

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
MISCELLANEOUS PROCEEDINGS NO 1471 OF 2019**

IN THE MATTER OF ss.722 to 726
of the Companies Ordinance,
Cap. 622 of the Laws of Hong Kong

and

IN THE MATTER OF Money Facts
Limited

BETWEEN

LEUNG YUET KEUNG

Petitioner

and

HARBOUR FRONT LIMITED
MONEY FACTS LIMITED

1st Respondent
2nd Respondent

Before: Hon Harris J in Chambers

Date of Hearing: 23 January 2025

Date of Decision: 12 March 2025

DECISION

Introduction

1. On 11 June 2024 I handed down my judgment on liability after trial in these proceedings and ordered Harbour Front to buy the Petitioner’s (“YK”) 3,950 shares in Money Facts.

2. On 23 January 2025 I heard an application to determine the following matters:

- (1) Minority discount.
- (2) Additional expert evidence on valuation.
- (3) The valuation date.
- (4) Interest.

3. As matters transpired it was agreed that no discount should be made for a minority discount as the shareholdings are equal. It is not necessary for me to repeat the background to this matter, which is explained in my judgment dated 11 June 2024.

Expert evidence

4. The Petition was issued on 16 September 2019. Ms Lok argued that as the sole asset of the Company was its indirect interest in the Land¹, which is owned by its subsidiary Money Facts and an offer of HK\$888,000,000 has been made by a prospective purchaser for the Land in May 2019 there was no need for a valuation of the shares as the offer price provided a reliable basis for determining the value of the shares,

¹ See [2] of the judgment of 11 June 2024.

A subject to the Court accepting the valuation date. Ms Lok argued, I accept
B with some justification, that given the history of this matter it is undesirable
C for directions to be made for the determination of the value involving
D expert evidence from both parties as this would lead to unnecessary delay
E and expense. However, having considered the countervailing arguments it
F seems to me that this is too robust an approach and I will make the
G directions I explain later. The more complicated issue is the valuation date.

G *Valuation Date*

H 5. YK submits that the valuation date should be the date of the
I offer to which I have referred, alternatively the date of issue of the Petition.
J Harbour Front submits that it should be the date of the order, alternatively,
K the date of filing of the Points of Defence in the 2015 proceedings (i.e.
L HCCW 111 of 2015), namely, 11 November 2015. The commercial reason
M for the different positions is that the property market has declined since the
N Autumn of 2019.

O 6. It is well established that the choice of the date of valuation is
P a matter of court's discretion. In *Re Sparkle Consultants (Hong Kong) Ltd*²,
Q Rogers VP said at [33]:

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“33. Clearly the choice of an appropriate valuation date is a
matter of discretion which has to be exercised in the light of the
circumstances of the case and also the other aspects of the order.
This would include the basis upon which the valuation should
be made...”

T ² [2002] 3 HKLRD 62.

A 7. The court has a wide discretion to choose a date which is the
B most appropriate and just in all the circumstances. The authorities in this
C area have not laid down any rigid rules. Rather, they illustrate how the
D courts respond flexibly to the particular factors in play and apply different
E techniques to produce a response which is fair and equitable on the facts of
F the case before it: *Re Dinglis Properties Ltd*³ at [52]; *Re Abbington Hotel*
G *Ltd*⁴ at [123]. As one would expect the principal consideration is that the
H date of valuation should be one which best remedies the unfair prejudice
I held to have occurred: *Re Dinglis*⁵ at [85], citing *Re Abbington*⁶ at [123].

H 8. Generally, the starting point is that *prima facie*, an interest in
I a going concern ought to be valued at the date on which it is ordered to be
J purchased to reflect the value of what the shareholder is selling. However,
K this is subject to the overriding requirement that the date achieves fairness:
L *Re New Century Iatrical Inv Management Ltd*⁷ at [32]; *Profinance Trust*
M *SA v Gladstone*⁸ at [33], [60].

M 9. As recognised by the English Court of Appeal in *Profinance*,
N there are many cases in which fairness requires the court to exercise its
O discretion to adopt another date. One example would be where a minority
P shareholder has a petition on foot and there is a general decline in the
Q market, the court may in fairness to the claimant have the shares valued at

R ³ [2019] EWHC 3327.

S ⁴ [2011] EWHC 635 (Ch).

T ⁵ *Supra.*

U ⁶ *Supra.*

V ⁷ [2020] 3 HKLRD 464.

