## DCPI 1217/2016

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 1217 OF 2016

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##### BETWEEN

LAU MING LEE（劉明莉） Plaintiff

### and

SECRETARY FOR JUSTICE for and on behalf of

DIRECTOR OF AGRICULTURE, FISHERIES

AND CONSERVATION Defendant

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Before: His Honour Judge MK Liu in Chambers (Open to Public)

Date of Hearing: 26 September 2017

Date of Decision: 26 September 2017

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DECISION

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1. By a summons filed on 30 June 2017 (“the summons”), the plaintiff applies for leave to appeal from my decision handed down on 2 June 2017 (“the Decision”), in which I ordered that the plaintiff’s statement of claim filed on 30 November 2016 be struck out on the ground that it discloses no reasonable cause of action and the plaintiff’s action be dismissed. The facts have been set out in the Decision and I do not repeat the same herein. For ease of reference, the abbreviations used in the Decision are adopted in the paragraphs below.

*The principles*

1. Leave to appeal from the District Court to the Court of Appeal is governed by the District Court Ordinance (“DCO”), s 63A(2), which provides:-

“(2) Leave to appeal shall not be granted unless the judge, the master or the Court of Appeal 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.”

1. The principles concerning DCO s 63A(2) are trite. A succinct summary of those principles can be found in a recent Court of Appeal’s decision *Yuen Oi Yee Lisa v Charoen Sirivadhanabhakdi and Others* (HCMP 3305/2015, 18 February 2016), in which Poon JA said:-

“8. Under section 63 of the District Court Ordinance, Cap 336, an appeal to the Court of Appeal from a judgment, order or decision of a District Judge in any civil cause or matter may only be made with leave. Section 63A(2) goes on to provide that leave to appeal shall not be granted unless the Judge or the Court of Appeal hearing the application is satisfied that the appeal has a reasonable prospect of success or there is some other reason in the interests of justice why the appeal should be heard.

9. It is well established that leave to appeal under section 63A(2) **is not lightly granted**. **Reasonable prospects of success** involves the notion that the prospects of succeeding must be reasonable and therefore **more than fanciful, without having to be probable**: see *SMSE v KL* [2009] 4 HKLRD 125, per Le Pichon JA at [17].” (Emphasis added)

1. As to the “some other reason” limb, the court may grant leave under this limb if there is an issue which the court considers that in the interest of the public should be clarified by the Court of Appeal. See *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538. However, even if there is an issue which may need clarification, if the “clarification” would not change the outcome of the appeal, the court may still refuse to grant leave.

*Grounds of appeal*

1. Mr Wong, counsel for the plaintiff, put forward several grounds of appeal. Those grounds in fact can be summarized in 2 points:-
2. P’s Proposition that in a criminal investigation, a law enforcement officer generally owes a duty of care to the suspect is arguably a correct statement of law notwithstanding the Court of Appeal’s decision in *Liu Mei Huei v Government of the HKSAR* [2016] 2 HKLRD 249.
3. It is arguable that a reasonable law enforcement officer may not regard the plaintiff as “keeper” of the said Dog for the purposes of s 25 of the RO, in that the plaintiff neither owned the said Dog nor had it in her possession at the time of the said Incident. Any deficiencies in the statement of claim can be cured by appropriate amendments.

*No reasonable prospect of success*

1. As to whether P’s Proposition is an arguable point of law, with respect to Mr Wong, he is repeating the arguments made in the previous hearing. For the reasons set out in the Decision, [11]-[19], I have rejected those arguments and ruled that P’s Proposition is unarguable. My view remains unchanged. In my judgment, the plaintiff does not have a reasonable prospect of success in overturning my ruling on this point.
2. Since the plaintiff does not have a reasonable prospectus of success in establishing that P’s Proposition is an arguable legal proposition, her case must come to an end. The point made by Mr Wong as summarized in §5(b) above does not assist the plaintiff at all.
3. For the sake of completeness, I have also considered the submissions made by Mr Wong concerning the point as summarized in §5(b) above. Mr Wong submits that whether the plaintiff should be considered as the “keeper” of the said Dog should be determined by reference to the time of the said Incident. In my view, one should not overlook that the plaintiff started §1 of the statement of claim with these words, ie “*At all material times ......*”, which must include the time of the said Incident. Notwithstanding Mr Wong’s submissions, for the reasons set out in the Decision, [21]-[31], I am of the same view that a reasonable law enforcement officer may well regard the plaintiff as the keeper of the said Dog for the purposes of the RO. With respect to Mr Wong, I do not regard the plaintiff has any reasonable prospect of success in appealing against my ruling.

*Some other reason?*

1. Mr Wong further submits that there is some other reason in the interests of justice that the appeal should be heard, and that some other reason is that the Court of Appeal may take the opportunity to clarify whether the duty of care as suggested in P’s Proposition exists in Hong Kong notwithstanding the *Liu Mei Huei* case. In my judgment, this is saying the same thing in another way. Mr Wong in fact is still suggesting that P’s Proposition is an arguable point of law notwithstanding the *Liu Mei Huei* case. I have already rejected the submissions and ruled that P’s Proposition is unarguable. With respect to Mr Wong, I do not think there is anything unclear which has to be clarified by the Court of Appeal.
2. Further, for the reasons set out in the Decision, [21]-[31], even if P’s Proposition is arguable, I am of the view that the plaintiff’s case is bound to fail. This is another reason for declining leave under the “some other reason” limb.

*Disposition*

1. The plaintiff has failed in demonstrating any reason justifying for leave to appeal being granted. I therefore dismiss the summons.
2. Having heard submissions on costs, I am of the view that costs of the summons should be to the defendant. I order that costs of the summons be to the defendant, with a certificate for counsel. I summarily assess those costs at HK$10,000.
3. I thank Mr Wong and Mr Chik for the assistance rendered to the court.

( MK Liu )

District Judge

Mr Anson Wong Yu Yat, instructed by Y H Yeung & Associates, for the plaintiff

Mr Edward Chik, Government Counsel, of Department of Justice, for the defendant