

HCA 855/2023  
[2023] HKCFI 2741

**IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
ACTION NO 855 OF 2023**

---

BETWEEN

SECRETARY FOR JUSTICE

Plaintiff

and

PERSONS CONDUCTING THEMSELVES IN  
ANY OF THE ACTS PROHIBITED UNDER  
PARAGRAPH 1(a), (b), (c) OR (d) OF THE  
INDORSEMENT OF CLAIM

Defendants

Before: Hon Anthony Chan J in Chambers

Date of Ms Chow Hang Tung's Written Submissions: 19 September and  
6 October 2023

Date of the Plaintiff's Written Submissions: 3 October 2023

Date of Decision: 31 October 2023

---

DECISION

---

A  
B  
C  
1. By a Summons dated 21 August 2023, Ms Chow Hang Tung  
seeks a declaration in the following terms :

D  
E  
F  
“A declaration that Ms Chow has since 23 June 2023 (when the  
Writ of Summons was served on her) been a party to these  
proceedings, although not named on the record, and a defendant  
in these proceedings under section 2 of the High Court Ordinance  
(Cap 4);”

G  
H  
I  
J  
K  
2. It should first be made clear what this application is and is not.  
This application is NOT about whether Ms Chow has a right to be heard in  
this action. If she is not a party to this action, she is free to apply to be  
joined either as a party or as an intervener. This application is about  
whether Ms Chow is correct that she is a party to this action by operation  
of the applicable law and rules of the Court.

L  
M  
N  
3. Having considered the skeleton arguments lodged by the  
parties (including one from the Plaintiff (“SJ”) dated 6 July 2023), I see no  
need for an oral hearing to determine this application. It can be disposed  
of on paper as agreed by the parties.

O  
P  
Q  
R  
4. There is a Decision of this Court dated 28 July 2023<sup>1</sup>  
 (“Decision”) by which the SJ’s application for an interlocutory injunction  
 (“Injunction”) against the Defendants was determined. It will be seen  
 from the procedural history below that Ms Chow did not participate at the  
 hearing of the Injunction. The Decision is under appeal by the SJ

S  
T  
U  
V  

---

<sup>1</sup> [2023] HKCFI 1950.

A  
B (“Appeal”), and Ms Chow would like to be heard on the Appeal. Indeed,  
C she has attempted to file a Respondent’s Notice in the Appeal. The desire  
D to participate in the Appeal gave rise to this application.

E 5. The nomenclature used in the Decision is adopted for the  
F present purpose.

G 6. The relevant procedural history will be set out in detail  
H because it reflects on the merits of this application.

I *Procedural history*

J 7. On 5 June 2023, the SJ commenced these proceedings against  
K the Defendants, who are identified by the description: “Persons conducting  
L themselves in any of the Acts prohibited under paragraph 1(a), (b), (c) or  
M (d) of the Indorsement of Claim”. In simple terms, these are acts which  
N endanger national security with the use of the Song known as “Glory to  
O Hong Kong”.

P 8. On the same day, an *inter parte* Summons for the Injunction  
Q was issued. The Injunction sought to prohibit 4 Acts<sup>2</sup> by persons who  
R were conducting those Acts and those who were not conducting the Acts  
S but would conduct the same in the future, ie, “newcomers”<sup>3</sup>.

---

T <sup>2</sup> The terms of the Injunction can be found in the Decision, [21].

U <sup>3</sup> Decision, [39].

V

9. On 12 June 2023, at an *ex parte* hearing (open to the public) of the SJ’s Summons for substituted service, Wilson Chan J made an order (“Service Order”) to the following effect [emphasis added] :

(1) Leave to the SJ to serve the Writ, the Injunction Summons and the Service Order on the Defendants by way of publication online, exhibiting a notice and issuing a press release containing a QR code linking to the webpages (Service Order, [1]);

(2) “Anyone who opposes the [Injunction Summons]” to (i) notify the SJ within 7 days; (ii) provide the personal particulars specified in the Service Order; and (iii) pay photocopying fees, upon which the SJ shall serve copies of the Writ (etc) on the said person(s) ([2]);

(3) “Anyone who opposes the [Injunction Summons]” shall file and serve his grounds of opposition within 7 days thereafter [(3)].

