

HCMP 937/2020
[2020] HKCFI 3128

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
MISCELLANEOUS PROCEEDINGS NO 937 OF 2020**

IN THE MATTER of an Application
on behalf of KOO MING KOWN
against CHAN CHI MONG,
HOPKINS for an Order of Committal

and

IN THE MATTER of an Order dated
3rd June 2020 granted in High Court
Action No 2337 of 2016

and

IN THE MATTER of Order 52 rule 3,
Rules of the High Court

BETWEEN

KOO MING KOWN Applicant

and

CHAN CHI MONG, HOPKINS Respondent

Before: Hon Au-Yeung J in Court

Date of Hearing: 14 December 2020

Date of Judgment on Sentence: 21 December 2020

J U D G M E N T O N S E N T E N C E

Introduction

1. This judgment is to be read with my judgment dated 4 November 2020 whereby I found the charge of contempt of court proved beyond reasonable doubt against the Respondent.

2. The Order that was breached required the Respondent to produce his PhD certificate (“**Certificate**”) and to provide further and better particulars. The contempt in relation to provision of further and better particulars was purged on 29 October 2020, about a week before the hearing of the committal proceedings took place.

3. The contempt in relation to the Certificate has not been purged. The Respondent only produced an apostillized copy of the Certificate. Inexplicably, it now appears that the Respondent has 2 “original” Certificates, which were never produced.

Undisputed principles on sentencing

4. The relevant sentencing principles have been summarised in *Bruno Arboit as sole liquidator of Highfit Development Co Ltd v Koo Siu Ying (No 2)* [2016] 3 HKLRD 154 at §§2 to 8, Au-Yeung J:

“2. The starting-point is to acknowledge that contempt of civil court orders is a serious matter and that court orders are made to be obeyed. A prime consideration of the court in sentencing contempt is to ‘signal importance of demonstrating

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to litigants that the orders of these courts are to be obeyed'. By 'litigants', it is clearly referring to litigants in general and not just the contemnor himself.

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3. The object of the sentence is both to punish conduct in defiance of the court's order and to serve a coercive function by holding out the threat of future punishment as a means of securing the protection which the order was primarily there to do. ... The court has to balance the 2 objects.

4. The sentence for contempt may range from a fine to a term of imprisonment. The UK Contempt of Court Act 1981 imposes a maximum term of 2 years' imprisonment but Hong Kong does not have that statutory limit.

5. Imprisonment should be regarded as a sanction of the last resort. Any custodial sentence should be as short as possible consistent with the circumstances of the case.

6. The court may suspend a term of imprisonment for such period or on such terms as the court deems fit: ... Order 52, rule 7. This is an "absolute discretion" but it would be difficult to think of circumstances where a suspended order should be made when nothing further remains to be done to comply with the order.

7. The court will consider if there are:

- (a) Aggravating factors;
- (b) Mitigating factors; and
- (c) Acts to purge the contempt.

8. Relevant factors (which are not exhaustive) include:

- (a) The nature of the order and breach in question, and the extent of the breach.
- (b) Whether the contempt was contumacious or unintentional, the reasons, motives and state of mind.
- (c) Whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy.
- (d) Whether the contemnor appreciates the seriousness of the deliberate breach.
- (e) Whether the contemnor has cooperated."

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5. The Court should examine the context in which the contempt had arisen, the effect of the breach on the Applicant, the aggravating factors, the mitigating factors and the personal circumstances of the respondent.

6. Where there are aggravating factors of the respondent being uncooperative and dragging his feet before the application for leave to commit for contempt was made, an immediate custodial sentence of 3 months may be appropriate: see §43 of *Bruno Arboit v Koo Siu Ying (No 2)*, *supra*.

7. Where there were two or more distinct breaches, either consecutive or concurrent terms may be appropriate and it is incumbent on the court to clarify which approach is being adopted: *Miller on Contempt of Court*, 4th ed, §12.115.

8. The burden of proving that the contempt has been purged rests on the respondent. It does not have to be beyond reasonable doubt but there must be credible evidence to satisfy the court of the purging.

Context in which the contempt has arisen

9. The Order was simple in terms. There should be no difficulty in understanding what needed to be done. The Respondent has had many chances before and after commencement of the contempt proceedings to comply with the Order, which were not taken. He had been warned by the Applicant's solicitors of the serious consequences of non-compliance by letters. Despite DHCJ Le Pichon's remark that he was *prima facie* in contempt, he persisted in his non-compliance. He even evaded service of the originating summons.

