HCMP 1471/2019
[2020] HKCFI 1912

**IN THE HIGH COURT OF THE**
**HONG KONG SPECIAL ADMINISTRATIVE REGION**
**COURT OF FIRST INSTANCE**

MISCELLANEOUS PROCEEDINGS NO 1471 OF 2019

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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 | 1st Respondent |
| MONEY FACTS LIMITED | 2nd Respondent |

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Before: Deputy High Court Judge Jat SC in Chambers
Date of Hearing: 23 July 2020
Date of Decision: 7 August 2020

## DECISION

1. By Summons dated 3 October 2019, the 1st Respondent ("Harbour Front") applies to strike out and dismiss the Petition filed herein on 16 September 2019, on the ground that it discloses no reasonable cause of action and/or is otherwise an abuse of process.

*Brief background*

2. This is the latest episode in a long history of litigation between the Petitioner Mr Leung Yuet Keung ("YK") on the one hand, and his brother Mr Leung Yat Tung ("YT") and companies controlled by or related to him on the other, concerning the 2nd Respondent ("Money Facts") and its subsidiary Fonfair Company Limited ("Fonfair").

3. Money Facts owns 67.5% of Fonfair, the only substantial asset of which is a piece of land known as Yau Tong Marine Lots 2, 3 & 4 ("Property"). YK and Harbour Front (controlled by YT) each holds 50% of the shares in Money Facts, while Harbour Front further owns 32.96% of Fonfair. A small number of Fonfair's shares are held by other members of the Leung family.

4. YT and YK entered into a Shareholders Agreement dated 5 June 1990 ("SHA") for the establishment of a new company, which eventually was Money Facts, to hold their interests in Fonfair. This was the original agreement between them in respect of Money Facts which gave rise to a relationship of mutual trust and confidence.

5. There is no dispute that Money Facts and Fonfair were a "quasi-partnership" between YK and YT, and upon YT's transfer of his shares in the companies to Harbour Front in February 1998, between YK and Harbour Front. For present purposes, it is unnecessary to draw any distinction between YT and Harbour Front.

6. YT and YK used to be directors of both Money Facts and Fonfair. YT ceased to be a director of both companies when he was adjudged bankrupt in 2001. Since around March 2001, YK has been in sole control and management of both companies.

7. Since 2001, the brothers have been engaged in a number of litigations, including non-exclusively the following proceedings.

8. **HCA 1886/2001** – After YT ceased to be a director of Fonfair, Fonfair under YK's control commenced proceedings against a company controlled by YT ("Universal") which used to lease the Property from Fonfair. Without going into the details, YT misappropriated some of the rent payable to Fonfair and later allowed Universal to occupy the Property without paying rent. Fonfair obtained judgment against Universal ("2002 Judgment") but Universal failed to comply with it, and YT actively took steps to thwart Fonfair's attempts to pursue Universal to recover the judgement debt.

9. **HCCW 880/2001** and **HCCW 246/2002** – Harbour Front petitioned for the winding up of Money Facts and Fonfair on the just and equitable ground, on the basis that it had been unfairly excluded from participating in the two companies' management and affairs. Kwan J (as

Kwan VP then was) heard the petitions in November-December 2003, and in a detailed and closely reasoned judgment her Ladyship dismissed both petitions in February 2004 essentially on the ground that Harbour Front's exclusion was not unfair: it was due to the misconduct of Harbour Front that there was a breakdown in the relationship of mutual trust and confidence, hence Harbour Front cannot assert its right of equal participation in the management of Money Facts and Fonfair ("2004 Judgment"). The misconduct included the misappropriation of Fonfair's properties and related matters canvassed in the 2002 Judgment.

10. In this Petition, YK relies upon a number of findings in the 2004 Judgment. In particular, Her Ladyship found that Money Facts was set up to:

> "1. ensure as the majority shareholder in [Fonfair], that the rental and other incomes received by Fonfair are properly administered and that after reasonable provisions for expenses such incomes are distributed to the shareholders of Fonfair; 2. ensure as the majority shareholder in [Fonfair], that Fonfair shall pursue and negotiate any future development plan and other business to safeguard and maximize the interest of Fonfair shareholders; 3. safeguard and maximize the interest of [YK] and [YT] in [Fonfair]; (I shall refer to the above as "the three purposes")."

