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HCA 1598/2008

**IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
ACTION 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 Kwan J in Chambers

Date of Hearing: 3 September 2008

Date of Decision: 3 September 2008

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**DECISION**

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1. I have before me an application for an interim injunction pending appeal against the decision of Recorder Kwok, SC on 29 August 2008.

2. In its amended summons, the plaintiff, Harbour Front Limited (“Harbour Front”), seeks an interlocutory injunction against the 1<sup>st</sup> and 2<sup>nd</sup> defendants to restrain them from taking any action on behalf of Money Facts Limited (“Money Facts”) from voting on item (6) in the Notice of the 2008 annual general meeting of Fonfair Limited (“Fonfair”) dated 12 August 2008.

3. Money Facts holds 65.8% of the issued ordinary shares in Fonfair. Harbour Front is the registered shareholder of 50% of the shares in Money Facts, the 1<sup>st</sup> defendant holds the other 50%. Fonfair is the owner of a property at Yau Tong Marine Lots No. 2, 3 and 4 (“the Property”). The annual general meeting of Fonfair is scheduled to be held on 4 September 2008.

4. Item (6) of the agenda is as follows:

“To consider the offer dated 1 August 2008 received from Messrs Littlewoods Solicitors for the purchase of the Property and Yau Tong Marine Lot No. 1 and where appropriate authorise specific course of action to be taken by the Directors;”

5. The interlocutory injunction is to restrain the defendants from voting on the above item and from taking any action on behalf of Money Facts in relation to the disposal or redevelopment of the Property, save and except where Harbour Front has previously been fully consulted and any mandate for action to be taken by Money Facts has been duly approved by both shareholders of Money Facts as being consistent with the terms of a shareholders agreement dated 5 June 1990 as supplemented or varied by a memorandum dated 13 February 1998 (“the Shareholders Agreement”).

6. Recorder Kwok dismissed the application for interlocutory injunction with costs to be paid forthwith by Harbour Front to the defendants on an indemnity basis. Mr Daniel Fung, SC, for Harbour Front says the Recorder did not give reasons in refusing relief and that it is not a proper way of dealing with the summons. I do not think that is a correct way of putting it. The Recorder's judgment was terse and concise, but he has given reasons. He held that the application is an abuse of process and the claim is frivolous and vexatious, in other words there is no serious issue to be tried. He did so on the basis that an injunction is an equitable remedy, that the application is premised on the Shareholders Agreement, and in the judgment I gave on 2 February 2004 dismissing the petitions of Harbour Front to wind up Money Facts and Fonfair on just and equitable ground (HCCW No. 880 of 2001 and HCCW No 246 of 2002), I held that Harbour Front had acted against the interest of Fonfair and had defeated the first of the three purposes for which Money Facts was set up (which was to ensure that as the majority shareholder in Fonfair, the rental and other incomes received by Fonfair in respect of the Property are properly administered and distributed to the shareholders of Fonfair), that Harbour Front had acted in breach of the Shareholders Agreement, that the breakdown of mutual trust and confidence was attributable to the misconduct of Harbour Front, and that in the circumstances Harbour Front cannot assert its right of equal participation in the management of Money Facts and Fonfair under the Shareholders Agreement (paragraphs 87, 88 and 106 of my judgment).

7. Harbour Front seeks an interim injunction today pending its appeal against the Recorder's decision, to preserve the status quo pending

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B the appeal. I am hearing this application as this should first be made to a  
C judge of the Court of First Instance, pursuant to Order 59 r 14(4) of the  
D Rules of the High Court.

E 8. Provided I am satisfied the grounds of appeal are reasonably  
F arguable, it seems to me the status quo should be preserved pending appeal.

G 9. The major argument is encapsulated in paragraph 20 of the  
H skeleton submission of Mr Fung. He contended that the findings made in  
I my judgment as summarised earlier should be considered as made in the  
J context of the winding-up petitions, that the findings of misconduct (and  
K breach of the Shareholders Agreement) are irrelevant and clearly spent, so  
L they could have no immediate or necessary relation to the equity being  
M sought in the present application. He submitted that the Recorder applied  
N the finding in my judgment and the law mechanically and that it cannot be  
O right that Harbour Front is forever barred from seeking equitable relief.

P 10. I cannot agree with this. On the evidence adduced in this  
Q application, Harbour Front remains in breach of the Shareholders  
R Agreement, and has thwarted the first of the 3 purposes for which Money  
S Facts was set up. It has made no reparation of the losses suffered by  
T Fonfair as a result of its misconduct in the misappropriation of rental  
U income and the thwarting of Fonfair's attempts to recover the judgment  
V debt of \$8.5 million for arrears of rent owed by Universal Dockyard  
Limited, which has been wound up in 2003. Harbour Front is seeking  
equitable relief by invoking its rights under the Shareholders Agreement  
notwithstanding it has been and still is in breach of the agreement. I am

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unable to see how its misconduct is irrelevant to the equitable relief sought or that its breach of the agreement is spent.

11. I refuse to grant the interim injunction pending appeal. I order Harbour Front to pay the defendants' costs of this application on a party and party basis.

(S Kwan)  
Judge of the Court of First Instance  
High Court

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

Mr Francis Ip of Messrs Ho & Ip, for the Defendants