

HONG KONG / JUDGMENT

HKSAR v. CNT SECURITY CO LTD

COURT

Court of First Instance

DECIDED

22 June 2007

CASE / FILE NUMBER

HCMA887/2006

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bjbj HCMA887/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 887 OF 2006 (ON APPEAL FROM KTS 13906 13911 OF 2005)

BETWEEN HKSAR Respondent and CNT SECURITY COMPANY LIMITED Appellant (mended notice of motion in which Mr McCoy invites the court to certify as points of law of great and general importance the following matters arising from the judgment of this court delivered on 31 May 2007

- (a) Whether the term housing allowance or other housing benefit in the definition of relevant income in s.2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap.

485) is to be construed as encompassing only actual and real expenses of that nature;

- (b) Whether notification of unsubstantiated complaint(s) of a similar nature by the regulatory authority, namely the Mandatory Provident Fund Authority, constitutes a reasonable excuse, available pursuant to s.43(1) of the Mandatory Provident Fund Schemes Ordinance for non-compliance of the requirement to make requisite payments under that Ordinance.

AUTONUMOUT In the course of the judgment, it was necessary for the court to construe the provisions of section 2(1) of the Ordinance in respect of the term relevant income , namely any wages, salary, leave pay fee, commission, bonus, gratuity, perquisite or allowance (other than a housing allowance or other housing benefit) expressed in monetary terms, paid or payable by an employer (directly or indirectly) to the relevant employee in consideration of his employment under that contract AUTONUMOUT In the course of so construing that provision at paragraph 36 of the judgment, this court said this (it) is to be construed as encompassing only actual and real expenses of that nature and not the mere attribution of that description to a part of an employee s monetary payments. AUTONUMOUT It is the phrase actual and real expenses that resonates in the terms of question

- (a) that is sought to be certified as of great and general importance. Whilst I accept Mr McCoy's submission that the judgment of the court does impact upon the appellant's business, it being the employer now of over 1,500 employees, and whilst it may be that other employers may be affected in a similar manner and notwithstanding Mr McCoy's attractive argument, I am not satisfied that the issue of law that arises is one that is of great and general importance. AUTONUMOUT The question sought to be certified by question
- (b) arises from the determination of this court in its judgment of the issue of whether or not the appellant company had a reasonable excuse for its conduct, which defence is available under the Ordinance. The issues that fell to be determined were, as Mr McCoy has candidly acknowledged, factual matters and in my judgment discreet to this appeal. I am not satisfied that an issue of law of great and general importance arises thereby.

Conclusion

AUTONUMOUT In the result, I declined to certify the two questions as being issue of law of great and general importance. I have in mind to make no order as to costs unless either of the party have any other submission. No order as to costs. (Michael Lunn) Judge of the Court of First Instance High Court Mr Liu Yuen Ming, SGC of Department of Justice, for HKSAR Mr Gerard McCoy, SC, instructed by Messrs Leung, Chan & Pang, for the Appellant PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V &`#\$ "5Ld !tdO ~QbJJ ~Qb] !tdO & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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