11. Another provision of the SHA which YK relies on is what is called the "Cooperation Provision":

> "YK and YT agreed to negotiate and execute such further and other documents and instruments and to do such and further things as might be necessary to implement and carry out the intent of the [SHA]."

12. **HCCW 111/2015** and **HCCW 116/2015** ("2015 Petitions") – In 2015, Harbour Front again petitioned for the just and equitable winding up of Money Fact and Fonfair respectively, again based on YT/Harbour

Front's exclusion from management. These petitions were tried before Harris J who dismissed both petitions on 4 October 2017, with Written Reasons for Judgment handed down on 15 February 2018 ("2018 Judgment"). In substance, his Lordship found that Harbour Front had fairly been excluded from management and had failed to remedy the losses it had caused by its misconduct. Harbour Front appealed against the 2018 Judgment, but abandoned the appeal in November 2018.

13. The above judgments contained detailed findings of the background and history of the disputes between the two sides, to which I respectfully refer.

14. **HCMP 1987/2018** and **HCMP 1988/2018** ("2018 Petitions") – These are the latest rounds of proceedings prior to the presentation of the present Petition. In these petitions, Harbour Front seeks (for the third time) to be allowed to reassert its rights under the SHA to participate in the management of the two companies' affairs, on the ground that it had remedied or taken "active, serious and diligent steps" to remedy its misconduct. It is pertinent to note here that the misconduct relied on by YK in this Petition are substantially the same as those pleaded in his Points of Defence filed in the 2018 Petitions. The 2018 Petitions are substantially ready to be set down for trial.

15. In November 2018, in HCMP 1987/2018, Harbour Front successfully obtained from Deputy High Court Judge Kenneth Wong an interlocutory injunction against YK enjoining him (or through Money Facts) from causing or procuring Fonfair to dispose of or sell the Property without the prior approval or consent of Harbour Front ("**Injunction**"). The Court

of Appeal dismissed YK's application for leave to appeal against that decision on 23 August 2019.

*This Petition*

16. The Petition was presented by YK on 16 September 2019, ie. shortly after the Court of Appeal dismissed his application for leave to appeal against the Injunction.

17. In substance, YK complains that "YT (and since February 1998, Harbour Front) conducted Money Facts' affairs in a manner unfairly prejudicial to the interests of its members including YK and caused an irrevocable breakdown in the relationship of trust and confidence": Petition §12. In other words, YK invokes s.724(1)(a) of the Companies Ordinance, Cap. 622 ("**Ordinance**").

18. Petition §13 broadly summarises YK's complaints in this way:

> "YT and/or Harbour Front flagrantly breach [sic] the [SHA] by:
>
> (1) misappropriating from and causing loss to Fonfair and (together with other entities or corporate vehicles controlled by YT) obstructing Fonfair's efforts to recoup its losses (counteracting the 1st and 3rd Purposes of Money Facts and the Cooperation Provision) (see Section D below);
>
> (2) persistently sabotaging or otherwise interfering with arm's length sale of the [Property] by Fonfair in circumstances where Harbour Front was (as found by the courts) for good reason not entitled to participate in the management of Money Facts or Fonfair (counteracting the 2nd and 3rd Purposes of Money Facts and the Cooperation Provision) (see Section E below);
>
> (3) refusing to properly consider and/or accept an arm's length offer by a third party, [IDL] to purchase the [Property] from Fonfair at the consideration of HK$910,000,000 in August 2019 ("**IDL Offer**")

(counteracting the 2nd and 3rd Purposes of Money Facts and the Cooperation Provision) (see Section F below)."

19. Section D, E and F of the Petition set out at length the alleged unfair prejudicial conduct relied upon. These sections refer to the dispute between the two sides over the years which have led to the many visits to the courts mentioned above.

