

**Court of First Instance of the High Court
Civil Action Nos. 282 and 283 of 2005**

Background Paper

Brief Summary of Events and Proceedings

On October 6, 2004 I submitted a modest claim (C1) with the Labour Tribunal in an effort to recover unpaid wages that I had earned while in the defendant's employ at the Buddhist Yam Bing Yim Memorial School.

This was done after strenuous effort to obtain the cooperation of the Buddhist Yam Bing Yim Memorial School to insure that Mr. the defendant's contract with the school would not be endangered after my departure (C2, C47-C58 in particular C47, C52, C54, C55, C58). To the best of my knowledge, a new teacher was found within a month after my departure (C58), the defendant's contract with the school was continued (C58), and the defendant was properly remunerated for the work that I had performed (C54).

Thus, there should have been nothing standing in the defendant's way from paying me the wages that I had dutifully earned (C4, C54) and urgently required to secure my own debts (C84, C96, C105, C106, C108, C110), business (C-78, C-88, C-91, C-93), and abode (C2, C29, C111, C116). The defendant refused payment (C2) while well aware of my financial needs (C216).

As a result of the defendant's arbitrary handling with regard to the Chinese Women's Club College contract (C5, C6, C83, C89, C95, C222, C243a, C243b), and his negligence with regard to the Buddhist Lam Bing Yim Memorial School contract (C2, C8, see again C47-C58, D2-3(1 and 2) C246a and b), and his inability to reach compromise (LBTC8193/2004 and eventually LBTC6462/2004), I was forced to vacate my apartment (C62), change my residence (C63-67, C109, C112), and borrow from friends (C96, C110), family (C106, C108) and employers (C105) to make ends meet.

When informed of my further difficulty with the defendant, my landlord (C75), who had also been my dentist (H-02/03/23, H-02/04/16, H-02/04/23b), good friend (C2, C82), and Hong Kong sponsor (C76) for more than two years, suddenly turned on me, failed to honor an oral promise made in June, 2004 (C103, C108, C116), and took court action against me (C-29, Db, Dc). More recently he has also resorted to extralegal procedures (G-05/03/22, G-05/03/23a, b, and c, G-05/03/24) to recover my unpaid and rightfully owed rent (C2, C29, C111, C116, G-05/02/04).

In the middle of October I returned materials to the defendant's office that I had retained from previous courses and presented a copy of my appointment letter (H-04/09/28a) and claim forms (H-04/10/06a and H-04/10/06b) obtained from the Labour Tribunal. It was at this time that I was informed by one of the defendant's office staff (Daisy Wong) that the defendant's address was wrong. After two trips to the the Companies Registry (C14-16, C21-25) my original claim was amended to include two additional addresses (C26). While at the

Companies Registry I learned of three companies with which Mr. Ho Chun Hung was once or is currently affiliated: Time Enterprises Ltd. (defunct), Time Enterprises Publications Ltd., and Wise Power Far East Ltd.

After receiving formal notification of my amended claim the defendant apparently went to the Labour Tribunal and registered a complaint about my having sued the *wrong* company. As a result, I went to the Inland Revenue Department (C11(1-5)) and obtained information about a fourth company called Time Enterprises Co and added it to my original claim as a possible defendant (H-04/11/04a and b).

The information obtained from both the Companies Registry and the Inland Revenue Department were summarized, presented to Frankie Yiu, Presiding Officer, at the Labour Tribunal (C107) on October 30, 2005 and later submitted as evidence on December 28, 2005 (G-04/12/28e, G-04/12/29a and b).

The ambiguity with regard to the legal nature of my contracts with the defendant came about because the agreements and related documents bore a variety of different company names, addresses, and signatures. This confusion was amply, but not completely, documented (C253, C254, C255) for Ms. Ada Yim, Presiding Officer, after a special hearing that she convened on January 6, 2005. Additional information (H-04/12/24, also entered as C256(1 and 2)) regarding this ambiguity was submitted on January 24, 2005, the trial date arranged by Frankie Yiu on December 6.

