

HONG KONG / JUDGMENT

YUEN OI YEE LISA v. ROBERT LAM**COURT**

Court of First Instance

DECIDED

18 October 2007

CASE / FILE NUMBER

HCA2742/2006

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bjbj HCA2742/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE ACTION NO. 2742 OF 2006

BETWEEN YUEN OI YEE LISA Plaintiff and ROBERT LAM Defendant

Coram: Hon. Lam J in Chambers (Open to the public) Date of Hearing: 18 October 2007 Date of
Judgment: 18 October 2007

J U D G M E N T

The purpose of today's hearing is to consider whether this matter should be transferred to the District Court. There is also a side issue in terms of whether Miss Yuen should get default judgment. Dealing with the question of default judgment first, as I said in the course of the hearing, the order of Master Wong has not been drawn up. But from what is said or written on the record by way of endorsement to the time summons, what the master ordered is that the plaintiff be at liberty to apply for leave to enter default judgment against plaintiff if the time limit is not observed. The time expired on 11 October and the defence was only filed on 12 October so technically the plaintiff is entitled to apply for default judgment. But whether she will get it is another matter: the defence having been filed and subsequent to that Miss Yuen filed a reply to defence on the same date, 12 October 2007. It is well established that once you take a subsequent step in the proceedings you are regarded as having waived previous irregularities. So in these circumstances it is not possible for this court to grant Miss Yuen default judgment. Coming back to the question of transfer, Miss Yuen objects on the basis that the matter is outside the jurisdiction of the District Court. I do not agree. As I have said, costs is never taken into account in deciding whether the matter is within the jurisdiction of the District Court. So even on Miss Yuen's own reckoning, even if interest can be taken into account, the matter is within the

jurisdiction of the District court. Further, I do not think in the present context it is correct to include a claim for interest by way of calculating the value of the claim for the purpose of deciding the question of jurisdiction. Thus, as a matter of law, the claim is within the jurisdiction of the District Court. The question is whether I should exercise my discretion to have the case transferred. I think, as a matter of discretion, a number of considerations arise. Firstly, as far as a claim is within the jurisdiction of District Court the prima facie position must be that this case should be litigated in the District Court. It is a matter of allocation and deployment of judicial resources. Judges in the High Court have other matters to deal with. If a case is within the jurisdiction of District Court, unless there are compelling reasons and good reasons, I am of the view that the matter should be litigated in the District Court. Miss Yuen submitted that I have been seized with the matter for quite some time and it would be burdensome to another judge, be it District Court or High Court, if I were to transfer the matter to them. I do not agree. I have tried to summarise the main issues in this action in my judgment of 8 August 2007. Hopefully, that would provide some assistance to whoever has to take on the case. In fact, the case is still at an early stage. Pleadings has been closed, so the next step is discovery and the filing of witness statements. It is only then the case can be considered for setting down for trial. So we are still at a relatively early stage of the action. Another consideration I bear in mind is that I have imposed an RAO against Miss Yuen concerning this action. That means she will have to come back to me to apply for RAO leave for steps to be taken in the progress of this action. Though I do not regard this factor alone would automatically require the trial of the case to be heard by another judge, in the present context, bearing in mind the numerous correspondence Miss Yuen has written to this court in which there are some allegations against this court, I think it would be in the interests of justice and also the fairness to everybody if I were to let somebody else be the trial judge, whilst at the same time I will be keeping an eye on Miss Yuen by acting as the designated judge in dealing with the applications for RAO leave. Although that logistically may require (in some circumstances) some arrangement to be made between the District Court and this court concerning keeping this court informed of the development in the District Court action, I do not perceive that as an insurmountable difficulty. In the light of all these, I think the matter should be transferred to the District Court and I order that accordingly. To regulate how the matter is to be proceeded in the District Court, I would suggest the District Court, after the file has been transferred to them, to list the matter for directions on the court's own motion. And the District Court will notify the parties as to the hearing dates so parties will know what are the next steps they have to take after the case has been transferred. (M H Lam) Judge of the Court of First Instance High Court Plaintiff, in person, present Miss Lam Wan-chung, Anita, of Messrs Johnson, Stokes & Master, for the Defendant

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