

Summary Judgment in Probate: A Tale of Two Approaches to Trial



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Atension has always pervaded the exercise of summary judgment in contentious probate. On one hand, the imperatives of civil justice reform demand the efficient disposal of cases that are plainly unmeritorious. On the other, the peculiar nature of a probate action, an *in rem* proceeding with an inquisitorial function, where the court must be satisfied of the testator's true intentions counsels caution. The Court of Appeal has repeatedly affirmed that summary judgment in this context is "*rarely appropriate*", a principle it powerfully restated in its 2025 decision in *Chiu Mei Cherry v Yip Ngan Yuk*. Yet a more recent 2026 Court of First Instance judgment,

Liu Zujian v Chiu Chi Hang, demonstrates the court's readiness to act decisively when a defence is not merely weak, but ineffectual.

Today we go through these two contrasting cases. It first analyses the Court of Appeal's definitive reversal of a summary judgment in *Chiu Mei Cherry*. It then offers a critical perspective on the judgment in *Liu Zujian*, questioning whether, in its pursuit of a pragmatic outcome, the court adopted a methodology that eschews the very principles articulated in the higher court. Together, the cases provide a nuanced map of the current judicial landscape and offer vital practical guidance for solicitors.

The Orthodox Position Reinforced: *Chiu Mei Cherry v Yip Ngan Yuk* [2025] HKCA 677

The facts of *Chiu Mei Cherry* were profound. The deceased, a married man with an adult son, began an extra-marital relationship with the plaintiff, with whom he had a second, younger son. In the final year of his life, while suffering from pancreatic cancer, he executed three wills in rapid succession. The first largely benefited his wife and elder son. The second made provision for the younger son. The third, executed just six weeks before his death, was a radical departure: it disinherited his wife of 41 years, his elder son, and even his new-born younger son,

leaving his entire estate to the plaintiff.

The Court of First Instance Decision

The defendants challenged the third Will on grounds of lack of testamentary capacity, want of knowledge and approval, and undue influence. The plaintiff sought summary judgment. Before the Court of First Instance, Madam Justice Au-Yeung undertook a detailed, systematic review of the evidence and dismissed every ground of defence. The judge placed significant weight on the fact that the will was prepared by an experienced solicitor and that the “golden rule” had been followed. Her Honour characterised the defendants’ challenges as a “bold submission” and a “nitpicking exercise,” ultimately granting summary judgment.

The Court of Appeal’s Reversal

The Court of Appeal (Cheung, G Lam and Chow JJA) allowed the appeal unanimously. Mr. Justice Chow (delivering the judgment) began by setting out the peculiar characteristics of a probate action. It is an action in rem, the court has an inquisitorial role, and a will proved in solemn form is irreversible. All of this, he said, requires that summary judgment should be exercised with an additional “caution” over and above the general principle that it is only suitable for clear cases.

The Court concluded that the judge



below had, in effect, “conducted a mini-trial on the affidavit evidence”. She had not adequately taken into account the court’s inquisitorial role and the need for “added caution”. The Court of Appeal drew attention to several “special features” that, taken together, “give rise to concerns that require a hearing”. These were: the dramatic change of will within one month, the controversial nature of the motive for the disinheritance, the former solicitor’s refusal to prepare the second will, the uncertain way in which the second solicitor was instructed, and the “possible flaws” in the capacity assessment.

Chiu Mei Cherry is a strong reaffirmation of the conventional, cautious position. It is a warning: in the case of a will created in circumstances of suspicion and being contested on plausible, factually supported grounds, the inquisitorial obligation of the court will require the matter to proceed to a hearing in virtually all cases.

A Resilient Rebuttal or a Dangerous Precedent? *Liu Zujian v Chiu Chi Hang* [2026] HKCFI 895

On its face, the decision of Mr Recorder William Wong, SC in *Liu Zujian* is unremarkable. It appears to be a mere iteration of the principle that summary judgment is available when a defence is not bona fide. However, once one begins to scratch beneath the surface, questions arise. While the judgment achieves a fair and practical outcome, it may also be appealable on the grounds that it nevertheless involves

the same species of judicial fact-finding that *Chiu Mei Cherry* eschewed.

It was a 2016 will. The original had been placed in a safe deposit box. The testator passed away the same year. The claimant, his partner, had a certified true copy. The defendant, the testator’s son, refused to assist in opening the safe deposit box for almost nine years. Eventually, it was opened, and the original will was missing. The defendant’s sole defence was to rely on the presumption of revocation, i.e. that a Will, last seen in the testator’s possession, but which cannot be found on death, is presumed to have been destroyed with the intention of revoking it.

