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CACV 260/2008

**IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF APPEAL  
CIVIL APPEAL NO. 260 OF 2008  
(ON APPEAL FROM HCA NO. 1598 OF 2008)**

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BETWEEN

HARBOUR FRONT LIMITED

Plaintiff

And

LEUNG YUET KEUNG

1<sup>st</sup> Defendant

WONG SUM YUEN

2<sup>nd</sup> Defendant

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Before: Hon Ma CJHC and Rogers VP in Court

Date of Hearing: 4 September 2008

Date of Judgment: 4 September 2008

Date of Handing Down Reasons for Judgment: 18 September 2008

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**REASONS FOR JUDGMENT**

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Hon Ma CJHC:

1. The application for an interim injunction pending appeal was dismissed on 4 September 2008 with costs awarded on an indemnity basis against the plaintiff. I agree with the reasons for these orders contained in the Judgment of Rogers VP.

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Hon Rogers VP:

2. This was an application made to this court for an interim injunction pending the plaintiff's appeal. The plaintiff, Harbour Front Limited ("Harbour Front"), had originally sought orders to restrain the defendants from taking any action which enable Money Facts Limited ("Money Facts") to vote in favour of a resolution at an Annual General Meeting of Fonfair Company Ltd ("Fonfair") which was due to take place in the afternoon of the day of the hearing before this court. This, and the other injunctions prayed for, sought, in broad terms, to restrict the defendants from taking any action in relation to Yau Tong Marine Lots Nos. 2, 3, and 4 at 44 Ko Fai Road, Yau Tong, Kowloon ("the Yau Tong Properties"). These properties were the only assets of Fonfair.

3. Following the commencement of proceedings on 26 August 2008, Harbour Front applied for these injunctions. The application for the interim injunctions was dismissed by Mr Recorder Kwok S.C. on 29 August. The notice of appeal was lodged on 2 September. The next day, an application was made to Kwan J for an interim injunction pending appeal (effectively preventing the meeting taking place on 4 September). This was refused. Hence the application to this Court. The application was dismissed with an order of indemnity costs in favour of the defendants.

*Background*

4. Although this action was only commenced on 26 August 2008 the history of the matter goes back a great deal further. In February 2004 the judge below had heard two winding up petitions that been brought by Harbour Front. One of those petitions was in respect of an application to wind up Fonfair and the other was a petition to wind up Money Facts. In commencing

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her judgment in those cases the judge had occasion to remark that the winding up petitions were but another episode in the long-running disputes between Mr Leung Yat Tung (“YT Leung”) and his elder brother Mr Leung Yuet Keung (“YK Leung”), the first defendant. In order to explain some of the history I can do no better then to quote paragraphs 5-7 of the judgment of 2 February 2004:

“5. Harbour Front was incorporated in the British Virgin Islands. Prior to the bankruptcy order made against YT Leung on 1 March 2001, he was the sole shareholder, sole director and the company secretary of Harbour Front. After YT Leung was adjudged bankrupt, his wife Mrs Irene Leung Yu Oi Ling (“Irene Leung”) became a director of Harbour Front. YT Leung claims he has ceased to be the sole shareholder.

6. Money Facts was incorporated in Hong Kong on 21 May 1991 and was acquired by YK Leung and YT Leung in September 1991. A total of 7,900 shares have been allotted, of which 3,950 shares have been allotted to YK Leung. The remaining 3,950 shares were allotted to YT Leung until he transferred them to Harbour Front in February 1998 with the consent of YK Leung in circumstances that I will go into. The only asset of Money Facts is a majority shareholding of 65.79% in Fonfair. Money Facts has not carried on any other business. Until the events complained of after YT Leung was adjudged bankrupt, YK Leung and YT Leung were the only directors.

7. Fonfair was incorporated in Hong Kong on 3 July 1980. The only material asset of Fonfair is Yau Tong Marine Lot Nos. 2, 3 and 4 (“the Yau Tong Property”), which has been held by Fonfair as the registered owner since October 1980 when it was acquired from the administrators of the father’s estate. Fonfair used to be a wholly owned subsidiary of Universal Dockyard until the flotation of UDL Holdings Limited (“UDL”) on the Stock Exchange of Hong Kong in September 1991. Fonfair was then spun off from Universal Dockyard to keep the Yau Tong Property in the hands of the Leung family. Since September 1991, Fonfair had leased the Yau Tong Property to Universal Dockyard and it was occupied by the companies in the UDL group until vacant possession was recovered by Fonfair in the latter part of 2002. Other than letting out the Yau Tong Property, Fonfair did not appear to have carried on any business activity.”