10. By a separate order made on the same day, SJ’s application for Injunction was adjourned to 21 July 2023 (“Hearing”).

11. On 21 June 2023, Messrs O Tse & Co (“OTC”), acting for Ms Chow, faxed a “Notice of Intention to Defend” to the Department of Justice (“DOJ”), signing off as “Solicitors for Intended Defendant”.

12. On 23 June 2023, to comply with [2] of the Service Order, DOJ served copies of, *inter alia*, the documents referred to therein on OTC. In the same letter, DOJ queried whether Ms Chow, as an “Intended Defendant”, had complied with relevant procedures such as the filing of an Acknowledgement of Service.

13. On 26 June 2023, OTC wrote twice to DOJ, as solicitors acting for “Intended Defendant CHOW HANG TUNG”, requesting further documents.

14. On 27 June 2023, DOJ wrote to OTC. Paras 2 and 8 of the letter stated as follows [emphasis added] :

“2. Your letter has not made clear how Ms Chow Hang Tung whom you represent falls within the description of the Defendant in the Writ, namely persons conducting themselves in any of the acts prohibited under paragraphs 1(a)-(d) of the Indorsement of Claim. In particular, it is unclear whether Ms Chow claims that she is or has been broadcasting etc. the Song (as defined in the Indorsement of Claim) with intend to incite secession or with a seditious intend or with intent to insult the national anthem, or whether she is or has been assisting or authorizing etc. others to do so. We therefore do not accept that Ms Chow has the necessary locus to join or participate in the proceedings as an Intended Defendant as you stated in your letter.

...

8. We look forward to receiving your client’s grounds of opposition by 30 June 2023. Further, please note that we are liaising with you and serving papers on you solely in the interests of saving time and costs despite: (i) your client has not demonstrated how she qualifies as an Intended Defendant; and (ii) the procedural irregularity that your client has not filed any Acknowledgment of Service or complied with paragraph

2 of the Substituted Service Order. Please take appropriate steps to rectify the situation and confirm your client’s position in these proceedings forthwith.”

15. On 29 June 2023, OTC replied. It is an important letter by which Ms Chow’s position on her status was made clear :

- (1) Ms Chow did not need to show *locus* as she was not seeking leave to apply for judicial review;
- (2) there was a distinction in the Service Order between “Defendants” (Service Order, [1]) and “anyone who opposes the [Injunction]” ([2]), and that “persons opposing the application for [Injunction] are not necessarily the Defendants”;
- (3) Ms Chow “gave notice pursuant to [Service Order, [2]] as a person with intention to oppose the application for [Injunction]” without admission that she was a Defendant; and
- (4) “The reference to “the intended Defendant” in paragraph 1 of our letter dated 26 June 2023 was a reference to Ms Chow’s status as an additional party to these proceedings other than the existing defendants”.

16. On 4 July 2023, Ms Chow filed her Grounds of Opposition in which she was referred to as the “Opposing Party”. Paras 32 to 35 of that document addressed the issue of *locus* as follows :

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

**“Locus**

32. The questions and issues outlined above arise out of or relate to or are connected with the relief or remedy claimed in this Action and/or the interim relief or remedy claimed in the Summons. It would be just and convenient for the said questions and issues to be determined between the Opposing Party and the Plaintiff as well as between the Plaintiff and the Defendants.
33. It is unlikely that any of the Defendants will reveal himself or herself and appear to defend the Action against them or oppose the Summons.
34. There are aspects of the public interest in the legal questions and issues raised by the Opposing Party and outlined above which are of general importance and are not sufficiently represented by either the Plaintiff or the Defendants (who are likely to be absent).
35. The decision to be made in the Action and the Summons involves strong public interest elements and the Opposing Party may, through her participation in the Summons, assist this Honourable Court and enable it to strike the right balance between competing considerations.”