No matter who Mr. Ho claims to be the legal person with whom I contracted for the Buddhist Lam Bing Yim Memorial School assignment, the only name appearing on our agreement was Time Enterprises. As Mr. Ho uses this name to represent both Time Enterprises Publications Ltd. and Time Enterprises Co, I fail to understand why Ms. Yim rejected my request to add Time Enterprises Publications Ltd. as another potential defendant. Moreover, when I asked for an explanation, none was received (G-05/01/25, G-05/01/27, G-05/01/31, G05/02/03a, G05/02/07, G-05/03/01). This despite my eventual receipt of Ms. Yim's reasons for decision (05/01/24a). Certainly I have always viewed my contractual relationships with Mr. Ho's companies as agreements between Mr. Ho and me.

On November 15, 2004 the defendant filed for damages at the Small Claims Tribunal accusing ME of wasting HIS time. A court date was set for December 17, 2005 (D2-2(1-5)). As it was clear that the defendant would not be easily persuaded, even with the threat of impending legal action, I wrote to the Presiding Officer, Yiu Fun Che, and inquired about the possibility of filing additional claims against the defendant at the Labour Tribunal (C69, C70, C2). These claims and other matters were discussed at the December 7, 2005 hearing. During recess the defendant and I were left to discuss our differences, whereupon I asked the defendant to withdraw his claims at the Small Claims Court, and pay me my dutifully earned wages at the Buddhist Lam Bing Yim Memorial School. Once again, the defendant refused (C72).

As it was clear that the defendant was indifferent to the hardship that he was causing me; believed that he was the only injured party (D2-1(1-6), D2-2(1-5)); and was certain that he owed me nothing, I was left with a decision: one, withdraw my case; two, make no change; or three, sue the defendant for what I

have always believed to be just and fair (C2).

As expected (C68, C72, C73) the defendant's claims were rejected by the Small Claims on December 17, 2004. They were subsequently transferred to the Labour Tribunal as Case No. LBTC 8193/2004.

On December 21, 2004 I was issued a court order (G-05/01/08a) by the Hong Kong Lands Tribunal to pay Dr. Siu for back rent and court costs. Had Dr. Siu honored my June 2004 promise to restart payment in September 2005 (C116), and had the defendant paid me my earned wages for work at the Buddhist Lam Bing Yim Memorial School (C4) and honored the Chinese Women's Club College agreement (C83) this court order never would have come about.

Unable to meet the order issued by the Lands Tribunal and confident that my additional claims, discussed at the December 7 hearing at the Labour Tribunal, could be heard I amended my October 6, 2004 claim against the defendant on December 28, 2004 and added items B, C, D, and E (G-04/12/28a-c) as directed by Frankie Yiu, Presiding Officer, on December 7th. As further directed by Mr. Yiu, I also provided the tribunal with a completed copy (C117) of the tribunal's questionnaire (C117) and my packet of evidence including appendices A, B, C, D, E, and M. These documents were received by Ms. Fung Shuk Fun, Tribunal Officer (G-04/12/28), as Mr. Sung Chi Leung, the Tribunal Officer assigned to LBTC6462/2004, was not present. I also promised to serve my evidence to the defendant before December 30, 2005 (G-04/12/28e). The documents were mailed by registered post on December 29th (G-04/12/29b).

In preparation for a special hearing called by Ms. Yim Shun Yee, the new Presiding Officer assigned to LBTC6462/2004, for the 6th of January, 2005, Sung Chi Leung, Tribunal Officer, requested (H-04/12/24) that I appear at the Labour Tribunal again on December 31, 2004 (G-04/12/31). On this day I provided my Statement of Defense (G-04/12/31) against the defendant's claim submitted to the Small Claims Tribunal and later transferred to the Labour Tribunal as LBTC8193/2004. This statement was served to the defendant on Monday, January 3, 2005 (G-05/01/03) three days before the special hearing held on Thursday January 6, 2005. While in Mr. Sung's office I learned that the defendant had also been requested to appear on December 31, 2005, but has not. I left Mr. Sung's office after closing time.