Potential Grounds for Appellate Scrutiny

1. **A Mini-Trial on Revocation?** The central critique in *Chiu Mei Cherry* was that the judge conducted a “mini-trial on affidavit evidence.” It is here that an appellant in *Liu Zujian* would likely focus their attack. The question of whether the Will was lost or deliberately destroyed is an inherently factual one, to be resolved by inference. The Recorder made extensive findings on this, concluding it was “inherently improbable” the deceased would have destroyed the Will. He made strong credibility findings against the defendant, dismissing his explanations as “not credible.” While these findings may well be correct, an appellate court could hold that resolving such a central factual dispute without the benefit of cross-examination trespasses upon the domain of a full trial.

2. **Displacing the Presumption of**



Revocation: The Recorder held that the defendant could not even invoke the presumption because the precondition that “all reasonable search and inquiry” had been made was not met due to the defendant’s own inaction or a lack of proof thereof. A forceful submission, certainly. An appellant might argue, however, that this finding itself required a trial. What constitutes a “reasonable search” is a question of fact. Furthermore, an appellant could contend that the burden of the search should not fall solely on the defendant, especially when the plaintiff also held a key. The court is therefore open to the criticism that it summarily determined a complex factual matrix that ought to have been tested at trial.

3. **The Inquisitorial Function:** The Court of Appeal in *Chiu Mei Cherry* laid great stress upon the court’s inquisitorial function. An appellant in *Liu Zujian* could argue this duty was not fully discharged. The court’s duty is to be satisfied that the instrument propounded is the deceased’s last Will. Where the original is missing, this duty is heightened. By resolving the matter summarily, the court denied itself the opportunity to test the evidence of key witnesses in the crucible of cross-examination. An appellate court might well question whether the inquisitorial duty can be satisfied by a summary process when the very existence of the Will is the central issue in dispute.

Reconciling the Tension

How, then, are these decisions to be reconciled? *Liu Zujian* is not necessarily wrongly decided. The defendant’s conduct was deplorable, and his defence remarkably thin. The case may well fall into that category where a defendant’s allegations are so incredible that summary judgment is justified. The decision achieves a just result and avoids the costs of a trial that would likely have reached the same conclusion.

However, the judgment’s methodology creates a palpable tension with the principles articulated in *Chiu Mei Cherry*. It highlights the difficult line a first-instance

judge must draw. On one side is the duty to weed out hopeless cases; on the other, the prohibition against conducting a mini-trial. While the outcome in *Liu Zujian* is pragmatic, its reasoning provides potential footholds for an appeal. It pushes the boundaries of summary judgment in probate and invites the Court of Appeal to clarify precisely where the line is to be drawn.

Practical Guidance for Practitioners

These cases provide a wealth of practical guidance.

1. **The Golden Rule is a baseline, not a panacea:** *Chiu Mei Cherry* is a stark reminder that simply “checking the box” of the golden rule is not enough. The quality and context of any ‘fact’ must be thoroughly scrutinised.
2. **Document Everything:** The solicitor’s file is often the single most important source of evidence. The detailed attendance notes and correspondence from the solicitors in both cases were central to the court’s analysis. Every meeting, every instruction, and every decision should be meticulously documented.
3. **A Credible Defence Requires Particulars:** A defendant cannot simply assert undue influence. They must “condescend upon particulars.” The defence in *Chiu Mei Cherry* was triable because it was supported by specific, objective facts. The defence in *Liu Zujian* failed because it was not.

4. **Conduct is Critical:** *Liu Zujian* is a powerful illustration of how a party’s own conduct can fatally undermine their case. Clients must be advised that delay, non-cooperation, or egregious explanations will be viewed with extreme disfavour.

5. **The Enduring Value of a Certified**

Copy: The action in *Liu Zujian* was only possible because a certified true copy of the Will existed. This is a vital risk management tool. Solicitors should advise clients to obtain at least one certified copy and store it separately from the original.

6. **Clarify Will Storage Policies:** The facts of *Liu Zujian* also highlight the importance of Will storage. Many clients assume their solicitor will retain the original Will; this is often not the case. It is the testator’s responsibility to ensure the original is kept in a secure and known location. This should be clearly communicated to the client.

Final Thoughts

Read together, *Chiu Mei Cherry* and *Liu Zujian* illuminate the fine line that courts must tread. *Chiu Mei Cherry* reinforces the high bar for summary disposal where there are genuine, evidenced-based disputes. *Liu Zujian*, in contrast, shows the court’s willingness to act decisively when faced with a defence rendered crumbling by the defendant’s own conduct. Yet, the latter’s methodological approach might leave it open to challenge. The tension between these two imperatives; efficiency and inquisitorial caution remains a defining feature of this complex area of law. For practitioners, the message is clear: the path to success lies in meticulous preparation, credible evidence, and the unimpeachable conduct of your client. ■