17. The document concluded as follows :

“AND FURTHER TAKE NOTICE that, by opposing the [Injunction Summons] pursuant to paragraphs 2 and 3 of the [Service Order], the Opposing Party does not admit that she is one of the Defendants described in the Writ of Summons.”

18. On 5 July 2023, OTC issued a Notice to Act for the “Opposing Party”.

19. On 6 July 2023, “to avoid delaying the [Hearing]”, DOJ wrote to the Court (copied to OTC) with enclosed submissions seeking an urgent

determination on Ms Chow's *locus*. On 8 July 2023, OTC responded by writing to the Court, *inter alia*, seeking leave to file submissions in reply if the Court was minded to determine the issue of *locus* prior to the Hearing.

20. On 10 July 2023, this Court gave Directions, paras 2 and 3 of which were as follows [emphasis added] :

“2. The Grounds of Opposition of Ms Chow has been read by the Judge, and a copy of the document will be provided to the amici curiae. Where appropriate, points of merits set out in the document will be considered by the court for the purpose of the Injunction Application;

3. Unless and until there is a proper joinder application, it is unnecessary to consider Ms Chow's *locus*. It should be made clear that the filing of Grounds of Opposition does not entitle Ms Chow to appear as a party or to make submissions at the hearing on 21 July 2023;”

21. The Directions went on to provide for the management of the Hearing, namely, lodging of skeleton arguments by the SJ and the *amici*, and for the service of all relevant papers by the former on the latter. It should be noted that due to the tight time frame the last set of skeleton arguments would only be lodged in the morning of the 17 July 2023, 3 days before the Hearing (not counting the day of Hearing).

22. On 14 July 2023, OTC filed an Acknowledgement of Service and a 2<sup>nd</sup> Notice to Act. In the Acknowledgement, Ms Chow was described as “One of the PERSONS CONDUCTING THEMSELVES IN ANY OF THE ACTS PROHIBITED UNDER PARAGRAPH 1(a), (b), (c)



A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

OR (d) OF THE INDORSEMENT OF CLAIM”. The 2<sup>nd</sup> Notice to Act stated that OTC were acting as solicitors of Ms Chow, “a Defendant in these proceedings”.

23. After the lodging of the last set of skeleton arguments pursuant to the Directions dated 10 July 2023, on 18 July 2023 OTC wrote to the Court asserting, *inter alia*, that Ms Chow had become a party within the meaning of s.2 of High Court Ordinance, Cap 4 (“Ordinance”) in that she was given notice of these proceedings on 23 June 2023. In addition, the letter stated that Ms Chow would appear by counsel at the Hearing, and that her counsel “will endeavour to file Skeleton Arguments before the hearing, upon obtaining copies of the skeleton arguments for the [SJ] and the *amici curiae*”.

24. On the same day, the Court directed that it “would like to have the [SJ’s] response to the letter of [OTC] dated 18 July 2023 as soon as possible and not later than 12:30pm on 19 July 2023”.

25. On 19 July 2023, DOJ wrote to Court, maintaining the SJ’s position that Chow had no *locus* to participate in these proceedings.

26. Later on 19 July 2023, this Court gave the following directions :

- “1. It is not at all clear from the letter of O Tse & Co. dated 18 July 2023 (Letter) why Ms Chow is a party to these proceedings, especially when she had previously made clear that she is not a defendant to these proceedings;

- A
- B
- C
- D
- E
- F
- G
- H
- I
- J
- K
- L
- M
- N
- O
- P
- Q
- R
- S
- T
- U
- V
2. Ms Chow is represented and must be aware (1) of the SJ's disagreement to her *locus* and (2) this court had made clear on 10 July 2023 that she should join as a party to these proceedings in the absence of which she would not be entitled to appear as a party to the proceedings or to make submissions at the forthcoming hearing;
3. If Ms Chow has in mind to address the court on issues on public interest, there is nothing to stop her to apply to intervene in these proceedings;
4. Regrettably, Ms Chow has chosen not to make any joinder application, and the court is deprived of the opportunity to properly manage the hearing, especially if there is to be another party;
5. It is now too late to allow any disruption to the hearing on 21 July 2023 in respect of which the court has a duty to resolve expeditiously;
6. Ms Chow is the author of the situation and the requests in the Letter are declined.”