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10. The Respondent claimed that he had a lapse of judgment and delayed in giving instructions to his solicitors to comply with the Order. These were hollow excuses as he had knowledge of the Order and had not delayed in seeking to appeal against other parts of DHCJ Le Pichon’s order.

Steps to purge the contempt

11. The further and better particulars were provided only 4 months after the deadline under the Order.

12. As for the Certificate, the Respondent (or his former solicitors at one time) has all along been in possession of what he considered to be the original until he handed it to his current solicitors to comply with the Order.

13. The Respondent did purport to produce his Certificate but it turned out to be an apostillized copy (“**Apostillized Certificate**”). He averred that this was the only certificate that he had ever been given upon completion of his doctorate degree at the European University of Ireland. He had always thought that it was the original.

14. After the Apostillized Certificate was produced for inspection, the Applicant’s solicitors quickly drew to the Respondent’s attention that the original certificate (“**1st Certificate**”) had been produced earlier in a related case, HCA 1619/2014. The Applicant sought the Respondent’s consent to produce a copy of the photo of the 1st Certificate to the Court.

15. That suggestion was brushed aside by the Respondent on the excuse that no leave has been obtained from the Court to disclose

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documents used in another case. The Respondent maintained that the 1st Certificate was the same as the Apostillized Certificate.

16. On the morning of this hearing, the Respondent lodged his 3rd affidavit and emails from the Applicant, which disclosed without doubt that the 1st Certificate and Apostillized Certificate were not the same. The material visual differences of the 2 Certificates are that:

- (a) The golden seal on the left bottom of each document has different orientation;
- (b) The position of the signature of the Academic Vice-President on each document is different from the other; and
- (c) The signature of the Academic Vice-President on each document is not identical to each other.

17. The Respondent had checked with his former solicitor in HCA 1619/2014 but the latter could not recall if the certificate he had seen was the original or not. The Respondent then surmised that the 1st Certificate was lost or misplaced. He claimed that his mixing up of the 2 Certificates was due to honest and genuine mistake.

18. This Court does not have to resolve the questions of whether there was more than one original, whether they were genuine or not and whether the Respondent had made an honest mistake. Those are for trial. What is relevant is that the Respondent's attitude in purporting to produce the Certificate under threat of contempt proceedings was cavalier and unnecessarily contentious.

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19. In summary, not only had the Respondent dragged his feet but the breach of the Order was totally inexcusable and egregious. His apology to the Court carried little weight.

Prejudice to Applicant

20. I agree with Mr Yu SC that the failure to supply the further and better particulars has hindered the proceedings in HCA 2337/2016. The prejudice was, however, limited, having regard to the fact that the case has only reached the stage of close of pleadings notwithstanding its commencement in 2016.

21. In relation to the Certificate, the Applicant seeks a declaration in HCA 2337/2016 that the Respondent is not a fit and proper person to serve as the supervisor of Hong Kong Pui Ching Primary School, on the basis that he has falsely claimed that he had a doctorate degree. The Certificate is referred to in the Respondent's defence.

22. Without the Certificate, the case could still proceed. It would only strengthen the Applicant's case. Accordingly, the non-production of the original Certificate caused limited prejudice to the Applicant.

Mitigating factors

23. The clear record of the Respondent is irrelevant. As stated in *Bruno Arboit*, §37, the public must not be misled to believe that there is always one chance of disobeying a court's order.

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B 24. Similarly, the Respondent’s contribution to society is B
C irrelevant as his breaches were not purportedly to benefit society. C
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E 25. The personal financial condition of the Respondent is relevant D
E only to quantum in the event a fine is imposed. There is no suggestion that E
F if he received a custodial sentence, someone would be left without care. F
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H 26. The hostile series of litigation is not a mitigating factor in G
H itself. It is, however, relevant as part of the overall circumstances to H
I consider. I
J 27. As pointed out by Ms Leung, the Applicant has commenced J
K no less than 10 cases since 2014 against the Respondent and other parties. K
L The recurrent theme therein was the Respondent’s alleged false doctorate L
M degree and how he has allegedly brought disrepute to the organizations that M
N he served. Out of those 10 cases, 6 were struck out. N
O
P 28. The Respondent claims that the Applicant spared no expense O
P to bring him down. The litigation has cost the Respondent time, costs, his P
Q management posts in Pui Ching schools and various organizations, and loss Q
R of his post as INED in listed companies. The litigation caused the alumni R
S to be badly divided. The litigation has not come to an end despite the S
T Respondent stepping down as supervisor to the Pui Ching Primary School. T
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V 29. The Applicant has been criticized as a “vindictive litigant” V
conducting a “personal campaign” against the Respondent’s academic
record. The multiple proceedings premised on the same allegation have
been described as a campaign of “vilification rather than a genuine attempt

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to seek relief from the court: *Koo Ming Kown v Securities & Futures Commission*, HCA 2599/2016, 21 July 2017, Master M Wong.