On January 6, 2005 the defendant and I appeared before Ms. Yim Shun Yee. Neither before December 28, 2005, the due date set by Mr. Yiu Fun Che for submitting evidence in preparation for the January 24 and 25, 2005 hearing, nor before January 6, 2005, the special hearing date set by Ms. Yim, did I receive any written communication from the defendant. In effect, the defendant had not followed Mr. Yiu's orders.

Although far more frustrating than productive (G-05/01/07, G-05/01/13, 05/01/18, 05/01/19), some good was achieved at the January 6, 2005 hearing: one, on January 20, 2005 I withdrew items D and E of my claim against defendant (C252) in order to insure that items A, B, and C would be tried at the Labour Tribunal in a timely manner; and two, I provided Miss Yim with the evidence she required to make a proper judgment with regard to the appropriate legal persons to be tried in my case (C253, C254, C255).

Only at the hearing on January 24, 2005 did I receive a copy of a letter (Da) that the defendant had written to Ms. Yim on January 17, 2005, and notification of two counterclaims (G-05/01/21b and G-05/01/21c) that the defendant had entered against me on January 21, 2005. On January 25, 2005, one day after the hearing, I received a packet (G-05/01/22) in the mail containing copies of the defense's witnesses' statements (Db-f) and copies of my own evidence (Dg-z). The letter addressed to Ms. Yim (Da) was not enclosed. Even if it had taken only one day for the packet to arrive, it would have been impossible for me to receive these document before the hearing on Monday at 9:30 AM, as mail is not normally delivered to my residence until after lunch.

At the January 24, 2005 hearing I was asked by the Presiding Officer where I felt my claims should be tried. I replied at the Labour Tribunal. As I had long since been forced to vacate my Ma On Shan residence, and my chances of returning to Japan were no longer good (C100, C101, C102), time and money were not nearly as pressing as they were on December 7, 2004, when I first requested an early decision. As a result, I gave as my only reason the appropriateness of the venue (C70 and C72). Still, my need should have been apparent to the Principal Officer (C2, C84, C88, C93, C105, C106, C109, C110, C111, C116, and Appendix B).

When Ms. Yim returned from recess she cited Chapter 25 (H-99/10/19), and with no mention of my financial hardship or concerted effort to have the case tried at the Labour Tribunal Court (G-05/01/24a), pushed the entire matter up to the Court of First Instance of the High (G-05/01/24b and c). In addition, she rejected my bid to have Time Enterprises Publications Ltd. added to the list of defendants without explanation and scurried out of the court room (G-05/01/24a).

Despite my direct request to know her reasons for rejecting my bid to have Time Enterprises Publications Ltd. (05/01/25) I was provided with a complimentary copy of her Reasons for Decision with no answer to my question (G-05/01/27, G-05/01/31, G-05/01/03a-i, G-05/02/07, G-05/03/01).

Conclusion

The case now lies before the Court of First Instance of the High Court. It has been brought there by a concerted effort on the part of the defendant to keep it out of the Labour Tribunal and by Ms. Yim's apparent disregard for my financial situation and repeated urging to have the case tried at the Labour Tribunal.

The Defendant

Before closing I would like to draw your attention to several matters that have disturbed me throughout the proceedings at both the Small Claims and Labour Tribunals.

Firstly, rarely did Mr. Wong Yat Ming, Adjudicator, Small Claims Tribunal, and Ms. Yim Shun Yee, Principal Officer, Labour Tribunal, take the initiative to silence the defendant's attempts to soil my good name and person without evidence and speak and write as if he new my mind even before the trial had begun. In addition, while at the Labour Tribunal Ms. Yim failed to reprimand the defendant for his failure to meet court deadlines and follow court orders. Moreover, she permitted the defendant to interrupt while I was speaking to the

presiding officer.