⁸ [2002] 1 BCLC 141.

A an early date, especially if it strongly disapproves of the majority
B shareholders' prejudicial conduct⁹.

C 10. This was the case in *Re Cumana Ltd*¹⁰. Vinelott J chose the
D date of the petition as the date of valuation to protect the petitioner against
E a general fall in the value of shares on the market and to mark the court's
F disapproval of the majority shareholder's "*devious and unscrupulous*"
G attempts to "*deprive the minority shareholder of the benefit of his*
H *shareholding*"¹¹. On appeal, Lawton LJ considered Vinelott J's reason for
adopting the date of petition as the valuation date was a sound one:

I "The date of petition is the date on which the petitioner elects to
J treat the unfair conduct of the majority as in effect destroying
the basis on which he agreed to continue to be a shareholder, and
to look to his shares for his proper reward for participation in a
joint undertaking."¹²

K See also *Re Tai Lap Investment Co Ltd*¹³ and *Re Hing Ming Gondola (HK)*
L *Co Ltd (No. 2)*¹⁴.

M 11. It is clear from my judgments in the present petition, the
N previous unfair prejudice petition I heard and the judgment of Kwan J (as
O she then was) in the first of the proceedings in this sorry saga of sibling
P discord, that the court has found Harbour Front (largely through the agency
Q of YK's Brother) repeatedly to have behaved improperly and to have
ignored the court's admonitions about its conduct. It seems to me that

R ⁹ *Supra* at [61(iii)].

R ¹⁰ *Re a Company (No. 002612 of 1984)* (1986) 2 BCC 99,453 at Chancery Division (Companies Court).
Reported as *Re Cumana Ltd* [1986] BCLC 430 on appeal.

S ¹¹ (1986) 2 BCC 99,453 at 99,495.

S ¹² [1986] BCLC 430 at 436a-b.

T ¹³ [1999] 1 HKLRD 384 (at CFI) at 399A-G; [1999] 3 HKC 660 (at CA) at 664B-C.

T ¹⁴ [2010] 1 HKLRD B1 at [16].

A fairness clearly points in the present case to the valuation date being the date the petition was issued. It seems to me perfectly reasonable for YK's patience with Harbour Front's persistent attempts to interfere with the management of Harbour Front and Money Facts, in particular, how the Land at Yau Tong should be dealt with, to have ran-out in mid-2019 and for YK to have decided to issue the petition. There is nothing unfair with this result, in my view quite the opposite. If consequently Harbour Front have to pay more for the indirect interest in the land than it is currently worth that is not unfair; it is the result of the management of Harbour Front's belligerence and generally unreasonable behaviour. Harbour Front's argument that it was always open to YK to exit the company earlier using the shootout provision in the Shareholders' Agreement seems to me irrelevant in assessing the valuation date and certainly cannot justify treating as self-induced any loss that might result from a change of value in the Land between the dates of presentation and determination of the Petition. The judgment determined that YK was unfairly prejudiced by events that had occurred by the time the Petition was issued, and he was entitled to a buy-out order. Harbour Front's submission tacitly suggests that he was at fault for not giving into Harbour Front's disruption of the management of Money Facts earlier. Harbour Front's submission that the fact that he had *de iure* control of Money Facts is relevant to the determination of the valuation date is similarly misconceived. The complaint was not that YK was excluded from management it was that Harbour Front had interfered with his ability to manage Money Facts to an extent that was unfair and prejudicial.

12. What seems to me clear is that it would be manifestly unfair for YK to be prejudiced because of any diminution in the value of the assets of Money Facts during the period following presentation of his Petition.

Interest

13. Harbour Front agreed to the payment of interest at 1% above Hong Kong Interbank Offered Rate (HIBOR) or 1% above prime rate per annum from 23 January 2025 until the date of determination of the price by experts. This was on the basis that the valuation date would be the date of the order for a buyout not the date of the judgment. Even if I had agreed with Harbour Front that the date should be the date a buyout was ordered, I would have proceeded on the basis that it should be the date of the judgment (11 June 2024) not the date of the order containing directions for valuation, which is what Harbour Front has contended.

14. Harbour Front opposes an order that interest is payable from either of the dates proposed by YK. Mr Smith cited various authorities, which consider the principles by reference to which the Court determines whether to order interest. In a case such as the present in which the petitioner has not been kept out of management and deprived of a salary or director's fees what is relevant is whether awarding interest for the period sought is justified because the petitioner has not had the use of the value of the shares (i.e. the purchase price).

