



31 March 2021
Ref : Chans advice/239

To: Transport Industry Operators

Small Claims Tribunal

The Hong Kong High Court issued a Decision on 22 January 2021 dealing with an appeal against a Small Claims Tribunal's award concerning a dispute over a container terminal's storage charges. [HCSA 44/2020] [2021 HKCFI 200]

Introduction

The claim was a straightforward claim by Ocean First Container Storage Ltd against its customer Easy 2 Learn Ltd for storage fees, at the monthly cost of \$4,100, for the 8 months October 2019 to May 2020 inclusive, totalling \$32,800, together with a sum of interest of \$1,804. The total amount claimed was subsequently reduced to take account of a prepayment amount of \$1,554 made by Easy 2 Learn Ltd, and payments made by Easy 2 Learn Ltd after the filing of the claim totalling \$10,000. That left the balance of claim at \$23,050.

The Small Claims Tribunal

The original hearing of the claim was scheduled for 17 July 2020. On 5 July 2020, Easy 2 Learn Ltd applied by letter to adjourn that hearing for the reason that there were no staff in the company in Hong Kong to represent Easy 2 Learn Ltd.

The Tribunal refused the application. Easy 2 Learn Ltd was informed that it might send a representative to attend the hearing. Easy 2 Learn Ltd was also warned that if Easy 2 Learn Ltd (or its representative) failed to attend the hearing, the Tribunal might make such order in its absence as the Tribunal deemed fit.

However, Easy 2 Learn Ltd was absent on 17 July 2020. On that date, the hearing was adjourned to 28 August 2020. But by fax dated 24 August 2020, Easy 2 Learn Ltd applied to postpone the hearing. The Small Claims Tribunal then directed the matter to be dealt with at the hearing on 28 August 2020.

On 28 August 2020, Easy 2 Learn Ltd failed to attend the hearing. Judgment in default in the sum of \$23,050 was entered by the Small Claims Tribunal.

On 8 September 2020, Easy 2 Learn Ltd filed an application to set aside the award. The hearing was fixed on 3 December 2020.

Easy 2 Learn Ltd alleged that: (1) the managing director Ms Kabalan was the only representative in the case and the only person who knew about the facts of the case, and there was no other employee in Easy 2 Learn Ltd; (2) the representative of the case was out of Hong Kong; and (3) Easy 2 Learn Ltd had a dispute on the amount claimed by Ocean First Container Storage Ltd.

Easy 2 Learn Ltd also mentioned that Ms Kabalan's husband, who was the manager of Easy 2 Learn Ltd, was locked in Saudi Arabia and she could not leave the office as that might make them face

heavy loss in their business and there would be problems if the office was left unattended. Easy 2 Learn Ltd had been using the storage service and paying monthly rent since 2017. Easy 2 Learn Ltd believed the amount claimed by Ocean First Container Storage Ltd was not correct, and it was very important to check the account files when she would be back in Hong Kong, as all record files were in Hong Kong.

On 17 November 2020, Easy 2 Learn Ltd applied by letter to postpone the hearing of the application to set aside the award scheduled for 3 December 2020. Easy 2 Learn Ltd relied on the same reason that Ms Kabalan could not return to Hong Kong.

A direction was given on 19 November 2020 that Easy 2 Learn Ltd might apply for adjournment of the hearing to an agreed date, if Ocean First Container Storage Ltd provided written consent. If no such consent, the hearing would be conducted as scheduled. Ocean First Container Storage Ltd refused to consent to the adjournment.

Easy 2 Learn Ltd was absent at the hearing on 3 December 2020. Ocean First Container Storage Ltd attended and informed the Tribunal that the failure to pay storage fees had continued from June 2020 to December 2020 as well.

The Small Claims Tribunal pointed to the eight factors which might be taken into account as guidelines on an application to set aside an award having been made in the Tribunal. Applying those factors, and noting that Easy 2 Learn Ltd had no meritorious defence and no real prospect of success, the Small Claims Tribunal doubted the significance of having Ms Kabalan to attend the hearing to defend the claim. In the absence of any concrete evidence to support the chance of successfully overturning the judgment, the Small Claims Tribunal dismissed the application to set aside the previous award.

Leave to appeal

Easy 2 Learn Ltd applied to the High Court for leave to appeal pursuant to section 28 of the Small Claims Tribunal Ordinance, which limits appeals from the Tribunal to appeals on points of law (including matters of jurisdiction).

The application for leave to appeal said that the grounds on which leave to appeal was desired were that the award/order was outside the jurisdiction of the Tribunal in that (capitals in original, sic):

1. THE ORDER WAS TAKEN ON THE ABSENCE OF THE DEFENDANT'S REPRESENTATIVE.
2. THE DEFENDANT REPRESENTATIVE HAS ASKED THE COURT TO ADJOURN THE HEARING DATE.
3. THE ADJOURNMENT REQUEST BY THE DEFENDANT REPRESENTATIVE WAS REFUSED BY COURT.
4. THE DEFENDANT'S REPRESENTATIVE HAS ALREADY PRESENTED TO THE COURT EVIDENCE DOCS SHOWING THAT SHE IS OUT OF HONG KONG.

Whether Leave to Appeal

There was actually no point of law sought to be raised by the intended appeal, and the place on the application form where any point of law might have been raised was struck through.

Rather, the application for leave suggested only that the making of the award/order was outside the jurisdiction of the Tribunal. According to the High Court, it was plainly within the jurisdiction of the Small Claims Tribunal to have dealt with the hearing, and no error of law was suggested.

There was no attendance by anyone on behalf of Easy 2 Learn Ltd at the High Court's hearing to support the application. Nor had there been any prior filing of any argument or other materials as

might be put forward to support the application.

Irrespective of the absence of any representative for Easy 2 Learn Ltd, there was clearly no merit whatsoever in the application for leave to appeal.

Easy 2 Learn Ltd was afforded every proper opportunity to attend hearings, and was properly informed of its ability to appoint representatives who might attend on its behalf. Easy 2 Learn Ltd must be taken to have chosen not to attend, by its apparent insistence that Ms Kabalan be the representative notwithstanding her continued absence from Hong Kong.

Plainly, it was within the jurisdiction of the Small Claims Tribunal to have dismissed the application to set aside the previously entered award.

But in any event, the Small Claims Tribunal carefully considered the materials and formed the view that no defence had been raised with any reasonable prospect of success. Not only was there no proper basis to interfere with that view, the High Court considered it to be entirely correct.

It was abundantly clear that there was no defence to the claim, and that Easy 2 Learn Ltd had simply delayed payment of storage charges for which it was liable. Easy 2 Learn Ltd could not have misunderstood the basis of the charges, or the basis of interest accruing on unpaid charges. Easy 2 Learn Ltd had also continued to avail itself of the storage services, whilst apparently continuing in its failure to pay for them. No proper basis for not paying had ever been identified.

There was no basis for the grant of leave to appeal.

The application for leave was dismissed by the High Court.

Please feel free to contact us if you have any questions or you would like to have a copy of the Decision.

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