DCPI 514/2018

[2022] HKDC 105

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO. 514 OF 2018

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BETWEEN

|  |  |
| --- | --- |
| CHOW KIN HANG ALI | Plaintiff |
| and |  |
| SECRETARY FOR JUSTICE for and on behalf of COMMISSIONER OF POLICE | Defendant |

|  |  |
| --- | --- |
| Coram: | His Honour Judge Harold Leong in Chambers (by paper disposal) |
| Date of Decision: | 31 January 2022 |

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DECISION

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1. This is an inter-partes Summons taken out by the plaintiff on 12 July 2021 to seek leave for appeal against the decision of this court dated 29 June 2021.
2. The court has ordered that the application be dealt by paper disposal and this is the decision.

*Background*

1. In summary, the plaintiff alleged that he was assaulted by another person inside the Prince Edward MTR Station on 17 March 2015. He followed the alleged assailant onto the MTR train whilst making 999 calls to the police. According to the plaintiff, two police officers arrived at Kam Sheung Road MTR station and brought both the plaintiff and the alleged assailant to the investigation room at the West Rail Line Yuen Long Station. The plaintiff was later brought to Pok Oi Hospital via an ambulance for medical treatment.
2. The plaintiff commenced the current personal injury action on 7 March 2018 and in the pleadings, he alleged various misconducts by the police in handling the investigation of the alleged assault incident, wrongful arrest / false imprisonment of the plaintiff and improper investigation by the Complaints Against Police Reporting Centre (“CAPO”) etc. causing “mental hardship and related problems” and seeking damages etc.
3. The plaintiff applied for specific discovery of various documents (including audio recordings of 999 calls and various other documents), but the application was substantially dismissed by Master Louise Chan on 12 March 2021, granting specific discovery of only two specific reports.
4. The plaintiff made an appeal against the decision of Master Chan in respect of specific discovery on the audio recordings of the 999 calls that he made on the relevant day.
5. With regard to these 999 calls, the plaintiff claimed he had numerous 999 calls on the relevant day and the content of these calls would be his repeated complaints that i) he was assaulted by someone; ii) the police officers came but were handling his complaint improperly and were “perverting the course of justice”; iii) he was now being “kidnapped” by these police officers; and iv) he would seek assistance and investigation by more senior police officers.

*Hearing on 29 June 2021*

1. The appeal was dismissed by this court on 29 June 2021.
2. Reasons for Decision was given orally during the hearing, which is summarised as follows:
   1. Order 24 rule 7 and 8 of the Rules of the District Court Cap. 336H and the legal principles in the case of Peruvian Guano was explained.
   2. In essence, the defendant has already filed and served an Affirmation stating that the requested audio recordings were not in the possession, custody or power of the defendant because *“records in 999 call centre only kept for 62 days”* (paragraph 13, Affirmation of Ng Pak Wai Victoria dated 13 January 2021)
   3. The plaintiff disputed this but did not give any reasons in his affirmation.
   4. During the hearing, the plaintiff told the court that he understood that the police was using a certain computer system which has a vast memory capable for recording and archiving many hours of audio recordings, so he believed that the Victoria Ng’s evidence was wrong in that the police would still possess those audio recordings.
   5. The court found that even if the plaintiff’s evidence was to be believed, it only went as far to the fact that the system was *capable* of recording and archiving audio recordings, but there was no evidence from the plaintiff to show that the user of the system could not destroy the recordings.
   6. More importantly, it was trite that the answer to such a specific discovery by way of an affirmation was conclusive at the interlocutory stage. If there was any further dispute, it would be for submission to the Judge at trial, for example, raising the question on the credibility of the witness etc.
   7. Further, the plaintiff alleged that the 999 recordings were relevant to the case because of his dispute with the investigation findings of CAPO. However, the pleadings of the plaintiff concerned alleged unlawful arrest / false imprisonment by the police causing personal injuries. Therefore, disputes in the findings in the subsequent CAPO investigation had no relevance to the claim.
   8. The court also needed to consider whether such discovery was necessary for disposing fairly of the cause or matter or for saving costs. The court found no such necessity.

*Legal principles for leave to appeal*

1. The legal principle for leave to appeal is trite: section 63A (2) of the District Court Ordinance, Cap 336 provides that:

*“Leave to appeal shall not be granted unless the judge…hearing the application for leave is satisfied that—*

1. *the appeal has a reasonable prospect of success; or*
2. *there is some other reason in the interests of justice why the appeal should be heard.”*
3. The plaintiff, in his skeleton submission, referred to various laws or principles on pleadings, criminal procedures, hearsay evidence etc. These are irrelevant to the current application or to the procedures of specific discovery.
4. In summary, the main ground for appeal raised by the plaintiff was that, whilst he agreed with the principle that *“the respondent may answer an application for specific discovery by an affidavit stating that he does not have the documents, and this will be conclusive at the interlocutory stage”*, he argued that this principle could not be applied when the affidavit was *“untrustworthy”*, contained *“fraudulent misrepresentation”* and / or *“hearsay”* and as such, the court had erred in law.
5. However, the plaintiff failed to refer to any law or precedent to support his argument. It was a bare assertion.
6. In short, the plaintiff was simply rehashing the same argument which had already been raised, heard and dealt with on 29 June 2021: he disputed the evidence in the Affirmation of Ng Pak Wai Victoria regarding the audio recording. As such, he has not raised any reasonable arguments concerning any error of the court in the findings of facts or the application of law in that decision.
7. Therefore, the court is not satisfied that the appeal has any reasonable prospect of success, nor that there is some other reason in the interests of justice why the appeal should be heard.
8. The application is therefore dismissed with costs of the application be to the defendant. The defendant shall within 14 days of this order lodge and serve a summary bill of costs. The plaintiff shall within 14 days thereafter lodge and serve a summary list of objections failure of which the plaintiff be deemed not raising any objections on costs. Costs will be summarily assessed by way of paper disposal.

(Harold Leong)

District Judge

The plaintiff appeared in person

Mr Louie Chan, Government Counsel, of Department of Justice, for the defendant