27. The Hearing proceeded as scheduled. The Decision was handed down on 28 July 2023. On 7 August 2023, the SJ filed a Summons seeking leave to appeal against the Decision. On 21 August 2023, Ms Chow took out the present application. Leave to appeal was granted by this Court on 23 August 2023.

*Issues*

28. The lynchpin of Ms Chow case is the reliance on s.2 of the Ordinance. In addition, Ms Chow also contends that the Writ and notice of proceedings were served on her on 23 June 2023 and she acknowledged service and gave notice of intention to defend on 14 July 2023.

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

29. Representing the SJ with Mr Chang SC and Ms Cheung PGC, Mr Yu SC submitted that, firstly, on Ms Chow’s own case, she is not a Defendant to this action, and she is required to show that she has some interest in the matters for her to be joined. She has not done so. Her reliance on the general definitions of “party” or “defendant” in s.2 of the Ordinance or the Service Order does not dispense with the need for her to comply with the rules for a joinder.

30. Secondly, Ms Chow’s application is an abuse of process. Her request to take part without a joinder was rejected by this Court on 10 July 2023 (see para 20 above) and on 19 July 2023 (para 26 above). If she is dissatisfied, the proper course is for her to seek leave to appeal (by now she is out of time), rather than to mount a collateral challenge by seeking a declaration that she is entitled to take part without a joinder, circumventing the hurdle for leave to appeal.

*S.2 of the Ordinance*

31. To begin with, Ms Chow has been inconsistent on why she is a party to these proceedings. The assertion that she had become a party by virtue of s.2 of the Ordinance was made to the Court only on 18 July 2023, 2 days before the Hearing.

32. Before the 18 July 2023, Ms Chow’s stance was that she was a party by virtue of being an “opposing party” under the terms of the Service Order. I am unable to agree that the Service Order was either

intended to or had the effect of creating a new category of party, namely, “anyone who opposes the [Injunction]”.

33. Plainly, para 2 of the Service Order was a case management direction dictated by the unusual circumstances of the case. In particular, it was uncertain whether anyone or how many people would come forward to resist the Injunction Summons. It was therefore imperative to put in place measures for the purpose of informing the Court the number of such persons and their grounds of objection so that the matter could then be properly managed. The Court had the duty to deal with matters of national security expeditiously, which could only be achieved with proper case management.

34. It is simply baffling as to why Ms Chow had not taken out a joinder application even after the Directions given on 10 July 2023. No doubt Ms Chow was alive to the imminence of the Hearing, the need for the Court to manage the conduct of the Hearing and the need for her to prepare for the hearing in synchronization with other parties.

35. It appears that the change of tact with the reliance on s.2 was a response to the 10 July 2023 Directions. S.2 is the interpretation section of the Ordinance. It provided various definitions under the parenthesis: “In this Ordinance, unless the context otherwise requires”. The definitions include :

“*defendant* (被告人) includes any person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings;

...

*party* (一方、方) includes every person served with notice of or attending any proceeding, although not named on the record;”

36. To avoid conflation, it must be borne in mind Ms Chow’s unequivocal stance that she is not a Defendant. The letter of OTC dated 29 June 2023 and Ms Chow’s Grounds of Opposition leave no scope for argument (see paras 15 to 17 above). Put another way, she does not fall within the description of Defendants. Parties who are not named by the SJ may be joined in this action by invoking the rules on joinder of parties.

37. Does the Service Order assist Ms Chow in this application? One must be clear on the scope of the Service Order. On careful reading of it, in particular para 1 thereof, the substituted service process would only apply to Defendants. In other words, people like Ms Chow, who do not fall within the description of Defendants, cannot claim to have been served under the Service Order. With respect, this may undermine Ms Chow’s application, save possibly for her reliance on service which took place on 23 June 2023.