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5. I would add here that the setting up and operation of Money Facts was governed by a shareholders agreement between the two brothers. The judge held that Money Facts had been set up to ensure that the rental and other income due to Fonfair in respect of the Yau Tong Properties would be properly administered and distributed to the shareholders of Fonfair. The winding up petitions had been brought on the just and equitable ground. The judge had no difficulty in dismissing those petitions. She held that Harbour Front had acted in breach of the shareholders agreement and that the breakdown of mutual trust and confidence was attributable to Harbour Front's misconduct. The details of that misconduct were set out in considerable detail in the judgment in the winding up proceedings but it suffices to say that it involved the misappropriation of funds of Fonfair and the persistent failure to enforce the tenancy agreement made by Fonfair with Universal Dockyard Ltd., which latter company had come under the control of YT Leung. In paragraph 87 of the judgment the judge held that Harbour Front had actively assisted Universal Dockyard Ltd. to thwart Fonfair's attempts to recover the judgment debt for arrears of rent which, by then, had grown by then to \$8.5 million.

6. The matters going to misconduct that were held against Harbour Front after the hearing of the winding up petitions have never been rectified. None of the debt owing has been paid or discharged. In HCA 1937 of 2007 Harbour Front brought action against YK Leung and Wong Sum Yuen, who were both directors of Money Facts, as well as against Fonfair. Various injunctions and declarations were sought and on 14 September 2007 Suffiad J dismissed an application for an interlocutory injunction to restrain the first defendant from convening an annual general meeting of Fonfair and a further injunction to restrain both defendants from convening an annual general meeting of Money Facts.

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7. It was thus hardly surprising that when this matter came before Mr Recorder Kwok on an application for an injunction to prevent the holding of an annual general meeting of Money Facts other than with the consent of Harbour Front, the Recorder had little difficulty in dismissing the application in a very concise and precise way saying that the application was an abuse of the process and the claim was frivolous or vexatious (the claim was based largely on alleged breaches of the shareholders agreement). There had been a proposed amendment which appears to have been the focus of the application which was essentially to restrict the injunction to preventing the annual general meeting of Fonfair from dealing with item (6) on the agenda namely:

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“To consider the offer dated 1<sup>st</sup> August 2008 received from Messrs Littlewoods Solicitors for the purchase of the Property [which reference is to the land registered at the Land Registry as Yau Tong Marine Lots Nos. 2, 3 and 4, the address of which is at 44 Ko Fai Road, Yau Tong, Kowloon, Hong Kong] and Yau Tong Marine Lot No. 1 and where appropriate authorise specific course of action to be taken by the Directors; and....”

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8. On the following Tuesday an application was made to Kwan J for an interim injunction pending appeal. Kwan J heard the matter because by then Mr Recorder Kwok was no longer sitting. She had the advantage of being familiar with much of the background since, of course, she had heard the petitions previously. Kwan J gave a fully reasoned judgment immediately and had no difficulty in refusing an interim injunction pending appeal.

*This application*

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9. It was in those circumstances that the matter came before this court on the following day on a renewed application for an injunction pending appeal. Quite apart from the fact that this court considered that the decisions of Mr Recorder Kwok and Kwan J were entirely correct, it would be necessary to comment on the manner in which this application was made.

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10. In my view the commencement of this action was, as Mr Recorder Kwok said, an abuse of the process and appears to have been an attempt to re-litigate the matters which were raised in HCA 1937 of 2007 and in the winding up proceedings to which I have referred. Furthermore and most importantly, Harbour Front has done nothing to repair the losses suffered by Fonfair as a result of its misconduct by misappropriating the rental income and, indeed, thwarting Fonfair's attempts to recover its judgment debt from Universal Dockyard Ltd. In those circumstances, quite apart from there being no serious question to be tried, Harbour Front is in no position to seek the court's assistance by the grant of interlocutory injunctions in this case.

11. Turning to the matter of how this application was made, I would point out that the notices of the annual general meetings were dated 12 August. The writ in these proceedings was not issued until a fortnight later and an application was then immediately launched for an interlocutory injunction which was heard on the third day thereafter. Following that, and having been told in no uncertain terms that their action was an abuse, Harbour Front persisted in making urgent applications, which as I have already indicated, were doomed to failure. Harbour Front's conduct in waiting for two weeks before commencing the proceedings and then making applications on very short notice on the basis of urgency was likely to result not only in grave inconvenience to the other parties, as well as the court, but would have made it difficult for the other parties to present their case properly. In my view, Harbour Front's manner of conducting this litigation was, in itself, tantamount to an abuse and would have justified this court in refusing to hear the application on the basis of delay alone. Mr Fung accepted there was delay.

12. Finally, I would for completeness just make the point that the application for interim injunctions (whether pending appeal or as sought in the

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appeal proper) was objectionable on the basis that, clearly (and as Mr Fung, I think, accepted) damages were an adequate remedy.

(Geoffrey Ma)  
Chief Judge, High Court

(Anthony Rogers)  
Vice-President

Mr Daniel R Fung SC & Ms Catrina Lam, instructed by Messrs Tsang & Lee,  
for the Plaintiff/Appellant

Mr Anthony Ismail, instructed by Messrs Ho & Ip, for the 1<sup>st</sup> &  
2<sup>nd</sup> Defendants/Respondents