15. Ms Lok referred me to the decision of Le Pichon J *In Re Tai Lap Investment*¹⁵ in which the Judge discusses interest and says this:

¹⁵ *Supra.*

A “Counsel for the respondents’ submitted that the court has no
B power to make any order for payment of interest prior to the
C order for the buy-out. He relied on a dictum of Peter Gibson J in
D *Re DR Chemicals Ltd* (1989) 5 BCC 39. But that was a case
E where the appropriate valuation date was considered to be the
F date of the order rather than the date of the petition. As explained
G by the trial Judge in *Dynasty Party Ltd & Others v Coombs*
H (1996) 138 ALR 64 cited in the judgment of the Full Court at
I p.85:

‘To arrive at a fair value to be paid now by valuing the
shareholding at some date in the past and by adding to
that value an allowance for the fact that the shareholder
has been kept out of the enjoyment of that value in the
meantime, to borrow the words of Lord Denning, is to
give to the oppressed shareholder what is in effect money
compensation for the injury done to [the shareholder]:
but I see no objection to this. The section gives a large
discretion to the court and it is well exercised in making
an oppressor make compensation to those who have
suffered at his hands.’

J The Full Court upheld that approach since the trial judge did not
K award interest *qua* interest: rather he used interest as a proxy to
L measure the increment in the value of the petitioner’s investment
M in the company appropriate to reflect the fact that the
N respondent’s interests had the use of the petitioner’s investment
O since the date of the petition, that being the valuation date.

I agree. As explained by Thomas J in the passage in *Rankine v*
Rankine (1995) 18 ACSR 725, an interest factor should be
allowed as the value of the petitioner’s shareholding to arrive at
a fair price at which his shares should now be purchased.
Accordingly, the petitioner is entitled to interest on the amount
to be paid by the respondents at 10 per cent per annum as from
the date of the petition.”

P 16. What this is describing is a theory of loss, which informs an
Q assessment of the financial consequences of the unfair prejudice for which
R the petitioner is to be compensated (the “*money compensation for the injury*
S *done to [the shareholder]*” referred to in the quoted passage borrowing the
T words of Lord Denning). It is not a valuation to arrive at a market price.
U The distinction is important. The distinction is implicitly recognised in
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A passages from the judgment of Walker LJ (as he then was), on which
B Mr Smith placed reliance, in *Profinance Trust SA v Gladstone*¹⁶:

C “31. In our judgment the deputy judge was right in his view
D that an order for the equivalent of interest is not beyond the
E powers of the court under s 461(1). The court has repeatedly
F emphasised the width of the discretion conferred by that
G subsection, which is not limited to the particular powers
H enumerated in subs (2). The House of Lords has (in relation to
I the court’s closely comparable powers under s 210 of the
J Companies Act 1948) approved the making of adjustments in the
K valuation process which mean that the court is actually valuing
L shares, not as they are, but as they would have been if events had
M followed a different course; and that practice is regularly
followed by the court in orders under s 461(1). In these
circumstances a denial of the court’s power to award the
equivalent of interest would come close to straining at a gnat.

I 32. It is however a power which should be exercised with
J great caution. Miss Newman has rightly drawn attention to the
K need for lawyers to be able to advise their clients as to the likely
L range of outcomes of s 459 proceedings, in order to encourage
M compromise in an area in which litigation can be cripplingly
expensive. If a petitioner seeking an order for the purchase of his
shares contends (either as his only claim or in the alternative)
that they should be valued at a relatively early date but then
augmented by the equivalent of interest, he must put forward
that claim clearly and persuade the court by evidence that it is
the only way, or the best way, to a fair result...”

N 17. The distinction becomes clearer with an example. If we
O assume that the value of Money Facts had not changed at all between
P May 2019 and January 2025 (the preferred valuation dates of YK and
Q Harbour Front respectively) the valuation of the shares to be transferred to
R Harbour Front by YK would be the same regardless of which valuation
S date was chosen. The only significance of the date would be whether it
T justified ordering interest from a date earlier than January 2025 with, if it

T ¹⁶ [2001] EWCA Civ 1031.