38. If I am wrong, it appears to this Court that the definition provisions must be read with common sense bearing in mind the parenthesis. It cannot conceivably be right that, in the circumstances of this case where the identities of the Defendants were unknown and the

A  
B Service Order was granted, anyone and everyone who had been served  
C would become a Defendant. C

D 39. I agree with Mr Yu that the implausibility of Ms Chow's  
E contention is obvious: by virtue of the Service Order, everyone in Hong  
F Kong had been served with notice of the proceedings. A literal  
G application of s.2 would mean that everyone in Hong Kong is a "party" and  
H can just appear without showing either that he/she is a defendant, or that  
I he/she has an interest which makes it proper for him/her to be joined.  
J This is untenable. H

I 40. Whilst this Court accepts that public interest is engaged in this  
J action, it is not correct that anyone can come forward, makes a claim to  
K speak for the public interest and automatically becomes a party because  
L he/she has been served pursuant to the terms of the Service Order. The  
M judicial process in Hong Kong is sophisticated with well-established rules  
N which provide for orderly resolution of disputes. People who are not  
O conducting any of the 4 Acts can apply to be joined in this action as an  
P intervener to speak for the public interest. On Ms Chow's case, she  
Q belongs to such a group. It should also be pointed out that there is no  
R suggestion by Ms Chow that she intends to carry out any of the 4 Acts in  
S the future. P

Q 41. I agree with Mr Yu that the specific provisions in O.15 of the  
R RHC, in particular O.15, rr.4 & 6, which laid out the rules on parties and  
S joinders that only a proper party who can demonstrate a legitimate interest  
T  
U  
V

A  
B in the outcome of the action (or application) should be allowed to take part  
C in the action would be a situation where the context “otherwise requires”.  
D In other words, where the Court is concerned with the question whether a  
E person should or should not be joined, the Court would apply the specific  
F rules under O.15, r.6, and not the general definitions in s.2 of the Ordinance.

F 42. Ms Li SC, who represents Ms Chow with Mr Kwan, Mr Wong  
G and Ms Leung, submitted there is an absurdity in the SJ submissions in that,  
H according to the SJ, a party must admit that he is conducting or propose to  
I conduct himself in any of the acts sought to be restrained before he can be  
J allowed to be heard.

J 43. In my respectful view, the proposition misses the point that  
K Ms Chow’s unequivocal stance is that she is not a person conducting or  
L propose to conduct herself in any of the Acts. Her entitlement to be heard  
M depends on meeting the requirements for joinder either as a party or as an  
N intervener. There was no inhibition for her to make such an application.

N 44. In *Hong Kong Housing Authority v Hsin Yieh Architects &*  
O *Associates Ltd* [2005] 1 HKLRD 801, [7]-[11], the Housing Authority  
P sought to serve a summons on the defendant’s insurer in Germany for the  
Q purpose of holding it liable for the costs of its proceedings against the  
R defendant. There was a difficulty because the relevant statutory  
S provisions did not allow the Court to make costs awards against a non-  
T party. The Housing Authority argued that the insurer should be declared  
U a party to the proceedings by relying on s.2 of the Ordinance. Reyes J  
V

A  
B declined to do so, and instead made an *ex parte* order joining the insurer as  
C a defendant under O.15, r.6(2)(b).  
D

E 45. *Hong Kong Housing Authority* was considered by DHCJ Poon  
F (as he then was) in *Re Aurasound Speakers Ltd* [2005] 4 HKLRD 382.  
G The issue there was whether the Court had jurisdiction to make an order  
H for costs against a director of a company who opposed the winding up of  
I that company. In the context of s.54A(2) of the Ordinance (which  
J governed costs against non-parties), the Court took the view that where a  
K party intended to seek costs against a non-party, he had to either satisfy the  
L Court that the non-party was in fact a “party” within the meaning of s.2 of  
M the Ordinance or apply to join the non-party to the proceedings. It was an  
N *obiter dicta* because the application was decided on the basis that the  
O director was not a party to the proceedings. S.52A(2) had since been  
P amended to enable the Court to order costs against non-parties.  
Q

R 46. The above authorities were cited to this Court by the parties.  
S With great respect, I am unable to derive much assistance from them. It  
T appears from §§9 and 10 of the Decision in *Hong Kong Housing Authority*  
U that the claim that the insurer was a party under s.2 of the Ordinance was  
V rejected on the facts of that case. In respect of *Aurasound*, the *dicta*  
concerned the Court’s jurisdiction under s.52A(2), which was a provision  
in the Ordinance. Here, the Court is concerned with whether Ms Chow is  
a party to these proceedings bearing in mind the relevant circumstances of  
this case and the provisions under O.15, rr.4 and 6.



