

Court Case

Yuen Sha Sha v Tse Chi Pan

DCEO 1/1998

BACKGROUND FACTS

Both the Plaintiff and the Defendant were students residing at the same hostel in a university and they had been friends for a long time. The Plaintiff brought proceedings against the Defendant under the SDO after she discovered that the Defendant had secretly placed a camcorder inside her room over an extended period of time, which had videotaped her thighs, waist, face and chest. Several clothes-changing scenes were also captured where her upper body could be seen with a bra.

COURT'S DECISION

It was held that the Defendant's videotaping fell within the meaning of "unwelcome conduct of a sexual nature" according to s.2(5) of the SDO. Hence, the Defendant had committed an act of sexual harassment under s.39(3) of the SDO.

In fact the Defendant had admitted liability and only contested the issue of remedies to the Plaintiff. The Court awarded the Plaintiff a total of HK\$80,000 by way of damages as follows:

(1) Damages for injury to feelings

The Court recognized that the Plaintiff was shocked and distressed by the Defendant's actions. HK\$50,000 was awarded as damages for injury to feelings.

(2) Exemplary damages

The objective under this head of damages is to punish the Defendant for his conduct in inflicting the harm. Taking into account the Defendant's exploitation of trust and friendship with the Plaintiff, his calculation in carrying out the whole plan, and his showing of the tape to a friend of both the Plaintiff and the Defendant, exemplary damages of HK\$20,000 was awarded to the Plaintiff.

(3) Aggravated damages

From the Defendant's conduct of prolonging the settlement of the matter, failure to tender a timely apology, as well as causing two phone calls to the Plaintiff before the hearing which aimed at putting pressure on her to abandon her claim, the Court considered that the Defendant had deliberately added insult to the Plaintiff's injury. Therefore, aggravated damages of HK\$10,000 was awarded.

The Court also ordered the Defendant to give a written apology upon the Plaintiff's request, in addition to an apology in open court.

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法庭案例

阮莎莎 訴 謝智斌

DCEO 1/1998

案情背景

原告人與被告人均為學生，兩人是認識多年的朋友，於同一大學宿舍住宿。原告人發現被告人長期在她房間收藏隱蔽攝錄機，拍攝她的大腿、腰部、臉部及胸部，而她數次更衣的情況亦被錄影，影片中可看到她的上半身連乳罩。她因而就事件按《性別歧視條例》向被告人提出法律程序。

法庭的裁決

法庭裁定，根據《性別歧視條例》第 2(5)條，被告人的錄影被視為「作出不受歡迎並涉及性的行徑」。因此，被告人曾作出《性別歧視條例》第 39(3)條之下的性騷擾作為。

由於被告人已承認有關行為及法律責任，故爭議只在向原告人作出的補償。原告人最終獲判港幣 80,000 元作為損害賠償，詳情如下：

(1) 感情損害的賠償

法院確認原告人因被告人的行為而感到震驚及困擾，故原告人獲判港幣 50,000 元作為感情損害賠償。

(2) 懲戒性的損害賠償

懲戒性的損害賠償旨在懲罰被告人為他人帶來傷害的行為。法院考慮到被告人利用原告人的友誼與信任，加上被告人在整件事件上早已有全盤計劃，又將錄影帶給予一名原告人及被告人的共同朋友觀看，故判原告人獲得港幣 20,000 元作為懲戒性的損害賠償。

(3) 加重的損害賠償

考慮到被告人拖延解決事件、沒有及時作出道歉，又於聆訊前兩度致電原告人，向她施壓要求她放棄申索，法院認為被告人刻意加深原告人的痛苦。故此，判給原告人港幣 10,000 元作為加重的損害賠償。

法院亦命令被告人除了在庭上公開道歉外，亦須應原告人要求作出書面道歉。

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法庭案例

阮莎莎 诉 谢智斌

DCEO 1/1998

案情背景

原告人与被告人均为学生，两人是认识多年的朋友，于同一大学宿舍住宿。原告人发现被告人长期在她房间收藏隐蔽摄录机，拍摄她的大腿、腰部、脸部及胸部，而她数次更衣的情况亦被录像，影片中可看到她的上半身连乳罩。她因而就事件按《性别歧视条例》向被告人提出法律程序。

法庭的裁决

法庭裁定，根据《性别歧视条例》第 2(5)条，被告人的录像被视为「作出不受欢迎并涉及性的行径」。因此，被告人曾作出《性别歧视条例》第 39(3)条之下的性骚扰作为。

由于被告人已承认有关行为及法律责任，故争议只在向原告人作出的补偿。原告人最终获判港币 80,000 元作为损害赔偿，详情如下：

(1) 感情损害的赔偿

法院确认原告人因被告人的行为而感到震惊及困扰，故原告人获判港币 50,000 元作为感情损害赔偿。

(2) 惩戒性的损害赔偿

惩戒性的损害赔偿旨在惩罚被告人为他人带来伤害的行为。法院考虑到被告人利用原告人的友谊与信任，加上被告人在整件事上早已有全盘计划，又将录像带给予一名原告人及被告人的共同朋友观看，故判原告人获得港币 20,000 元作为惩戒性的损害赔偿。

(3) 加重的损害赔偿

考虑到被告人拖延解决事件、没有及时作出道歉，又于聆讯前两度致电原告人，向她施压要求她放弃申索，法院认为被告人刻意加深原告人的痛苦。故此，判给原告人港币 10,000 元作为加重的损害赔偿。

法院亦命令被告人除了在庭上公开道歉外，亦须应原告人要求作出书面道歉。

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