20. More specifically:

(1) Section D refers to the disputes considered in the 2002 Judgment and the 2004 Judgment. The section also refers to the events leading to the 2015 Petitions and the commencement of the 2015 Petitions to interfere with the proposed sale of the Property.

(2) Section E refers to two incidents in 2008 and 2015 when offers had been made by third parties to purchase the Property. These were referred to as the "Littlewoods Offer" (in 2008) and the "Chung Sing Offer" (in 2015). It is unnecessary to go into details here, suffice to say that the events related to these two matters had been considered by Harris J in the 2018 Judgment. His Lordship found that YT's conduct relating to the Chung Sing Offer were done with a view to interfering in the sale of the Property to Chung Sing as were the presentation of the 2015 Petitions.

(3) Section F concerns the Injunction. The gist of the complaint is that after delivery of the 2018 Judgment, when Harbour Front was in correspondence with the management of Money Facts and Fonfair with regard to a proposed public tender of the Property, Harbour Front suddenly commenced the 2018 Petitions and obtained the Injunction to stop the sale of the

Property. The Petition pleads that the application for interlocutory injunction was made in bad faith. Further, the Petition complains that in 2019 an offer was received from a third party (ie. the IDL Offer) to purchase the Property for HK$888 million, subsequently increased to HK$910 million, but Harbour Front refused to engage in any meaningful consideration of the offer and rejected it outright. This is said to be in breach of the SHA. The IDL Offer has since lapsed.

21. The Petition concludes in §59 in these terms: "In the circumstances, YK submits that Money Facts' affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members including YK." Again, this is a clear reference to s.724(1)(a) of the Ordinance.

22. The primary relief prayed for is an order that Harbour Front buys-out YK's shares in Money Facts at fair value to be assessed by the court, after taking into account of and making allowances for the unfairly prejudicial conduct complained of.

23. Neither YK, nor Harbour Front in the 2018 Petitions, invokes the court's jurisdiction to wind-up the companies on the just and equitable ground under s.177(1)(f) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, Cap. 32.

*Grounds for striking out*

24. In support of the application to strike out the Petition, counsel for YK (Ms Sabrina Ho and Mr Justin Lam) relied on three main grounds in their Skeleton Submissions.

25. First, it is said that the Petition discloses no reasonable cause of action because YK has been in full and sole control of the boards of Money Facts and Fonfair, so that it is within his power to cause and he did cause the companies to take action to remedy the alleged wrongful conduct committed by Harbour Front ("**Control Point**").

26. Secondly, it is said that the allegations against Harbour Front do not concern the conduct of Money Facts' affairs or any act/ omission on behalf of Money Facts. The court has no jurisdiction to grant relief under ss.724 and 725 of the Ordinance ("**Jurisdiction Point**").

27. Thirdly, the Petition is a collateral attack on the correctness of the Injunction. It is not open to YK to claim that it is unfairly prejudicial for Harbour Front to act upon the interim injunction and withhold consent for a proposed sale of the Property ("**Injunction Point**").

*Strike out: applicable principles*

28. There is no dispute between counsel for both sides that the burden is on the applicant to show that it is plain and obvious that the petition is bound to fail, assuming that the allegations pleaded in the petition will be established: *Re Hitachi Shin Din Cable Limited*, HCMP 2979/2004 (unrep, 2 February 2005) at [2] per Kwan J.

*Central question is Jurisdiction*

29. Despite the multiple ways in which the application is advanced on behalf of Harbour Front, Ms Ho realistically accepted that the determinative question is the Jurisdiction Point. She accepted, in my view

rightly, that if the complaints pleaded in the Petition arguably fall within the jurisdictional ambit of s.724(1), neither the Control Point nor the Injunction Point, separately or cumulatively, would be dispositive of the Petition. The converse is also true: if the complaints do not fall within the jurisdiction conferred by s.724(1), the other points would not save the Petition.

