



Summary of Judgment

Secretary for Justice (“SJ”) v Chan Po Hong (陳寶康) (“Defendant”)

HCMP 2199/2021; [2022] HKCFI 1468

Decision : Defendant liable for civil contempt and sentenced to 14 days’ imprisonment, suspended for 12 months, and liable to contribute towards SJ’s costs in the sum of HK\$6,000

Date of Hearing : 17 October 2022

Date of Judgment/Decision : 17 October 2022

Background

1. On 30 October 2020, the Court of First Instance (“CFI”) granted an injunction order (“**Judges Doxxing Injunction**”)¹ to SJ as the guardian of public interest restraining anyone from:-
 - (a) using, publishing, communicating or disclosing to any other person the personal data of and concerning any Judicial Officer(s) and/or their spouses and/or their respective family members, intended or likely to intimidate, molest, harass, threaten or pester any of them without the consent of the person concerned;
 - (b) intimidating, molesting, harassing, threatening or pestering any Judicial Officer(s) and/or their spouses and/or their respective family members;
 - (c) assisting, causing, counselling, procuring, instigating, inciting, aiding, abetting or authorising others to commit or participate in any of the aforesaid acts.
2. On 6 December 2020, a judicial officer (“**the judicial officer**”) and his wife received a total of 8 nuisance calls on their respective mobile phones. The judicial officer did not pick up the 2 nuisance calls made to his phone while his wife picked up 3 of the 6 nuisance calls made to her phone. The caller did not utter anything.
3. The Police traced the nuisance calls to the Defendant’s phone number. On 5 March 2021, the Defendant was arrested. Under caution, he admitted that he made the nuisance calls for fun. Upon forensic examination of the Defendant’s phone, it was discovered that his phone

¹ The order was continued on 13 November 2020.

contained a screenshot of a message extracted from a Telegram channel containing the personal data of the judicial officer and his wife, which was created immediately before the nuisance calls.

4. In light of the breach of the Judges Doxxing Injunction, SJ commenced the present civil contempt proceedings against the Defendant. The Defendant indicated that he did not intend to contest liability on 11 May 2022, and the CFI dealt with sentencing on 17 October 2022.
5. Separately, on 1 June 2021, the Defendant was charged with one count of making persistent phone calls contrary to section 20(c) of the Summary Offences Ordinance, Cap. 228. The matter was adjourned on the ground that the committal proceedings for civil contempt have been brought.

Issues in dispute

6. The question for determination is the appropriate sentence.

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=148007&QS=%28CHAN%2BPO%2BHONG%29&TP=JU)

7. In determining the appropriate sentence for civil contempt, the general principles include:
 - (a) The appropriate starting point for breach of the Judges Doxxing Injunction is one of an immediate custodial sentence, and one perhaps measured in months. (§32)
 - (b) Breaches of the Judges Doxxing Injunction are by their nature more serious than breaches of the Police Doxxing Injunction, since such breaches directly undermine public confidence in the very machinery by which justice is administered. (§33)
 - (c) Though the Court shall sentence the Defendant for the particular acts carried out by him, it must be recognised that the problem of doxxing is that the individual actions of one person are almost inevitably merely part of the overall actions of many persons. (§59)
8. In imposing the sentence in the present case, the Court took into account the following factors:-
 - (a) The Defendant's personal circumstances. This is not to lessen culpability, but to recognise the Defendant's own circumstances at the time of his actions. (§61)

- (b) The Defendant's acts were at the minor end of the scale of the various doxxing harassment directed at the judicial officer and his wife. (§62)
 - (c) The delay in bringing these contempt proceedings was not so great as to weigh significantly in the balance and the Defendant has been allowed to move on. (§63)
 - (d) There were two sets of proceedings (namely, the present civil contempt proceedings and the parallel criminal proceedings) with potentially two punishments hanging over his head. (§65)
9. In the particular circumstances of this case, the appropriate sentence is one of a custodial sentence of 14 days, suspended for 12 months. (§73)
10. On the question of the parallel criminal proceedings, it was accepted that the contempt proceedings could proceed on the assumption that there should be no double punishment. (§70)
11. As regards costs, the Court accepted that the usual order in a successful contempt proceeding is one against the contemnor on an indemnity basis. Nevertheless, the usual order can be departed from having considered the particular circumstances of the case, including the financial capacity of the contemnor and the overall proportionality. In exercising its discretion, the Court ordered the Defendant to contribute a sum of \$6,000 to SJ's costs for the period up to 2 May 2022 (before the granting of legal aid), with costs be to SJ on an indemnity basis (summarily assessed in the sum of \$81,800) after that date. (§§74-76)

Civil Division
Department of Justice
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