Secondly, the defendant's repeated claims throughout the proceedings, both at the Labour Tribunal and at the Small Claims Tribunal, that I was fully informed about the nature of my contractual relationships are in error, and until January 24, 2005 the defendant had never provided a shred of evidence in this regard (Dd). Even the evidence he did provide is both meager and circumstantial, as I have never had any relationship with the witness, nor do I even know who the witness is.

By way of example, my contract for the Lei Muk Shue Catholic Primary School project was signed in a taxi after substantial argument with one of Mr. Ho's office staff (Tracy) (See D1-6C(1), C222, and C224); and my contract for work at the Buddhist Lam Bing Yim Primary School (D2-3(1)) would have been signed while standing in a railway station in the presence of the defendant, had I not insisted that I speak with the Principal of the school first (C232, C233b, C234, C235a, C236, and D2-3(1 and 2)). The document entitled "Requirements for English Course Instructor for Teaching Projects" dated July 13, 2004 (C-6) was finally signed as a concession to the defendant to move the negotiation forward and attend the interview with Ms. Tsang, Principal, Buddhist Lam Bing Yim Memorial School. My overall impression of the defendant's business has rarely been very positive (H-04/07/13, D04/08/23, C70, C117, etc.) -- this despite the attractive hourly wages that he paid for the type of work I performed under his employ.

Time Enterprises Co is listed at the Inland Revenue Department as a wholesaler of food, household and personal care products, and magazines -- not as a language service provider (C11-2). On the Time Enterprises Publications Ltd. webpage the defendant boasts an M.A. degree. Is it true? There is absolutely no indication of time, place, or field. Just as the defendant has failed to heed the orders of the court; so too, the records at the Companies Registry indicate that he has failed in his recording obligations with the government. These are all things for which evidence can be easily obtained, but in some cases at substantial cost.



Thirdly, the defendant's incessant calls of indecent behavior are disgusting and have only indirect bearing on my claims against him. In effect, they have only to do with whether I did or did not openly and affectively touch primary school children in an effort to help overcome important psychological and physical linguistic barriers developed over years of fondling, hugging, cuddling, kissing, and soft whispers used by parents to endow their children with proper Cantonese speech habits. In my email to Mr. Stephen Cheung, the Senior English Panel Head on October 5, 2004 (C49), I clearly state that, based on school rules that I only learned after my altercation with Ms. Luk (Lut), I should not have touched the children in any manner, let alone pat them on the buttocks in an effort to encourage them to return to their seats as quickly as possible.

Nor do my claims have very much to do with after-the-fact witness statements from employees at the Buddhist Lam Bing Yim Memorial School signed in an effort to hide the school's failure to deal with the incident between Ms. Luk and myself in an adult and open manner (expected forthcoming witness testimonies). Rather they have to do with the defendant's failure to investigate the incident thoroughly and meet with the Senior English Panel Head and

Principal on the day after the incident, as I suggested to the defendant's assistant manager, Ms. Daisy Wong, over the telephone on the day of the incident. The defendant made a hasty decision (C113-Q3) based on a letter written in English (C19) that I believe was drafted by either Miss Lee, the Junior English Panel Head, or Ms. Luk (Lut), the school's Choir Director, and signed by Ms. Tsang Lai Mib, Headmistress, whose understanding of the English language appears to be as poor as my Cantonese. The results of this hasty decision have been catastrophic for me.

Fourthly, I have provided my evidence in a fair, timely, and open manner in an effort to provide all sides with an opportunity to arrive at a just decision and to encourage the defendant to listen to reason. What has the defendant done with this evidence? He has sought to further soil my good reputation (Da, Db, Dc, Df), lodge misplaced claims at the Small Claims Tribunal, and place exorbitant counterclaims at the Labour Tribunal, rather than to try to understand my side of things and seek a reasonable compromise.