30. Further, as I have observed, the complaints pleaded in the Petition are substantially the same as the facts and matters pleaded in YK's Points of Defence in the 2018 Petitions. These events will have to be canvassed at the trial of the 2018 Petitions, so there will be no significant increase in terms of time, or costs, if the Petition is to be heard together with the 2018 Petitions.

31. That being the case, I turn to consider the central question in this application, namely whether the misconduct complained of arguably fall within the statutory jurisdiction.

*Jurisdiction under s.724(1)*

32. Section 724(1) provides that:

> "The Court may exercise the power under section 725(1)(a) and (2) if, on a petition by a member of a company, it considers that–
>
> (a) the company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members generally or of one or more members (including the member); or
>
> (b) an actual or proposed act or omission of the company (including one done or made on behalf of the company) is or would be so prejudicial."

33. Counsel for both sides cited a number of authorities on the ambit of s.724 (and its equivalents under the previous s.168A of the Companies Ordinance, Cap. 32, and the corresponding English legislations). The following principles can be derived from the authorities cited.

34. The conduct complained of must be (or, in this context, capable of constituting) the act or conduct of the company, as opposed to act or conduct of the shareholder in his private capacity: *Re Ka Ka Realty Ltd* [2004] 1 HKLRD 832 at [13] to [24] per Kwan J; *Re CY Foundation Group Ltd* (unrep. HCMP 702/2010, 25 April 2012) at [65] - [69] per Barma J (as Barma JA then was).

35. The "affairs of the company" is to be construed widely: *Mandarin Resources Corp Ltd* (unrep. HCCW 348/1986) at [14] per Burrell J. In *Luck Continent Ltd v Cheng Chee Tock Theodore* [2013] 4 HKLRD 181 (which was the appeal from Barma J's decision in *Re CY Foundation*) at [30], Lam JA (as Lam VP then was, with whom Stock VP and Lunn LJ agreed) said:

> "… the acts or conduct in question must be in respect of the company's affairs. It has been said that the court will construe the words 'affairs of a company' liberally and will not adopt a technical or legalistic approach but will look at the business realities: see *Re Neath Rugby Ltd* [2009] 2 BCLC 427, [50]; *McKillen v Misland (Cyprus) Investments Ltd* [2012] EWHC 2343 (Ch), [628]-[629]."

36. Paragraphs [628]–[629] of *Re Coroin (No 2), McKillen v Misland (Cyprus) Investments Ltd* [2013] 2 BCLC 583 (the first instance decision David Richards J) are in these terms:

> "[628] The court will not adopt a technical or legalistic approach to what constitutes the affairs of the company but will look at the

business realities. It was held by the Court of Appeal in *Re Citybranch Group Ltd* [2004] EWCA Civ 815, [2004] 4 All ER 735, [2005] 1 WLR 3505 that the affairs of a company could include the affairs of a wholly-owned subsidiary which had common directors. If the affairs of the subsidiary are being conducted in a manner which damages the subsidiary and hence the value of the holding company's interest in the subsidiary, then the omission of the directors of the holding company to take steps to rectify the situation seems to me plainly capable of falling within s 994(1). Likewise, where the directors of a partly owned subsidiary nominated by the holding company permitted the holding company to build up a business at the expense of the subsidiary's business, which was allowed to wither, without taking any steps to protect the subsidiary's position, they were engaged in the conduct of the affairs of the subsidiary: *Scottish Co-operative Wholesale Society Ltd v Meyer* [1958] 3 All ER 66, [1959] AC 324; see also the decision of Court of Session (Outer House) in *Whillock v Henderson* [2009] BCG 314, 2007 SLT 1222.