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30. In HCA 1619/2014, 2 June 2017, A Chan J even refused to grant leave to the Applicant to commit the Respondent for contempt. A Chan J stated that the Applicant's own case suggested that he may be a vindictive litigant. There was an obvious risk that the contempt proceedings would be used by him to harass the respondent prior to conclusion of that action (§22).

31. Despite these judicial comments on the Applicant's litigation conduct, there was no excuse for the Respondent to flout a court order.

32. What I consider to be relevant is that, although not a valid defence, there was a ring of truth when the Respondent said he did not want to face the reality that his professional and social status was crumbling down due to the Applicant's personal vendetta and the Respondent had only wanted a moment of escape.

33. The Respondent has already suffered loss of reputation and his breach of Order relating to the Certificate may have adverse impact on his defence in HCA 2337/2016, a case where precisely his doctorate degree and integrity are in issue. Litigation is still going on between the Applicant and the Respondent and it is important for the Respondent to abide by court orders instead of "escaping from them".

34. Overall, the mitigating factors are the Respondent's admission of liability, expression of remorse, the little prejudice caused to the Applicant and the overall progress of the case.

The appropriate sentence

35. Although imprisonment is a sanction of the last resort, the Respondent's conduct justifies a term of imprisonment for 2 weeks in relation to the provision of further and better particulars and 6 weeks in relation to the Certificate. As the 2 limbs of the Order were interlocutory in nature and were supposed to be performed in close proximity of time, the sentences should run concurrently.

36. I have considered the authorities in which the sentence was suspended: *Secretary for Justice v Chan Oi Yau Riyo* [2020] 3 HKLRD 494, Coleman J; *Secretary for Justice v Cheng Lai King* [2020] HKCFI 2687, Coleman J. The damage to the victims caused by the defendants' breach of an anti-doxxing injunction in both cases was more far-reaching than in this case. However, the defendants were quick in purging the contempt. In the present case, purging of the contempt as regards the Certificate is nowhere in sight. I therefore decline to suspend the sentence.

Costs

37. Costs are in the discretion of the Court. I take into account all the circumstances, in particular the conduct of each party and the question of proportionality highlighted in §14 of PD14.3.

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38. The Applicant has put forth a costs statement in the region of \$2 million for proceedings that lasted about 6 months. I shall not engage in a mini-taxation but will only deal with matters of principle and in a broad brush approach.

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39. Notwithstanding the Respondent's concession (rightly, in my view) to bear indemnity costs, and his own conduct in relation to the Certificate which increased the costs of the Applicant, I find the amount claimed to be disproportionate to the issues at stake:

- (1) The Court is most grateful to Mr Yu SC for his assistance. However, given the simple nature of the Order and the conduct in contempt, the engagement of senior counsel was disproportionate to the issues at stake. The costs claimed were more of a harassment on the Respondent than justified by complexity of the proceedings.
- (2) The issue taken as to truthfulness of the further and better particulars was unnecessary in the present proceedings.
- (3) The amount of time spent by solicitors on perusal, legal research and preparation for hearings was excessive, given the engagement of counsel.
- (4) No costs are chargeable for preparing and approving a costs statement, whatever the basis of costs awarded.

40. I therefore make an order that the Respondent do bear the Applicant's costs, with certificate for one junior counsel, on indemnity

basis. On a *nisi* basis, I summarily assess the costs in the amount of \$500,000.

Order

41. I commit the Respondent for contempt and sentence him to 2 weeks' imprisonment for failure to provide further and better particulars and 6 weeks' imprisonment for failing to produce the original Certificate. The imprisonment shall run concurrently, making a total of 6 weeks.

42. Costs of these contempt proceedings are to be borne by the Respondent on indemnity basis. On a *nisi* basis, the costs are summarily assessed in the amount of \$500,000.

43. I thank counsel for their assistance.

(Queeny Au-Yeung)
Judge of the Court of First Instance
High Court

Mr Benjamin Yu, SC leading Ms Bianca Yu, instructed by How & Co, for the Applicant

Ms Joyce Leung, instructed by K.M. Lai & Li, for the Respondent