and where there is **no evidence to suggest that compliance was in any way difficult or impossible**, a sentence of **imprisonment** **would not be inappropriate**.  This would be particularly so in a case where the sentence was designed to enforce compliance.  A sentence of imprisonment for a **wilful** failure to observe a court order **can often be appropriate**. (bold supplied)”

1. On the above authorities and in all the circumstances of the case as found in the Judgment, the Sentence cannot, I think, be faulted as being wrong in principle, disproportionate or manifestly excessive as complained on the Second Ground.
2. Accordingly, the Second Ground enjoys no reasonable prospect of success on appeal either.
3. For the sake of completeness, Mr Mok had not submitted that there is some other reason in the interests of justice why the intended appeal against the Verdict and the Sentence should be heard.

*Disposition*

1. Accordingly, this Tribunal dismissed the Application on 21 October 2024 as it did.

(LEE Siu-ho)

Deputy District Judge

Mr. Samuelson T. L. Choi, instructed by Kong & Co., for the applicant

Mr. Billy C. Y. Mok, instructed by Ivan Lee & Co., for the respondent

1. [2024] HKLdT 71 [↑](#footnote-ref-1)
2. Cap.344 [↑](#footnote-ref-2)
3. Cap.17 [↑](#footnote-ref-3)
4. when sealed copy of the Previous Judgment endorsed with penal notice was personally served on the respondent [↑](#footnote-ref-4)
5. when 14-day time limit of the Previous Judgment expired [↑](#footnote-ref-5)
6. 沒審訊證據證明 [↑](#footnote-ref-6)
7. 張曾向現屆管委會或法團前律師否認控制、保管或管有法團物件 [↑](#footnote-ref-7)