[629] By way of conclusion on this aspect, guidance was given by the Court of Appeal in *Re Neath Rugby Ltd (No 2)*, *Hawkes v Cuddy (No 2)* [2009] EWCA Civ 291, [2009] 2 BCLC 427 at [50] where, in a judgment with which the other members of the court agreed, Stanley Burnton LJ said:

> 'The judge cited the observations of Powell J in *Re Dernacourt Investments Pty Ltd* (1990) 2 ACSR 553 at 556: "The words 'affairs of a company' are extremely wide and should be construed liberally: (a) in determining the ambit of the 'affairs' of a parent company for the purposes of s 320, the court looks at the business realities of a situation and does not confine them to a narrow legalistic view; (b) 'affairs' of a company encompass all matters which may come before its board for consideration; (c) conduct of the 'affairs' of a parent company includes refraining from procuring a subsidiary to do something or condoning by inaction an act of a subsidiary, particularly when the directors of the parent and the subsidiary are the same ... " I would accept these propositions, but with some qualification. Proposition (b) may extend to matters which are capable of coming before the board for its consideration, and may not be limited to those that actually come before the board: I do not accept that matters that are not considered by the board are not capable of being part of its affairs. Nonetheless, like the judge, I am unable to see how it can be said that the affairs of Neath and of Osprey were so intermingled that all of the affairs of the latter were the affairs of the former. It

> would, for example, be quite irrational to suggest that Mr Blyth, when acting as a director of Osprey, was conducting the affairs of Neath.'
>
> It no doubt goes without saying that the affairs of the company will also encompass matters which must go to the company in general meeting, rather than the board, for consideration."

37. There is no dispute between counsel for the parties on these principles. The arguments of counsel focused on the application of these principles to the facts of this case.

*Parties' contentions*

38. I have already mentioned that the Petition at §12 alleges that:

> "YT (and since about February 1998, Harbour Front) conducted Money Facts' affairs in a manner unfairly prejudicial to the interests of the members including YK." (emphasis added)

39. Ms Ho, on behalf of Harbour Front, argued that the Petition is fundamentally flawed. She emphasised the special feature in this case, ie. that YK has been in control of Money Facts since 2001 and it was YK, not Harbour Front, who has been conducting the affairs of Money Facts. The facts pleaded in the Petition are conduct of Harbour Front, not affairs of Money Facts. For example, Ms Ho referred to Petition §41 where it is pleaded that the acts by Harbour Front in relation to the Chung Sing Offer were done:

> "in bad faith to sabotage any arm's length negotiation of sale of the [Property] by Fonfair to third parties, stifle any genuine offers made by third parties to purchase the same, and in breach of the 2nd and 3rd Purposes of Money Facts";

and Petition §41(6) where it is pleaded that:

> "By commencing the 2015 Petitions (which were dismissed after trial), Harbour Front improperly hijacked the management of Money Facts and Fonfair which it was not entitled to."

40. Ms Ho submitted that these paragraphs demonstrate that the substance of what YK complains of is that YT/Harbour Front were wrongfully interfering with or sabotaging the proposed sale of the Property, rather than Harbour Front conducting any affairs of Money Facts.

41. Ms Frances Lok, counsel for YK, submitted that s.724 is engaged (or, in the present context, arguably so). Ms Lok's primary contention is that the conduct of YT/Harbour Front pleaded in the Petition constituted the affairs of Money Facts despite the fact that YT/Harbour Front had no management role or control over Money Facts since 2001.

42. More specifically, she argued that s.724(1)(a) does not mention *who* was conducting the affairs of the company, and it is possible that a person who has no management role in the company could depending on the facts be said to be conducting the affairs of the company. Ms Lok placed emphasis on the wider context and the past history of the two brothers' dispute. It is important to bear in mind, so Ms Lok submitted, the unique circumstances of this case: Money Facts was set up to hold the Property (via Fonfair), with the two brothers each holding equal number of shares; the SHA goes to the core of Money Facts' existence and spells out the requirement that the Property would be managed in such a way so as to achieve the "three purposes"; and the past history over the past 30 years was all about the two brothers wrestling over the control of Money Facts and the Property. The wrongful conduct of YT/Harbour Front undermined the very reason of Money Facts' existence. Viewed in this light, it is

arguable (so Ms Lok submitted) that although YT/Harbour Front has no management role or control of the companies, the conduct complained of, all of which had to do with leasing the Property, receiving rent, taking possession of or sale of the Property, are "affairs of the company".

