

Case Summary

**HKSAR v Lai Chee Ying (1st Defendant “D1”)
Apple Daily Limited (2nd Defendant “D2”)
Apple Daily Printing Limited (3rd Defendant “D3”)
AD Internet Limited (4th Defendant “D4”)**

HCCC51/2022; [2024] HKCFI 202

(Court of First Instance)

(Full text of the Court’s ruling in English at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=157535&QS=%2B%7C%28HCCC%2C51%2F2022%29&TP=JU)

Before: Hon Toh, Hon D’Almada Remedios and Hon Alex Lee JJ

Date of Hearing: 16 January 2024

Date of Ruling: 16 January 2024

Admissibility of expert evidence – relevance – conspiracy to make request to impose sanctions etc. by a foreign country under NSL 29 – argument based on “comity” not applicable and incorrect in the situation of the present case – lawfulness of sanctions or proposed sanctions to be determined by Hong Kong law

Background

1. The Defendants objected to the admissibility of the evidence of Professor Wang, being two reports (“Reports”) prepared by him dated 17 November 2022 and 15 November 2023, on the ground that it was irrelevant for the purpose of proving the elements of charges, being a conspiracy to request a foreign country to impose sanctions, blockade or hostile activities against the HKSAR or the PRC, contrary to NSL 29.
2. The prosecution sought to adduce the Reports in order to: (i) identify the sanctions, blockade or hostile activities imposed or being considered by the United States (“US”) against certain senior officials of the Central

Government and the HKSARG as well as Hong Kong as a Special Administrative Region; and (ii) explain their legal effects such as impact, consequence and time limit.

3. There was no dispute as to Professor Wang's qualification as an expert of American Law.

Major issue under consideration

- The relevance and admissibility of expert evidence in the context of a conspiracy charge under NSL 29.

Summary of the Court's rulings

4. The Court noted that evidence is relevant if it is logically probative or disprobative of some matter which requires proof, and observed that "relevance" is a matter of degree and is context specific. (para. 3)

5. The Court found that as the offences in question were conspiracies to make request to a foreign country for sanctions, blockade or hostile activities, contrary to NSL 29, the fact that such sanctions, blockade or hostile activities had in fact been imposed or proposed by a foreign country, depending on the other evidence, may provide some circumstantial support to the prosecution's case about the existence and scope of the conspiracies charged. (para. 4)

6. The Court noted the proposition that "comity" is observed by the recognition of the mutuality of the obligations that states undertake towards each other and it is in the interest of comity that courts of one state would refrain from sitting in judgement upon the internal affairs of another. However, the court rejected the defence argument based on "comity", which suggested that it was beyond the judicial functions of the Court to investigate into the reasons behind the imposition and engagement of the alleged sanctions, blockade or hostile activities by other foreign countries, as being not applicable and incorrect in the present case, for the following reasons:

- (1) a foreign country has no right to interfere with the way in which Hong Kong strives to preserve its core values of rule of law and law and order;
- (2) if sanctions are imposed or proposed by a foreign country with a view to influencing the internal affairs of Hong Kong, then mutual respect which is the very foundation of “comity” is not there, not because of any “investigation” or determination of this court, but by the act of the foreign country; and
- (3) in principle, it is the law of Hong Kong that determines whether or not the sanctions or proposed sanctions would be lawful. In this regard, by NSL 36 an offence shall be deemed to have been committed in the HKSAR if an act constituting an NSL offence or the consequence of the offence occurs in the Region. (para. 5)

7. The Court agreed that where a foreign law is relied upon, it is regarded as a question of fact to be proved by expert evidence. The function of expert witnesses on a foreign law includes informing the court of the relevant contents of the foreign law, identifying statutes or other legislation, as well as to explain when necessary the foreign courts’ approach to their construction. (para. 6)

Conclusion

8. The Court held that Professor Wang’s evidence as regards the US was useful in assisting it to properly understand the measures that the US had imposed or proposed against the Central Government and/or the HKSAR, and in helping the Court to come to a fully informed decision as to whether those measures were capable of constituting sanctions, blockade or hostile activities for the purpose of NSL 29(4).

9. The Court therefore overruled the defence objection to the admissibility of Professor Wang’s evidence, and found his Reports relevant and admissible as regards the US.