I worked under 12 different instructors for three weeks and only Ms. Luk (Lut) took offense with what I was doing (Df). Rather than going to the Senior English Panel Head, as I myself was blamed for not having done, she confronted me with her grievance directly, as I was leaving for a medical appointment (C99). The only evidence that she provide is distorted and attests to something to which I have already admitted doing in my correspondence with the Senior English Panel Head (C49). What does any of this prove with regard to the defendant's own negligence in investigating the incident thoroughly?

Ms. Luk (Lut) was also the only teacher, of whom I was aware, who called me Kiu Kiu, rather than Mr. Kiu, before my students, the only teacher whoever told me that I was rude and discriminatory to my students, the only teacher with a son or daughter in her own class, and the only teacher whom I needed to ask to sit at the back of the room at the beginning of every lesson. What can this witness's testimony possibly offer in defense of the defendant's failure to investigate the facts properly before terminating my contract with the Buddhist Lam Bing Yim Memorial School was terminated?

Dr. Siu Hin Ho, who himself engages in extralegal activities about matters that are already in court hands (G-05/02/04, G-05/02/14), believes that I am "familiar to take advantage and abuse the legal procedures and ordinances for his own benefit". Is this a credible witness?

I have already spoken to the manager of my former residence in Sunshine City, Ma On Shan, about the rumor that the defendant noted in his letter to Ms. Yim (Da), and the manager and I are negotiating possible action.

Ms. Tsang, Headmistress, Buddhist Lam Bing Yim Memorial School, is likely not capable of writing the witness statement that she signed (De), and what she signed does not correspond well with the letter that she apparently faxed to the defendant (D2-4) on the day of the incident.

Surely, many of these matters will become clear to the court when those people from whom the defendant has obtained witness statements are made to appear before the court, are confronted with their statements, and are asked to provide full information and defend their carefully and not so carefully worded remarks.

Summoned Evidence

Until this day I have not seen a copy of the contract between the Buddhist Lam Bing Yim Memorial School and the defendant -- a document that is crucial to the prosecution of my claim. I requested a copy of the contract already on November 11, 2004 (C32, H-04/11/18). Surely a copy has been submitted to the court by the defendant.

Procedural Notes

1. The court documents indicated for each statement are not necessarily all that are available for the statement indicated. I have sought only to include those that are self-explanatory and highlight the presence of a substantive matter.
2. Other than witness statements from the Buddhist Lam Bing Yim Memorial School and the defendant's own labour pool, I have not sought witness statements. I have been waiting until the need arises in an effort not to burden my friends and other people on whom I depend with court matters and tales of unfounded woe from the defendant.
3. Documents are referenced according to two systems: one created by me and one created by the Labour Tribunal. My system is organized by appendix and date of document. For example, the document labeled G-04/12/28d can be found in appendix G in chronological order under 04/12/28. The small-letter d indicates that at least three other documents (a, b, and c) in appendix G share the same date. In this background statement I have altered slightly the system adopted by the Labour Tribunal so that it is not easily confused with my own. Whereas the Labour Tribunal always places a dash between the first letter and first number of the document, I have removed the dash and written the first letter and number together. For example, the Labour Tribunal document C-19 is noted in this background paper as C19 and can be found in appendix A as 04/09/22. The document D-a has been indicated as Da.
4. The order in which appendices A through H were created is neither alphabetical, nor chronological.
 - Appendix B - **B**uddhist Lam Bing Yim Memorial School - e-mail correspondence with the Senior English Panel Head
 - Appendix M - **eM**ail with the defendant and his office staff.
 - Appendix D - **D**ocuments
 - Appendix A - Supplemental documents to appendix D
 - Appendix G - Supplemental documents to appendices A and D recording events after December 28, 2004.
 - Appendix H - Supplemental documents to appendices A and D recording events before December 29, 2004.
 - Appendix C - Formal **c**orrespondence not included in appendices D, A, G, or H.
 - Appendix E - **E**xpenditure - List of damages and expenses.
 - Appendix F - Additional damages and expenses (not yet submitted)