43. In support of that contention, Ms Lok referred to *Re Coroin (No 2); McKillen v Misland (Cyprus) Investments Ltd*, *supra* at [626] and *Re CY Foundation Group Ltd, supra* at [67]-[69] for the proposition that "private acts" of a shareholder may be covered by s.724 if those acts translate into acts or omissions of the company or the conduct of its affairs.

44. What David Richards J said in [626] in the former decision is this:

> "[626] The purpose of the jurisdiction is to provide remedies in respect of the way in which the affairs of the company are conducted. It was perceived prior to the enactment of s 75 of the Companies Act 1980 that there was insufficient protection to shareholders in that respect. The section is not directed to the activities of shareholders amongst themselves, unless those activities translate into acts or omissions of the company or the conduct of its affairs. Relations between shareholders inter se are adequately governed by the law of contract and tort, including where appropriate the ability to enforce personal rights conferred by a company's articles of association. This important distinction has been emphasised in many of the authorities. In *Re Legal Costs Negotiators Ltd* [1999] 2 BCLC 171 the Court of Appeal upheld the decision of Peter Goldsmith QC, sitting as a deputy judge of the Chancery Division, to strike out a petition under s 459 of the Companies Act 1985 as unsustainable. Peter Gibson LJ (at 195) summarised the judgment below, with which he said he completely agreed. He said that the judge –
>
> > "reviewed the authorities from which he drew two points of significance for the case before him. The first was that the starting point was to consider what the parties had agreed between themselves as their commercial relationship, though he recognised that this need not always be contained in the articles of association. The second was that the essence of the powers under s 459 is

> to give a remedy where there is complaint about the way the company's affairs are being conducted through the use (or failure to use) powers in relation to the conduct of the company's affairs provided by its constitution. He regarded the section as concerned with the company's affairs rather than the affairs of individuals and to be concerned with acts done by the company or those authorised to act as its organs."

Peter Gibson LJ said (at 196):

> "Thus like the judge I too would lay emphasis on the need to show that it is the affairs of the company which are being or have been conducted in an unfairly prejudicial manner or that it is an act or omission of the company that is or would be so prejudicial. The conduct of a member of his own affairs, for example by requesting a general meeting of the company or seeking answers to an excessive number of questions, is irrelevant."

I would only add that the refusal by a company to convene a general meeting would be an act of the company, although whether it was either unfair or prejudicial would of course depend on the circumstances. Other authorities in which the same distinction had been drawn include *Re Unisoft Group Ltd (No 3)* [1994]1 BCLC 609, *Re Estate Acquisition and Development Ltd* [1995] BCC 338 and *Re Leeds United Holdings plc* [1996] 2 BCLC 545."

45. It seems to me that Ms Lok was taking what David Richards J said in [626] out of context. That paragraph has to be read together with [628] and [629] which have been adopted by our Court of Appeal in *Luck Continent v Cheng*: see [35]-[36] above. David Richards J was addressing what might constitute the company's affairs within the meaning of the section. I do not read the learned judge to be saying, or intending to say, that simply because the conduct of a shareholder has a *causal effect* on what the company does or does not do, the shareholder's conduct would amount to the affairs of the company. A creditor could by serving a statutory demand against a company cause the company to take certain responsive actions. It would be difficult, one may perhaps even say absurd, to suggest

that the creditor is thereby "conducting" the affairs of the company simply because what he does leads the company to react in a certain way.

46. Likewise, Barma J in *Re CY Foundation Group Ltd* [67]-[69] was addressing the distinction between acts or lack of action on the part of a company and acts of a shareholder in exercising his own private right. The decision, properly understood, does not support the wide proposition advanced by Ms Lok.

47. Ms Lok also submitted that private acts of a shareholder destroying trust and confidence in a quasi-partnership company can amount to unfairly prejudicial conduct in the affairs of the company, citing *Re Home & Office Fire Extinguishers Ltd* [2012] EWHC 917 (Ch) [92]; *Re Abbington Hotel Ltd* [2012] 1 BCLC 410 [105]; and *Rackind v Gross* [2005] 1 WLR 3505 [16] – [18].

48. It is unnecessary to go into those authorities in detail. *Re Home & Office Fire Extinguishers Ltd* and *Re Abbington Hotel Ltd* are cases where the respondent was in a management role of a quasi-partnership company and the conduct in question took place either in the course of his conduct of the company's affairs or against the background of disputes between the shareholders over the management and affairs of the company. Properly understood in context, the passages in these cases relied upon do not support Ms Lok's wide proposition. *Rackind v Gloss* concerned the conduct of a subsidiary's affairs and does not assist.

49. Ms Lok in her oral submissions said that YK also relies on s.724(1)(b), despite no reference to that effect in the Petition. Moreover,

she advanced no submissions as to how that limb applies here. In response, Ms Ho submitted that it would be wrong to allow such an argument to be raised when s.724(1)(b) has not been expressly pleaded, citing *Graham v Every* [2014] EWCA Civ 191 at [37] per Arden LJ and [77] per Vos LJ (as Lady Arden and the Chancellor then were).

50. Given that this a strike out application, if any deficiency in the Petition could be remedied by an appropriate amendment, the court may decline to strike out. The difficulty here, however, is that Ms Lok has not explained how s.724(1)(b) may be relevant. Nor has she suggested that YK might apply to amend the Petition. I am therefore not inclined to accept Ms Lok's argument.

*Exercise of discretion*

51. I have carefully considered the submissions made by counsel. As presently advised, I am sceptical that YK's pleaded case does fall within s.724(1). Nevertheless, I have come to the conclusion that this is not an appropriate case to strike out, for two reasons.

52. First, I am mindful that the circumstances of this case are unusual. Although at the moment the case advanced by Ms Lok appears somewhat shadowy, I am not prepared to go as far as to hold that the Petition could not arguably fall within s.724(1). At the end of the day, as Ms Lok frankly accepted, her case would involve a novel construction of s.724(1)(a). I am persuaded, albeit only just, that YK's contention should be given an opportunity for more matured consideration at trial.

53. Secondly, I also bear in mind that substantially the same complaints are being relied upon in YK's defence to the 2018 Petitions. Counsel for both sides accept that if the Petition is allowed to proceed, it should be heard together with the 2018 Petitions. Realistically, therefore, to allow YK to pursue the Petition would not add significantly to time or costs.

54. Whether to strike out the Petition is a matter of discretion. Taking into account these two reasons, I am prepared to exercise my discretion not to strike out the Petition so that YK would be able to have his case fully argued in the light of the facts found by the trial judge.

*Disposal*

55. For these reasons, the Summons is dismissed.

56. I order that the Petition shall be heard together with the trial of the 2018 Petitions. I will give the following directions:

(1) The Petition shall stand as Points of Claim;

(2) The 1st Respondent shall file and serve Points of Defence within 14 days from the date of handing down of this judgment;

(3) The Petitioner shall file and serve Points of Reply within 14 days thereafter;

(4) The Petitioner and the 1st Respondent do file and exchange their List of Documents within 21 days thereafter. The List of Documents shall only contain documents which have not been disclosed in the disclosures in HCMP 1987/2018 and HCMP 1988/2018;

(5) There be inspection of documents within 14 days thereafter;

(6) The Petitioner and the 1st Respondent do file and exchange their witness statements within 21 days after inspection. The witness statements shall only cover matters which have not been covered in the witness statements and the witness statements in reply filed in HCMP 1987/2018 and HCMP 1988/2018.

57. As to costs, it seems to me that a fair order would be for the costs of the application to be in the cause. I make an order *nisi* to that effect. Either party who wishes to vary that costs order *nisi* should apply in writing within 7 days of handing down this judgment.

58. Lastly, I thank counsel for their assistance.

(Jat Sew-tong SC)
Deputy High Court Judge

Ms Frances Lok, instructed by Ho & Ip, for the Petitioner

Ms Sabrina Ho and Mr Justin Lam, instructed by
Yiu & Associates, Solicitors for the 1st Respondent

The 2nd Respondent was not represented and did not appear