



Summary of Judgment

Secretary for Justice (“SJ”) v Yip Sin Man (葉倩敏) (“Defendant”)

HCMP 539/2022; [2023] HKCFI 983

Decision : Defendant liable for civil contempt and sentenced to 21 days’ imprisonment, suspended for 12 months, and liable to contribute towards SJ’s costs in the sum of HK\$30,000

Date of Hearing and Decision : 12 April 2023

Date of Reasons for Decision : 14 April 2023

Background

1. On 25 October 2019, the Court of First Instance (“CFI”) granted an injunction order (“**Police Doxing 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) and/or their family members, intended or likely to intimidate, molest, harass, threaten, pester or interfere with them without consent;
 - (b) intimidating, molesting, harassing, threatening, pestering or interfering with any Police Officer(s) and/or their family members; and
 - (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 September 2020, a police officer intercepted and subdued a 12-year-old girl who fell on the ground during an unlawful public procession in Hong Kong (“**the Incident**”).
3. On the following day, the Defendant published a post (“**the Post**”) on her Facebook account showing the personal data of a police officer (“**the Police Officer**”) who was said to be the officer involved in the Incident. The Post contained a link to a Telegram message, which contained the

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

personal data of the Police Officer and his sister. The Post also stated “記得唔好 share 出去呀” (“remember, do not share to others”), “為大家介紹” (“introducing to everyone”), “2020/9/6 推跌 12 歲小妹妹個隻狗” (“the dog who pushed the 12-year-old little girl on 2020/9/6”) and “老豆搵仔料” (“Material from ‘Dadfindboy’”). The Post was publicly accessible to anyone with connection to the internet.

4. As a result of the Post, the Police Officer and his sister were subject to doxxing on social media platforms and nuisance, harassment and intimidation of varying degrees of severity. The Defendant removed the Post of her own volition on 8 September 2020.
5. In light of the breach of the Police Doxxing Injunction, SJ commenced the present civil contempt proceedings against the Defendant. The Defendant indicated that she did not contest liability on the first day of trial on 22 November 2022, and the CFI dealt with sentencing on 12 April 2023.

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=151881&QS=%2B%7C%28HCMP%2C539%2F2022%29&TP=JU)

7. In determining the appropriate sentence for civil contempt, the general principles include:
 - (a) Court orders are to be obeyed. Contempt of civil court orders is a serious matter. (§§37(1) & 40)
 - (b) Subject to mitigation factors, the starting and primary penalty for contempt of court in breaching injunction orders is imprisonment, normally measured in months. (§37(3))
 - (c) Imprisonment should be regarded as a sanction of last resort in civil contempt. Where the contempt was not deliberate or not contumelious, it would be only in very rare circumstances that a sentence of imprisonment would be appropriate. For a wilful failure to observe a court order, imprisonment can often be appropriate. (§37(4), (6) & (8))
8. In imposing the sentence in the present case, the Court took into account the following factors:-

- (a) The fact that the Post was short-lived is beside the point. Once personal data has been publicly revealed on the internet or social media, even if the original point of revelation is subsequently removed, that personal data will almost certainly forever remain publicly available. The facility to broadcast and publish material widely makes these breaches worse, rather than less serious. (§§41 & 51)
 - (b) The fact that the Defendant stated in the Post “remember, do not share to others” was evidently an attempt to incite viewers of the Post to share the personal data of the Police Officer to others and to breach the Police Doxxing Injunction. This is an aggravating factor, and this made the breach more serious. The Defendant must have known and intended what the Post might achieve. (§§52, 55)
 - (c) The fact that the breach occurred unthinkingly, impulsively or out of anger is not a strong mitigating factor, particularly in the context of the spread of personal data over the internet or social media, where the making of a few keystrokes could have significant and lasting effect. (§55)
 - (d) The Defendant removed the Post of her own volition the day following the Post was published. (§§53(1) & 56(1))
 - (e) The act of the Defendant was not at the most serious end of the spectrum. The Post was a reposting, rather than the initiation of the personal data breach. (§§53(3) & 56(2))
 - (f) The Defendant’s personal circumstances. (§56(3)-(11))
 - (g) The delay between the publishing of the Post and the commencement of these proceedings. To an extent, the consequences of the Defendant having made the Post have hung over her for a considerable period of time (this may in part be reflected in her apparent unwillingness or inability to engage in these proceedings). (§57)
9. After taking into account the circumstances of the case, the appropriate sentence is one of a custodial sentence of 21 days, suspended for 12 months. (§58)
10. 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, approaching costs by requiring payment of a contribution only, may also reflect the appropriate degree of proportionality when the penalty

and costs can be regarded as composite elements of the proceedings' impact on a defendant. The Defendant is thus ordered to contribute a sum of HK\$30,000 to SJ's costs in these proceedings. (§§59-61)

Civil Division
Department of Justice
14 April 2023