were so ordered, YK receiving greater compensation. YK is not claiming interest on the basis that he had a right to dispose of his shares at a fair market value in May 2019, and that interest is to compensate him for being held out of that sum. Thus, ordering interest cannot be justified on that ground. To justify an award of interest it is necessary for YK to demonstrate that he suffered some other or additional financial loss as a consequence of Harbour Front's unfairly prejudicial conduct. As Walker LJ stresses the justification cannot be an afterthought; in the present context something like: *but for the unfair prejudice Fonfair would have sold the land, the proceeds of sale would have been distributed, and I would have invested my share in an interest bearing bank account.*

18. In *Tai Lap*, Le Pichon J took the view that interest should be allowed as part of the valuation of the petitioner's shareholding to arrive at a fair price. However, if I have understood the judgment correctly, what was ordered was a valuation of the shares as at the date of presentation of the petition and for interest to be payable from that date on the value of the shares determined by the valuation that the Judge directed. Le Pichon J saw this as being part of a "*a fair price at which*" the shares were to be purchased at the time of the transfer, which was years after the valuation date. There is, however, no explanation of why this was fair. Le Pichon J seems to have assumed that by choosing an earlier valuation date, she was making a finding that the petitioner was entitled to be paid at that date and as he was not, it was fair to order interest. That seems to me to ignore the distinction I have explained earlier and to conflate price and loss.

19. In the present circumstances I am not satisfied that YK has demonstrated that he has suffered in a relevant way loss caused by Harbour Front's unfairly prejudicial conduct that justifies ordering interest from the date of the valuation as opposed to the date of the judgment; which it seems to me to be the appropriate alternative, rather than the date of the hearing for directions.

Directions

20. I will make the directions contained in the appendix to this decision. So far as costs are concerned, given the outcome I consider the appropriate order that there be no order as to costs, and I will make a costs order *nisi* to that effect.

(Jonathan Harris)

Judge of the Court of First Instance
High Court

Ms Frances Lok SC and Mr Kwan Ping Kan, instructed by Ho & Ip, for the
Petitioner

Mr Clifford Smith SC, Ms Sabrina Ho and Mr Arthur Poon, instructed by
Yiu & Associates, Solicitors, for the 1st Respondent

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Directions

1. The 1st Respondent shall purchase the Petitioner's shares in the 2nd Respondent (“**Shares**” and “**Company**”) in a sum to be determined in accordance with the directions herein (“**Valuation**”).
2. The Shares shall be valued as at 16 September 2019 (“**Valuation Date**”).
3. The Valuation shall be determined by a single valuer appointed by the Court (“**Valuer**”).
4. Within 28 days of the date of this Order the Petitioner and 1st Respondent shall either inform the Court in writing of the Valuer that they have agreed or in the absence of agreement the Petitioner and the 1st Respondent shall write to the Court with the name and details of their preferred Valuer and the Court will choose the Valuer.
5. With the letter to the Court notifying the Court of the agreed Valuer or each Party’s preferred Valuer, the Party shall include an appendix listing the documents that each Party believes should be provided to the Valuer and any matter that the Party considers relevant to the Valuation. The appendices shall be copied to the other Party.
6. The Court will send a copy of the Order appointing the Valuer to the Valuer and the Petitioner and the 1st Respondent (“**Appointment Order**”) and the appendices referred to in the previous paragraph herein.
7. The Valuer shall write to the Petitioner and the 1st Respondent within 10 days of the date of the Appointment Order requesting the documents and any information that the Valuer requires in order to carry out the Valuation. The Valuer may ask for additional documents or information. A Party is not to communicate with the Valuer other than in response to a request from the Valuer to the Party or with the leave of the Court.

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8. The Valuation shall be determined on such basis as the Valuer in his opinion considers appropriate and without a discount for minority interest.
9. The Valuer shall send to the Court a succinct report stating his Valuation of the Shares and the reasons for arriving at the Valuation (“**Valuation Report**”) within 56 days of the date of the Appointment Order or such other date as the Court directs. The Valuation Report shall be copied to the Parties.
10. The Court will following receipt of the Valuation Report make an order for the payment of the Valuation and the transfer of the Shares and/or such other directions as it considers appropriate.
11. The fees of the Valuer are to be paid in the first instance equally by the Petitioner and the 1st Respondent. The ultimate liability for payment of the Valuer’s fees shall be determined after the Valuation process has been completed.
12. There be a costs order *nisi* that there be no order as to the costs of the summons filed on 3 July 2024 and the hearing on 27 August 2024 and 23 January 2025.
13. There be general liberty to apply.

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