A  
B 47. A host of other cases had been cited to this Court by Ms Li.  
C I do not believe that any of those cases supports the proposition that a  
D person who is, on his own case, not a defendant and has failed to take out  
E any joinder application should be allowed to take part in the proceedings  
F because he has been served with notice of the same under an unusually  
G wide substituted service order made under exceptional circumstances.

H 48. I agree with Mr Yu that those cases are distinguishable and do  
I not assist Ms Chow<sup>4</sup>.

J 49. This Court has also been referred to a number of authorities  
K in Ms Li's reply submissions in support of Ms Chow's case on how the  
L phrase "unless the context otherwise requires" should be understood,  
M namely, *Savoy Hotel Co v London CC* [1900] 1 QB 665, 669; *Dilworth v*  
*Commissioner of Stamps* [1899] AC 99, 105-106; *Lisbeth Enterprises Ltd*  
*v Luke* (2006) 9 HKCFAR 131, [15]; and *M v SS for Work and Pension*  
*[2006] QB 380, [84]*.

N 50. With great respect, these authorities concerned different  
O circumstances and are distinguishable. In respect of the "workability"  
P test adopted in *Lisbeth* ([20]), in my view it would not be workable to apply  
Q the s.2 definition of "party" to someone who is not. To do so would mean  
R that proceedings in which A is sued but wrongly served on B would render  
S B a party to the same.

S  
T  
U  
V  

---

<sup>4</sup> See SJ's Reply Submissions, [30]-[38].

*Service on 23 June 2023*

51. The facts very much speak for themselves (see in particular paras 11 to 15 above). The service of documents by the DOJ on OTC on 23 June 2023 was plainly premised on the belief that Ms Chow was a Defendant, and to comply with [2] of the Service Order. The belief was no doubt induced by the Notice of Intention to Defend served by OTC on the DOJ on 21 June 2023. However, the DOJ acted swiftly in seeking clarification from OTC about Ms Chow’s status. After the clarification and in due course, Ms Chow’s *locus* was challenged by the DOJ.

52. The issue before the Court is one of substance. I am unable to see how Ms Chow can legitimately take advantage of the service on 23 June 2023. She knew that she was (and is) not a Defendant. I fail to see any basis for estoppel by convention as contended on behalf of Ms Chow (see Chitty on Contracts, 34<sup>th</sup> edn, vol 1, [6-116] to [6-119]). The proposition was put forward as a bare assertion without elaboration.

53. For these reasons, this Court is unable to accept that Ms Chow has been a party to this action since the service of the papers on her on 23 June 2023. It is unnecessary to deal with the SJ’s submissions on abuse of process.

*Disposition*

54. For the above reasons, Ms Chow’s Summons is dismissed with costs. I see no reason why costs should not follow the event, but I

A  
B am unable to agree with Mr Yu to award costs on indemnity basis. I make  
C an order *nisi* that the costs of and occasioned by this application be paid by  
D Ms Chow with a certificate for 2 counsel, to be taxed if not agreed.

E 55. Last but not least, I am grateful to counsel for their assistance.  
F  
G  
H

I ( Anthony Chan )  
J Judge of the Court of First Instance  
K High Court

L Mr Benjamin Yu SC, Mr Jonathan Chang SC and Ms Leona Cheung PGC,  
M instructed by Secretary for Justice, for the Plaintiff

N Ms Gladys Li SC, Mr Steven Kwan, Mr Albert NB Wong and Ms Yvonne  
O Leung, instructed by O Tse & Co, for Ms Chow Hang Tung  
P  
Q  
R  
S  
T  
U  
V