

HCMP 1987/2018, HCMP 1988/2018 and HCMP 1471/2019
(HEARD TOGETHER)
[2024] HKCFI 1599

HCMP 1987/2018

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE**
MISCELLANEOUS PROCEEDINGS NO 1987 OF 2018

IN THE MATTER OF Fonfair
Company Limited

and

IN THE MATTER OF Sections 724
and 725 of the Companies Ordinance
(Cap 622)

BETWEEN

HARBOUR FRONT LIMITED

Petitioner

and

MONEY FACTS LIMITED
LEUNG YUET WAH, LEUNG YUET KEUNG
and LEUNG YUET HOI
LEUNG YUET KEUNG
MARCON INVESTMENT LIMITED
FONFAIR COMPANY LIMITED

1st Respondent
2nd Respondent

3rd Respondent
4th Respondent
5th Respondent

AND

HCMP 1988/2018

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE**
MISCELLANEOUS PROCEEDINGS NO 1988 OF 2018

IN THE MATTER OF Money
Facts Limited

and

IN THE MATTER OF Sections 724
and 725 of the Companies Ordinance
(Cap 622)

BETWEEN

HARBOUR FRONT LIMITED

Petitioner

and

LEUNG YUET KEUNG
MONEY FACTS LIMITED

1st Respondent
2nd Respondent

AND

HCMP 1471/2019

**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

(HEARD TOGETHER)

Before: Hon Harris J in Court

Dates of Hearing: 4, 6, 11 December 2023

Date of Judgment: 11 June 2024

J U D G M E N T

Introduction

1. I have before me the third series of Petitions issued by Harbour Front Limited (“**Harbour Front**”), a company controlled by Leung Yat Tung (“**YT**”) against his elder brother, Leung Yuet Keung (“**YK**”), in respect of Fonfair Limited (“**Fonfair**”) and Money Facts Limited (“**Money Facts**”, collectively the “**Companies**”). There is also a cross-petition issued by YK seeking an order that Harbour Front purchase YK’s shares in Money Facts. There is no dispute that if YK’s is successful, Harbour Front’s Petitions fail.

2. Fonfair and Money Facts are used by the Brothers to hold land at Yau Tong (“**Land**”). The disputes between them relate to the sale or development of the Land. The Companies were originally managed by the Brothers and they had made a written shareholders’ agreement, but after differences between them arose YK took steps to remove YT from their Boards. In the two previous series of Petitions YT sought orders that would have resulted in him being able to participate in management of the Companies. The Petitions were dismissed:

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B (1) After trial by Kwan J (as she then was) in HCCW 880/2001
and HCCW 246/2022 on 2 February 2004.

C (2) After trial by me in 2017 in HCCW 111/2015 and 116/2015.
D I dismissed both Petitions on 4 October 2017 and my reasons
E were handed down on 15 February 2018.

F 3. Given the extensive judgments after trial and the Parties
G agreement to the facts contained in the Annex to this judgment, I will not
H repeat here the background to the dispute or its details.

I 4. Kwan J had found in the first set of proceedings that Harbour
J Front was entitled to participate in the management of the Companies,
K however, Kwan J further found that YT had caused the breakdown of trust
L between the brothers and that he had been justly excluded from their
M management. The Petitions heard by me were founded on the assertion
N that YT had remedied the matters that Kwan J had found justified his
O exclusion from management and, thus, Harbour Front had become entitled
P to participate in management as envisaged by the shareholders' agreement.
I found that YT and his Family members, who had become involved in the
dispute had not remedied the matters, which Kwan J had found justified
Harbour Front's exclusion from management. I stated the following
concerning Harbour Front's attempts to remedy its previous conduct:

Q "22. It should by September 2008 have been quite clear to
R Harbour Front and YT that if Harbour Front was to have any
S prospect of returning to a role in the management of Fonfair it
T would have to make good the losses it had caused to Fonfair and
U that if Harbour Front continued with its belligerent refusal to
V respect the decisions of the courts it was likely to find itself
permanently excluded from a role in Fonfair's affairs. Certainly
one would have expected Harbour Front's legal advisers, and it
has had the same solicitor since the presentation of the Petitions
in 2001, to have made the position clear to Harbour Front and
YT.

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23. Despite this at no time has YT or Harbour Front made an approach in writing to Fonfair or YK with a view to remedying the misconduct found by Kwan J...

36. On 30 March 2015 Harbour Front petitioned to wind up Money Facts and on 2 April 2015 petitioned to wind up Fonfair. The Petitioners advance the same complaints in both Petitions. I accept Ms Lok's submission that it is a compelling inference given the history of this matter that the Harbour Front's offers and proposals in March 2015 were not genuine, but were made with a view to interfering in the sale of the Land to Chung Sing as were the presentation of the Petitions.

...

41. As, in my view, is clear from the history of the disputes between YK and Harbour Front, which I do not think it can sensibly be suggested in practice is anything other than YT's corporate alter ego, YT has made no sensible effort to try and establish what needs to be done to remedy the breaches of the Shareholders Agreement. The opposite is the position. YT and Harbour Front have made no effort to engage meaningfully to agree what is owed despite being given the interim reports. Instead Harbour Front tried to intimidate Lau & Au Yeung in to stopping compiling them. Harbour Front has made no effort to propose an alternative method for agreeing what is owed and moving on. The guiding mind behind Harbour Front, who as I have said I think it is reasonable to assume is YT, is motivated by an animosity towards YK and a lack of objectivity, which seems to render any prospect of Harbour Front doing what is required to remedy its breaches illusory.

42. I find that Harbour Front has fairly been excluded from management. In my view this will remain the case until such time as Harbour front takes genuine and substantial steps to remedy its misconduct. Mr Fung has cited no authority for the proposition that a finding that a shareholder has been fairly excluded from management becomes spent simply by effluxion of time even if the shareholder has made no substantive effort to remedy his wrong as I have found to be the position in the present case. This is entirely unsurprising as the proposition seems to me to be as meritless as it is unattractive. If a shareholder acts in such a way as to destroy the mutual trust which was central to any agreement that he could take part in management, it seems to me clear that until such time as he remedies the misconduct, if it is possible to do so and it might not, he loses the right to argue that his exclusion alone justifies the court making a winding-up order on the just and equitable ground or granting relief for unfair prejudice. The reason is simple: it would not be just and equitable to wind up in these circumstances and the exclusion from management is not unfair."

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5. I note in passing that other litigation was brought unsuccessfully by Harbour Front following the February 2004 decision in which Kwan J, Recorder Kwok and the Court of Appeal found that Harbour Front had not remedied the matters, which Kwan J found had justified Harbour Front’s exclusion from management and did so in clear and firm terms.

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6. It seems to me quite clear that if YK had brought a cross-petition seeking a buyout order pursuant to *sections 724 and 725 of the Companies Ordinance, Cap. 622 (“Ordinance”)*, certainly if he had done so before me, he would have been successful. Ms Lok argued that the correct analytical framework in which to determine the Petitions was to ask if there had been any change of circumstances since 2017, which adversely affects YK’s right to a buyout order. This is the converse of Harbour Front’s case in its Petitions, which I think can summarised as this: Harbour Front has corrected the wrongs it has been found to have committed in the previous proceedings to which I have referred and is entitled to participate in the management of the Companies as envisaged in the shareholders’ agreement.

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The Legal Issues

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7. In the present Petition Harbour Front argues that as evidenced by [42] of my judgment, the findings of Kwan J and myself do not necessarily mean that Harbour Front is permanently excluded from relying on the shareholders’ agreement. If Harbour Front “*takes genuine and substantial steps to remedy its misconduct if it is possible to do so and it might not be*”, its exclusion will cease to be fair. What steps are adequate to remedy misconduct will depend on the nature of the misconduct and the circumstances. The greater the seriousness of the misconduct, the number

A of instances, the period of time over which it has taken place, and the
B general behaviour of the recalcitrant shareholder will all be material. It is
C obviously possible for breach of trust to be so serious that the trust and
D confidence of a shareholder has been irreversibly breached. It might
E reasonably be thought that this is a matter of common sense, but at the
F level of principle it derives from the characteristics of the equitable rights
G that may justify a shareholder objecting to another shareholder exercising
their strict legal rights in a way inconsistent with the understandings
between shareholders.

H 8. At least since *Ebrahimi v Westbourne Galleries*¹ if not earlier,
I it is clear that shareholders are not, by the mere fact of shareholding,
J entitled to participate in management. Lord Wilberforce (at 370E-G) set
K out the elements typically required for there to be superimposition of
equitable considerations:

- L (1) An association formed or continued on the basis of a personal
M relationship, involving mutual confidence; and
N (2) an agreement, or understanding, that all, or some, of the
shareholders shall participate in the conduct of the business.

O 9. Such mutual understandings and agreements are not
P immutable and can change over time. “*Relationships may obviously*
Q *change significantly over time, and a company can become a quasi-*
R *partnership, with understandings between shareholders, and equally cease*
S *to be one as time passes and circumstances change, with those*
understandings changing accordingly.”²

U ¹ [1973] AC 360, 379B-G.

V ² Hollington on Shareholders’ Rights, 8th ed, [7.47].

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10. This is not surprising. The essence of what is commonly referred to as a “quasi-partnership” is that the company has not just corporate personality and a constitution, but also scope for personal obligations and rights binding the shareholders in equity based on (i) a relationship of mutual trust and confidence and (ii) an agreement or understanding that each (or some) shall have the right to participate in the management of the company. Accordingly, if the personal obligation and rights, or their substratum of mutual trust and confidence and equal participation, are deliberately or permanently renounced by a member, he cannot thereafter expect that equity will allow him to hold the other members to their equitable obligations: see *Re Edwardian Group Limited*³.

11. The agreement or expectation of equal participation is, therefore, not indefinite and is likely to be limited to a point in time at which “for some other reason the change in management and control became necessary”: *R&H Electric v Haden Bill Electrical*⁴, citing Lord Templeman’s decision in *Tay Bok Choon v Tahanson*.

12. These principles are illustrated by the Australian case of *Fexuto v Bosnjak*⁵, where the majority shareholders excluded Mr Bosnjak from involvement in the management of the company. The trial judge held that, even if an expectation of participation in the management had existed, it had ceased to exist because of the emergence of a conflict over a long period of time between Mr Bosnjak and another controller ([84]). The trial judge held that the relations between them had “became strained to the degree that they could not work together” and concluded that “...the point has been reached where the brothers cannot work together and any

³ [2018] EWHC 1715 (Ch), [232] per Fancourt J.

⁴ [1995] 2 BCLC 280, 293d-h, 295d-g per Robert Walker J (as he then was).

⁵ (2001) 37 ACSR 672.

legitimate expectation has ceased". This observation was endorsed on appeal, where Spigelman CJ said (at [90]) that:

"There will be circumstances in which the emergence of irreconcilable differences will cause the court to conclude that an understanding or expectation as to participation in management should be taken to have ceased, in a manner not entitling the person excluded from such participation to relief under the statutory provisions. That would be so where the court decides that it is the person excluded who is responsible for the breakdown in the relationship."

13. This approach was endorsed in *Nasser v Innovative Precasters*⁶. Three venturers were parties to a "quasi-partnership" characterised by mutual cooperation and trust ([78]). However, there was a subsequent change in the individuals' relationship due to a fight ([113]). Following the fight, the parties held grudges against each other, and the relationship changed fundamentally. This led the court to conclude that the expectation as to participation in the management came to an end by reason of the emergence of irreconcilable differences ([115]–[117]): "At that point, the pre-existing expectations about participation in day-to-day management were overtaken by mutual acceptance of the reality that Mr. Nassar would no longer participate". As a result, although the petitioner had been excluded, it was not exclusion of the kind which would warrant a finding of oppression or unfair prejudice ([119]).

14. This is also the law in Singapore. In *Over & Over v Bonvests Holdings*⁷, the company in question started as a "quasi-partnership" during the formative years of its inception ([88]). However, as a result of events engendered mostly by the majority shareholders' camp, a fundamental change in the character of the parties' relationship was

⁶ [2009] NSWSC 342.

⁷ [2010] 2 SLR 776.

A precipitated (“...*This relationship was to be characterised by curt and*
B *eventually confrontational communications ...*”), and what began as a
C closely knit partnership underpinned by private share ownership was
D eventually replaced by a going concern that was effectively a listed
E subsidiary of the respondent ([96]–[97]).

F 15. In *Ng Yat Chi v Max Shares (No. 2)*⁸, the petitioner petitioned
G to wind up the company on the basis that it was just and equitable to do so.
H The petitioner contended that the company was intended to be a joint
I venture formed on the basis of a personal relationship involving mutual
J trust and confidence but there had been a breakdown in their relationship
K (568G). Rogers VP concluded that the company was not formed on the
L basis of a personal relationship. In *obiter* (572A-C), his Lordship held that
M even if there was a special relationship between the parties, such a
N relationship would have come to an end when the petitioner left the
O management of the company and gave up his position as managing director
P for reasons of his own. The misconduct had negated the original
Q agreement of mutual trust and confidence. Roger VP went on at 572D-I,
R to hold that the petitioner could not pray in aid a “*special relationship*”
S given his conduct in defrauding the company of its profits: “...*it is reading*
T *Lord Wilberforce’s speech too literally to hold that simply because at the*
U *formation of the Company there was a personal relationship which*
V *involved mutual trust and confidence which may have been intended to be*
faithfully carried out, that relationship survived a blatant abuse of
confidence on the part of the person seeking to found his case of justice
and equity upon it. In short, by abusing his position and siphoning off
profits, Mr. Ng had destroyed the basis of the mutual trust and confidence”.

⁸ [2001] 1 HKLRD 561.

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16. Harbour Front has not cited any authority in which a shareholder, who has been found to have caused a breakdown in trust has acted in a way, which a court has been satisfied remedies the misconduct sufficiently to restore the equitable rights the shareholder originally had. The authorities Harbour Front relies on concern a narrower proposition, namely, that a claimant who has found to have come to court with “unclean hands” and consequently is not entitled to equitable relief, can purge his mistake and renew an application for relief: *Royal Bank of Scotland v Highland Financial Partners LP*⁹; *The Pui Ying Middle School of Hong Kong v So Shing Yit*¹¹. Although there are similarities between a case in which an equitable remedy is sought to right a legal wrong and a case in which relief is sought in a unfair prejudice petition, there are likely to be material differences. The latter is much more likely to involve a long term and close business relationship. Curing a breakdown in a business relationship is likely to be considerably more difficult than “purging” an isolated wrong, which the court considers deprives a party of a right such as specific performance in the case of *Pui Ying Middle School*. It is likely to require action, which rebuilds a damaged relationship. As I observe in [42] of my 2018 reasons this may not be possible. In other words, it is not just a matter of correcting individual mistakes, but restoring trust, or at least taking action, which the court takes the view goes sufficiently far to justify the other shareholder being required to act in accordance with the shareholders’ original understandings and agreements.

17. It should have been quite clear to YT’s advisers, and YT or his Children if they read the judgments, that in order to remedy the misconduct they would need to need to show a recognition of the

⁹ [2013] 1 CLC 596.

¹⁰ [2012] 2 CLC 109.

¹¹ [2021] HKCI 692.

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seriousness of their misconduct and demonstrate a *bona fide* desire to
restore the *status quo ante*. It is necessary at the very least not only to
correct the wrongs YT and his *alter ego* Harbour Front have committed,
but to do so in a way that demonstrates a genuine attempt to restore trust.
Self-evidently, it would not be sufficient to, for example, repay money
which had been misappropriated, but to do so in a grudging and offensive
manner.

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18. Harbour Front has also argued that in relation to YK's petition
a breakdown in trust and confidence does not necessarily justify ending the
relationship by, in the present context, ordering a buyout. Ms Ho relied in
particular on Lord Hoffmann's statement in *O'Neill v Phillips*¹² "... even
in partnership law a dissolution would be granted on the [grounds of
breakdown in trust and confidence] in a case in which it was still possible
under the articles for the business of the partnership to be continued".
Ms Ho referred to similar statements in *Re Neath Rugby Ltd*¹³ and *Grace
v Biagioli*, which suggest something more than a breakdown in trust is
required. In the case of an unfair prejudice petition brought under *sections
724 and 725 of the Ordinance* for a buyout order, "something more" is
likely to be an action that has prejudiced the shareholder in a manner,
which so prejudices him as a shareholder that it is fair for him to be allowed
to exit the company. What I understand Lord Hoffmann and the courts in
Neath Rugby and *Grace v Biagioli*¹⁴ to be saying is that even if trust
between shareholders has broken down if it is possible for the commercial
venture to be carried on in accordance with the company's constitution a
buyout order will probably not be justified. In other words as a matter of
fact the relationship between shareholders may have been destroyed and it

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¹² [1999] 1 WLR 1092, 1104F-G.

¹³ [2010] BCC 597, Stanley Burnton LJ [108].

¹⁴ [2005] EWCA Civ 1222, [61(6)].

A is genuinely difficult for them to work together, but that does not mean it
B is impossible for the shareholders to conduct the business of the company
C on the basis originally agreed¹⁵. However, this plainly is not such a case.
D It is obvious from the judgments that I have referred to earlier that YT has
E committed serious wrongs in relation to the Companies. Although, I
F accept that it does not necessarily follow that because a shareholders'
G conduct has deprived him of the right he otherwise had to be involved in
H the management of the company it will be impossible for a company to be
I managed on the basis originally contemplated, in practice it is likely to be
J so. In the present case Ms Ho argued that as Harbour Front was a corporate
K shareholder the difficulties in operating the shareholders' agreement could
L be resolved by Gillian and her brother representing Harbour Front.
M Theoretically this might be the case, but it would be naive not to recognise
N that this would only be so if they could effectively distance themselves
O from both their Father's misconduct and the atmosphere of mistrust he had
P created, which was always likely to be very difficult particularly as Gillian
Q was implicated in it. As I will demonstrate later, in practice Gillian
R continued with the confrontational approach I describe in my earlier
S decision.

O 19. As I have already noted Harbour Front accepts that if YK's
P Petition is successful its two Petitions inevitably fail. However, Harbour
Q Front argues that there had been no irrevocable breakdown in trust in the
R mutual trust and confidence between Harbour Front and YK as of
S October 2018 by which time Harbour Front had remedied its previous
T wrongdoings. In my view this is analytically erroneous. Plainly YT (and
U as found by Kwan J Harbour Front is plainly his *alter ego*) had caused a
V serious breakdown in the trust and confidence in his relationship with YK

¹⁵ *Lau v Chu* [2020] 1 WLR 4656, Lord Briggs [15].

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at the time I dismissed Harbour Front's Petitions in October 2017. The issue is whether Harbour Front subsequently remedied the causes of the breakdown. Ms Ho's argument that, because YK continued to refer to the shareholders' agreement in correspondence and has not purported to terminate it, he accepted that it was possible to implement it and he cannot, therefore, believe that the relationship has irretrievably broken down, is specious. The fact that he had until issue of his petition in September 2019 tried to operate the Companies in a manner consistent with the shareholders' agreement does not mean that the relationship with YT and his children had not irretrievably broken down; it simply indicates how YK tried to manage the situation up until the point at which he thought that the best course was to take action to exit the Companies. In my view, if YK can demonstrate that Harbour Front continued after October 2018 to behave in a way, that damaged the relationship between the shareholders that is sufficient. Given the seriousness of Harbour Front and YT's misconduct prior to 2017, it would not require much in order to demonstrate that trust and confidence has been permanently destroyed as a consequence of wrongdoings by Harbour Front that justifies the court finding unfair and prejudicial conduct and ordering a buyout. To look at the matter from the perspective of Harbour Front's Petitions, unless Harbour Front can demonstrate that it has remedied the previous wrongs YK's case will be made out.

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Factual Matters

20. Harbour Front's initial reaction to my February 2018 decision was to issue notices of appeal. The appeals were withdrawn in November 2018. Correspondence between the Parties had stopped in August 2017. The correspondence between the Parties starts again with Harbour Front's letter to YK of 17 July 2018. This letter starts by referring

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to an offer to purchase Money Facts and Fonfair to which Harbour Front would appear to be receptive. It is signed by Gillian. The third paragraph reads:

“We understand that both Harbour Front and you are minded to realise both our respective interests in the Land and to terminate our existing shareholders relationship so that we can move on, particularly in light of the long history of disputes. We observe that pursuant to the Shareholders Agreement, we are both under an obligation, *inter alia*, to ensure that:-

- (1) Money Facts should be operated so as to ensure as majority shareholder in Fonfair that Fonfair should pursue and negotiate any future development plan and other business to safeguard and maximize the interests of the shareholders of Fonfair; and
- (2) Money Facts should be operated as a company to safeguard and maximize the interest of Harbour Front and Leung Yuet Keung in Fonfair.”

Gillian continues in a similar vein the pre-penultimate paragraph:

“For the above reasons and pursuant to the Shareholders Agreement, we demand Leung Yuet Keung to jointly procure Money Facts to:-

- (1) Procure Fonfair to conduct a public tender for sale of the Land in accordance to the Parallel Public Tender Arrangement;
- (2) Procure Fonfair to give the Undertaking (as described above) in accordance to the Parallel Public Tender Arrangement; and
- (3) Write to all Fonfair shareholders to agree to join in a public tender of sale for shares in accordance to the Parallel Public Tender Arrangement within the stipulated time in the July 2018 Letter.”

The letter makes no reference to YT repaying the sums that are owed or contains no acknowledgement of the findings of the courts that effectively YK was justified in excluding Harbour Front from management of the Companies. It seems to me a remarkably unempathetic letter to have sent

A in the circumstances. It suggests that Gillian had no grasp of the import of
B the court's concerns about the way in which YT and Harbour Front had
C conducted themselves. It plainly indicates an assumption that despite the
D judgments Harbour Front is entitled to involve itself in the management of
E the Companies even though at that time no effort had been made to pay the
sums owed to Fonfair despite the February 2018 decision.

F 21. One might have thought that given the content and tenor of
G the judgments that if Gillian genuinely wanted to rectify the situation
H Harbour Front would either simply have agreed the sum owing. This is
I not what happened. As explained by Ms Ho in [27(1)] of Harbour Front's
J written closing, its position was as follows: "*As explained by Gillian Leung
K during cross-examination, while Harbour Front initially had reservations
L to the accuracy of the interim reports because they were carried out by an
M accountant firm selected by YK, and none of the liabilities has been
N adjudicated upon in any form This is the reason Harbour Front
O initially requested for the quantum of Harbour Front's liability to be
P formally adjudicated.*" In other words, rather than try and agree the sum,
she wanted more proceedings. This did not suggest a genuine attempt to
Q establish a constructive working relationship. Whether this was because
she was acting at the direction of her Father, whose judgment was blurred
R by his animosity to his brother, her own animosity or an inability to
S understand the gravity of the situation, it is difficult to assess.

R 22. On 24 July 2018 Harbour Front wrote to Fonfair. The letter
S runs to 5 pages and again is signed by Gillian. It also does not start of with
T any kind of apology. It is a turgid repetition of the history of Fonfair's
U attempts to resolve the dispute over the misappropriations by YT. It makes
V two proposals. The first was a payment of HK\$12,762,695.14 to be made

A in full and final payment within 7 days of acceptance of the offer. The
B second was that the sum payable be referred to arbitration and
C HK\$12,762,695.14 paid by way of security. On 25 July 2018 Harbour
D Front wrote to YK personally. The letter was signed by Gillian.

E 23. On 27 July 2018 YK issued notices to convene extraordinary
F general meetings of Fonfair and Money Facts to consider Harbour Front's
G proposal and give an update on the current status of the sale of the Land.

H 24. On 3 August 2018 Fonfair replied to the 24 July 2018 letter.
I The letter was signed by YK. It suggests that Harbour Front's letter is
J unhelpfully tendentious and that rather than rearguing what has taken place
K it should admit liability and cooperate in the reconciliation process. It
L suggests that the proposals are an attempt to create a paper trail to argue in
future court proceedings that Harbour Front has remedied its past breaches
of the shareholders' agreement.

M 25. The correspondence continues in a similar vein until 30
N November 2018 when Harbour Front's new solicitors write
O "unequivocally" accepting the reconciliation in the 2016 Interim Report.
P This was 18 days after Harbour Front had issued (12 November 2018)
Q Petitions HCMP 1987/2018 and HCMP 1988/2018. There followed
R correspondence in December and January 2019 between the Parties
S solicitors discussing the terms of the written confirmation concluding the
T agreement of the reconciliation. Harbour Front wanted to include a
U provision that by agreeing the reconciliation it had purged its breaches of
V the shareholders' agreement. Understandably, Fonfair's solicitors
objected on the grounds that this was unnecessary and clearly was included
to bolster Harbour Front's case in the Petitions.

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26. It seems to me clear that the initial offer in July 2018 to pay HK\$12 million was caused by Harbour Front's wish to involve itself in the possible sale of the Land rather than a genuine recognition that the past wrongdoings should be remedied. The same is true of the November 2018 offer, which was clearly made with a view to improving Harbour Front's position in the new proceedings.

27. Ms Ho invited me in her closing to make findings in relation to matters predating the Petitions I heard in 2017, in particular:

(1) That Harbour Front did not sabotage the prospective sale of the Yau Tong property in 2008.

(2) That in relation to the Chung Sing offer in 2015, first, it was not acting *mala fides* in putting forward its offer to purchase the Land and YK's shares. Secondly, there was no evidence that the winding up petitions in HCCW 111/2015 and HCCW 116/2015 had sabotaged the Chung Sing offer.

28. It seems to me that this is unnecessary. As I have already stated it seems to me clear that by the time of the trial in 2017 Harbour Front's conduct as found by Kwan J and subsequently by myself was sufficient to support a finding that Harbour Front's conduct was unfairly prejudicial and justified making a buyout order at the end of 2017 had YK sought one.

29. In August 2018 the shareholders of Fonfair had discussed at the annual general meeting the sale of the Land. YK took the view that it should be put up for sale by an invitation to purchase the Land and that although if the Fonfair's shares were sold it would attract lower stamp duty the additional complications of the sale would likely not result in any

A financial benefit. Harbour Front's correspondence suggests that it wanted
B to keep open the possibility of selling the Land or shares. On
C 2 October 2018 Harbour Front wrote to YK (this time a letter sent by
D Jerry Leung). The letter complains that Savills' had published an
E advertisement for the "Sale by Public Tender" of the Land. The letter
F complains that Harbour Front were entitled to be kept informed of all the
G details of any proposed tender and, effectively, approve it. The
H advertisement is in general terms. It states that the "*Basis of Sale: The
I property is to be sold on "as-is" basis with existing tenancy*". In
J subsequent correspondence Harbour Front complains that Fonfair has not
K adequately considered and obtained advice on a sale by selling shares. YK
L answered the complaints in detail, and in my view convincingly, in a letter
M dated 23 October 2018. Harbour Front replied on 31 October 2018
N repeating its complaints and evincing an assumption that it was entitled to
O be actively involved in the management of the Companies. This was
P followed by issue of the Petitions and issue in November of an application
Q for an injunction to stop the public tender in HCMP 1987/2018. Clearly,
R by this time what hope there was of re-establishing any trust and
S confidence had been destroyed, and destroyed by the time the
T "unequivocal" acceptance of the reconciliation report was communicated.

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30. The injunction was in my view an abuse. Most of the relief
sought was rejected by DHCJ Kenneth Wong on 23 November 2018. He
declined to grant any relief to allow Harbour Front's participation in the
management of Fonfair. The DHCJ did order that the Land could not be
sold without Harbour Front's consent prior to the determination of the
Petitions. Plainly this interfered with the management of the affairs of
Fonfair and prevented it operating in accordance with its articles of
incorporation and prejudiced YK *qua* shareholder and given the history of

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this matter, clearly did so unfairly. Harbour Front argues that as the shareholders' agreement had not been terminated it was entitled to rely on its terms and it gave it a right to participate in the management of the Companies' affairs and the question of prejudice and fairness has to be considered in that light. I accept that if what had happened was that the board of Fonfair had decided to sell its major asset without consulting a major shareholder, who the other shareholders had, pursuant to a shareholders' agreement, agreed needed to be consulted and agree the sale, this would be relevant in assessing whether interference by the shareholder with the lawful exercise of the board's power was unfairly prejudicial to the major shareholder, because its rights under the articles were on the face of the matter infringed. However, the position in this case was far more complex. Harbour Front chose to sabotage the sale of the Land by interfering in the operation of Fonfair in circumstances in which the courts had twice found that Harbour Front had lost the right to complain that the Companies were not being run in accordance with the shareholders' agreement. As I have said, it seems to me that Harbour Front's conduct was unfairly prejudicial to YK.

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31. In 2019 YK wrote a letter to YT, which certainly on its face expressed in emollient language a desire to resolve their differences amicably. He suggested that an offer that had been received for the Land should be accepted. YK observes towards the end of the letter "*It is in the best interests of Fonfair and us all to accept the offer, reap the profit and think of better things to do.*" The clear implication being that it was best to sell the land and divide up the proceeds and for the Brothers to get on with their lives, which might be thought to be a sensible way of bringing the disputes to an end. YT did not reply. Instead, Gillian replied to "*Mr. Leung*"; not her "*Uncle*". There is nothing in the letter, which

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acknowledges her Father’s wrongdoings, nothing in the language she uses, which attempts to introduce a more friendly tone or reciprocate the spirit in which YK’s letter appears to be written. The letter does not suggest an agreement in principle to selling the land and moving on. On the contrary we read this: *“The obsolete past events you referred to, most of which were decades ago, shed little, if at all, light on the potentials of the Land. Without repeating what Harbour Front has already said in its previous letters, I would urge a proper and independent professional analysis be conducted to enable parties to decide what is best pursuant to the Shareholders Agreement.”* In other words, nothing has changed in the views of those who run Harbour Front. It has been Harbour Front’s case for some time that YT is no longer interested in the Land and its associated disputes. Indeed, in her letter Gillian says this *“Whether you choose to believe or not, my father is disinterested in the captioned matter and the series of litigations attached thereto.”* This is not credible, however, if it was true it follows that Gillian was the person, who had to remedy the wrongs done in the past. Her letter does nothing to suggest that she recognised this. The tone and content were confrontational.

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Disposition

32. I will make an order in HCMP 1471/2019 that Harbour Front purchases YK’s shares in Money Facts. The precise terms of the order require further consideration as I have not received submissions on questions such as valuation. The Petition should be listed for a 30 minute case management hearing unless the Parties can agree directions.

33. I dismiss HCMP 1987 and 1988 of 2018.

34. I make a costs order *nisi* in each Petition. In HCMP 1471 that the 1st Respondent pay the Petitioner's costs, such costs to be taxed if not agreed. In HCMP 1987 and 1988 the Petitioners pay all the Respondents' costs, such costs to be taxed if not agreed.

(Jonathan Harris)
Judge of the Court of First Instance
High Court

Ms Sabrina Ho and Mr Arthur Poon, instructed by Yiu & Associates, for the Petitioner (in HCMP 1987/2018 and HCMP 1988/2018), and the 1st Respondent (in HCMP 1471/2019)

Ms Frances Lok and Mr Kwan Ping Kan, instructed by Ho & Ip, for the 1st and 3rd Respondents (in HCMP 1987/2018), and the 1st Respondent (in HCMP 1988/2018), and the Petitioner (in HCMP 1471/2019)

The 2nd Respondent was not represented and did not appear (in HCMP 1987/2018)

The 2nd Respondent was not represented and did not appear (in HCMP 1988/2018 and HCMP 1471/2019)

The 4th Respondent was not represented and did not appear (in HCMP 1987/2018)

The 5th Respondent was not represented and did not appear (in HCMP 1987/2018)

1. In this Schedule of Agreed Facts, where appropriate, the following judgments are referred to:

(a) **2002 Judgment:** *Fonfair v Universal Dockyard* (HCA 1886/2001, 25 January 2002) *per* DHCJ To.

(b) **2004 Judgment:** *Re Money Facts Limited* (HCCW 880/2001, 2 February 2004), *per* Kwan J (as she then was).

(c) **2006 Judgment:** *Fonfair v UDL Management* (HCA 2002/2001, 24 November 2006) *per* Poon J (as he then was).

(d) **2018 Judgment:** *Re Money Facts Limited* [2018] HKCFRI 358 *per* Harris J.

(e) **2019 Judgment:** *Harbour Front v Money Facts & Ors* [2019] HKCA 916.

A. BACKGROUND

2. In the late 1950s, Mr. Leung Senior founded Universal Dockyard Limited (“**Universal Dockyard**”) and acquired the Yau Tong Property.

3. The Yau Tong Property was subsequently sold in 1980 to Fonfair, the then subsidiary of Universal Dockyard. Universal Dockyard had occupied the Yau Tong Property for over 40 years, notably known by the shipbuilding market to be the home of Universal Dockyard.

4. In 1966, Mr. Leung Senior passed away and his six (6) children, including YK Leung and YT Leung, received shares in Universal Dockyard as part of their inheritance.

5. The Yau Tong Property is the only material asset of Fonfair Company Limited (“**Fonfair**”). The Yau Tong Property is the last piece of land inherited from the

estate of the late Mr. Leung Man Kwong, the founder of Universal Dockyard and the father of YT Leung and YK Leung.

B. RELEVANT PARTIES

B1. Fonfair

6. On 3 July 1980, Fonfair was incorporated in Hong Kong as a subsidiary of Universal Dockyard.
7. In October 1980, Fonfair acquired the Yau Tong Property from the administrator of Mr Leung Senior's estate.
8. In September 1991, Fonfair was spun off from Universal Dockyard to keep the Yau Tong Property in the hands of the Leung family, when Universal Dockyard became listed on the Hong Kong Stock Exchange.
9. On 13 February 1998, YT Leung's 3958 shares in Fonfair were transferred to Harbour Front with the consent of YK Leung.
10. Since March 2001, YT Leung resigned as director of Fonfair.
11. At the 2006 AGM of Fonfair, YK Leung vote against the re-election of Fire Full Investment Limited ("**Fire Full**"). From 17 October 2006 up to present day, YK Leung and Marcon, a company owned and controlled by YK Leung, remain as the only directors of Fonfair.
12. As at the date of the Petitions, the share capital of Fonfair has been held as follows:-

Shareholder	No. of Shares	Percentage (%)
Harbour Front	3,958	32.96
Money Facts	7,900	65.79
Leung Yuet Wah, Leung Yeut Keung and Leung Yuet Hoi	75	0.63
YK Leung	25	0.21
Marcon	50	0.42

B2. Money Facts Limited (“Money Facts”)

13. On 5 June 1990, YT Leung and YK Leung entered into the Shareholders Agreement. (“the Shareholders Agreement”) and the Share Sale Agreement.

14. On 21 May 1991, Money Facts was incorporated in Hong Kong. The purpose of forming Money Facts was to hold an equal amount of YT Leung’s and YK Leung’s shareholdings in Fonfair to form a majority block of shares in Fonfair pursuant to the Shareholders Agreement.

15. On 3 September 1991, YK Leung and YT Leung entered into the Deed of Agreement and Release whereby it was provided that they should jointly acquire Money Facts and each was to take up 3,950 shares in Money Facts, that they should be the first directors of Money Facts and should cause the articles of association of Money Facts to be amended in the manner pursuant to the provisions of the Shareholders Agreement.

16. On 13 February 1998, YT Leung’s 3,950 shares in Money Facts were transferred to Harbour Front with the consent of YK Leung.

17. As at the date of the Petitions, the share capital of Money Facts has been held as follows:-

Shareholder	No. of Shares	Percentage (%)
Harbour Front	3,950	50
YK Leung	3,950	50

18. After YT Leung resigned as a director of Money Facts in March 2001, YK Leung appointed his nominee Wong Sum Yuen to be a director of Money Facts.

19. On 16 June 2016, Marcon, a company owned and controlled by YK Leung, was appointed as a director, and replaced Wong Sum Yuen who resigned on 17 June 2016.

C. AGREED FACTS RELEVANT TO THE SHAREHOLDERS AGREEMENT

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20. Money Facts was formed on the basis of a personal relationship between YK Leung and YT Leung involving mutual confidence. Fonfair was continued or operated on a similar basis to Money Facts, as the shareholding in Fonfair held by the estate of the Leung Man Kwong is so small as to be almost insignificant.

21. The provisions in the Shareholders Agreement, which provide that (1) YK Leung and YT Leung had agreed not to cause Money Facts to issue further shares without their mutual consent, and (2) they should cause themselves to be elected as the only two directors in Money Facts, must have been designed to ensure that there was to be equality of control in Money Facts of the two shareholders.

22. The Shareholders Agreement set out the three objectives of Money Facts in its role as the majority shareholder of Fonfair, including the important objective of pursuing and negotiating any future development plan of the Yau Tong Property. In view of these objectives, it must have been intended that YK Leung and YT Leung should have a right to participate equally in the business of Money Facts and through Money Facts in the business of Fonfair.

23. There was an implicit agreement or understanding that both shareholders of Money Facts should participate in the conduct of its business and that through Money Facts, both should participate in the business of Fonfair, and that neither was to be excluded from management and control unless for good reason such change should become necessary.

24. There was a quasi-partnership between YK Leung and Harbour Front in respect of their association in Money Facts and Fonfair giving rise to equitable considerations.

D. AGREED FACTS RELEVANT TO THE FINDINGS IN THE 2002 AND 2004 JUDGMENT

25. The rental income of the Yau Tong Property was applied towards mortgage repayments of the loan taken out by Fonfair from Hongkong and Shanghai

Banking Corporation Limited for payments to Universal Dockyard to facilitate the spin-off of Fonfair.

26. This arrangement continued until November 1996 when a loan of \$30 million was obtained from the Standard Chartered Bank against the Fonfair's assets to discharge the HSBC loan ("**SCB Loan**"). The proceeds were then distributed between YK Leung and YT Leung in accordance with the ratio of their shareholding in Fonfair. YK Leung and YT Leung became responsible for the monthly repayment of the SCB loan. From then on, with Fonfair having been freed from the burden of making mortgage repayments, the rental income net of incidentals became available for distribution to the Fonfair's shareholders, i.e. effectively to YT Leung and YK Leung in the approximate ratio of 2 to 1.

27. YTL, who had the management of Fonfair, overdrawn in favour of himself. This led to the appointment of an independent accountant firm, Messrs Lau & Au Yeung Certified Public Accountants Limited (hereinafter called "**Messrs Lau & Au Yeung**") to review the accounts of Fonfair. As a result, it was revealed that YT Leung had overdrawn from Fonfair's account \$2,652,363, while YK Leung had been underpaid \$1,988,432. The reconciliation account prepared by Messrs Lau & Au Yeung was accepted by both YT Leung and YK Leung. On 27 November 1997, Fonfair duly paid YK Leung the amount which he had been underpaid, while YT Leung was required to refund the amount overdrawn.

28. In view of YT Leung's misappropriation, it was agreed by YK Leung and YT Leung that Messrs Lau & Au Yeung be engaged to administer the accounts of Fonfair, and YK Leung to manage the lease of the Yau Tong Property to avoid further conflict of interest with YT Leung representing both Fonfair (as landlord) and Universal Dockyard (as tenant) at the same time ("**1997 Agreement**"). The 1997 Agreement was never implemented due to the lack of cooperation from YT Leung.

29. From September 1998 to December 1999, almost all the rental income received by Fonfair from Universal Dockyard was misappropriated by YT Leung into the account of YT Leung Trading (a company controlled by YT Leung).

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30. Subsequent to December 1999, Universal Dockyard was allowed by YT Leung to remain in possession of the Yau Tong Property without payment of rent.
31. YT Leung was adjudged bankrupt on 1 March 2001, which YK Leung admitted to be a “windfall” brought about by the bankruptcy of YT Leung.
32. YK Leung obtained control of the board afterwards. The 2004 Judgment found that it had only become possible for Fonfair to bring HCA 1886/2001 against Universal Dockyard to enforce the tenancy agreement, after YK had secured control of the board upon YT’s bankruptcy. YT Leung assisted Universal Dockyard to resist Fonfair’s claim by producing documents purportedly made by Fonfair. These documents have been found by To. J. in the 2002 Judgment to be lacking in credence.
33. After Fonfair obtained judgment against Universal Dockyard on 11 December 2001, the latter failed to pay the judgment debt or deliver up vacant possession. Irene Leung (wife of YT Leung), in her capacity as a director of Universal Dockyard, filed an affirmation in support of its application for a stay of execution for six months of Fonfair's writ of possession issued on 23 April 2002.
34. On 7 May 2001, Fonfair commenced HCA 2002/2001 to recover its books and records from UDL Management Limited (“UDLM”). In December 2001, summary judgment was entered against UDLM requiring it to deliver Fonfair’s books and records to Fonfair’s auditors. UDLM did not comply with the order. This led to committal proceedings initiated by Fonfair against Irene Leung and Bobby Chan in HCA 2002/2001 which failed.
35. On 21 June 2002, Fonfair presented a petition to wind up Universal Dockyard in HCCW 663/2002. Fire Full (nominee of Harbour Front) and Harbour Front objected to Fonfair’s petition to wind up Universal Dockyard, and actively assisted Universal Dockyard to resist the petition and to thwart Fonfair’s attempts to recover the judgment debt for arrears of rent (HK\$8.5 million with interest as at March 2003).

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36. Kwan J (as she then was) found that, in siding with Universal, Harbour Front had acted against the interest of Fonfair and had defeated the first of the three purposes for setting up Money Facts. Kwan J also rejected Harbour Front's submissions that its opposition to wind up Universal Dockyard was justified for "sentimental" or commercial reasons.

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37. Due to the misconduct of Harbour Front, there was a breakdown of the relationship of mutual trust and confidence between the parties. As a result, Harbour Front cannot assert its right of equal participation in the management of Money Facts and Fonfair, and has failed to make out a case of wrongful exclusion from management.

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E. **AGREED FACTS RELEVANT TO THE 2008 RECONCILIATION EXERCISE**

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38. By 2008, