



Summary of Judgment

Secretary for Justice (“SJ”) v Cheng Lai King (鄭麗琮) (“Defendant”)

HCMP 1256/2020; [2020] HKCFI 2687

Decision : Defendant liable for civil contempt and sentenced to 28 days’ imprisonment, suspended for 12 months, and liable to pay SJ’s costs on indemnity basis

Date of Hearing : 19 October 2020

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Background

1. On 25 October 2019, the Court of First Instance (“CFI”) granted an injunction order (“**Doxxing Injunction**”)¹ to SJ as the guardian of public interest and to the Commissioner of Police on behalf of the police officers, restraining anyone from:-
 - (a) using, publishing, communicating or disclosing the personal data of and concerning any Police Officer(s), Special Constable(s) and/or their family members, intended or likely to intimidate, molest, harass, threaten or pester them without consent;
 - (b) intimidating, molesting, harassing, threatening or pestering any Police Officer(s) , Special Constable(s) and/or their family members; and
 - (c) assisting, causing, counselling, procuring, instigating, inciting, aiding, abetting or authorizing others to commit or participate in any of the aforesaid acts.
2. During the social unrest, a female Indonesian journalist’s eye was injured in Wanchai on 29 September 2019. There was an allegation that a Police Officer (“**the subject officer**”) was responsible for the injury.
3. Upon Police investigation, the Defendant was found to have made a post on her Facebook page at around 10:35 a.m. on 24 March 2020 (“**Post**”). The Post forwarded another post made by one Facebook user “Cryana Chan” in another Facebook group named “西環變幻時” (“**Westerndistrict**”) which appears to be extracted from the Telegram channel “老豆搵仔” (“**Dadfindboy**”) showing the personal data of the subject officer . In the Post, the Defendant further added the words “如

¹ The order was amended on 28 October 2019, re-amended on 31 October 2019, continued and varied on 8 November 2019, and further amended on 11 December 2019.

果這名警員是有良知的？請自首！以眼還眼” (“If this officer has conscience, please surrender! An eye for an eye”). The status of the Post was “Public”.

4. While the Post was found to have been deleted at around 6:00 p.m. on 24 March 2020, the Post had attracted wide publicity. As a result of the Post, the subject officer and his wife have been subjected to abuse including having received nuisance calls and having been victims of unsolicited deliveries.
5. In light of the breach of the Doxxing Injunction, SJ commenced the present civil contempt proceedings against the Defendant. The Defendant having admitted liability for civil contempt in early October 2020, the CFI dealt with sentencing on 19 October 2020.

Issues in dispute

6. The two questions for determination are :-
 - (a) the appropriate sentence; and
 - (b) costs.

Department of Justice’s Summary of the Court’s rulings

(full text of the CFI judgment at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=131371&QS=%2B&TP=JU)

7. On the appropriate sentence, the Court held that the appropriate starting point in this case is one of an immediate custodial sentence, having regard to the general principles on sentencing in civil contempt and the aggravating features of the case, set out as follows.
8. The general principles include:-
 - (a) Court orders are to be obeyed. Contempt of civil court orders is a serious matter.
 - (b) The normal penalty for breaches of injunction orders is imprisonment measured in months.
 - (c) Imprisonment for a wilful failure to observe a court order can often be appropriate, but imprisonment should be regarded as a sanction of last resort in civil contempt. Where the contempt was not deliberate or not contemptuous, it would be rare that a sentence of imprisonment would be appropriate. (§65)

- (d) The Court made it clear that the ruling in Chan Oi Yau Riyo [2020] HKCFI 1194 did not state that if the offending activity takes place before that Judgment (which is 17 June 2020), the offending person would avoid an immediate custodial sentence. The starting point for the consideration of the sentence of a contempt of the Doxxing Injunction will be an immediate custodial sentence, perhaps measured in months. (§§97-98)
9. The aggravating features of this case include:-
- (a) The potential for fast and widespread dissemination on social media or the internet makes these breaches worse rather than less serious. It is easy to post something on social media or the internet with just a few clicks or keystrokes, but the effects can be far wider and last for far longer. It raises the requirement for carefully considered action, and to have regard to the rights and freedoms and legitimate expectations of persons who might be affected by that action. (§§71, 75, 80-81)
- (b) The impact of doxxing on victims is severe and long-lasting. The chilling effect on society when individuals or targeted groups or sectors of the public are intimidated into silence or suppressed for fear of being victimised by doxxing. (§§75, 82)
- (c) Doxxing is capable of constituting criminal activity. Thus, all persons should consider the consequences of their chosen actions before the actions were performed, irrespective of whether that action might or might not breach a court order. (§84)
- (d) The Defendant is a well-known public figure, that her Facebook page was widely followed, and that the contents were widely shared in the community. Such potential influence and inherent dangers should be guarded. (§§75, 85)
10. The CFI then took into account the following mitigating factors including, the Defendant's good character, the significant time spent by her in public service, that the offending conduct appears to be one-off, that she is quick to take advice and to remove the Post, that she is quick to cooperate with the Police, that the Post was a reposting although she appended additional words, that she promises not to reoffend and her acceptance of full responsibility for her actions. (§§87-91)
11. On the basis of costs, the CFI accepted that the usual order in a successful contempt proceeding is for costs to follow the event and to be payable by the person found guilty of contempt on indemnity basis. The CFI finds

no reason to depart from the usual order in the circumstances of this case.
(§§93, 96)

Civil Division
Department of Justice
19 October 2020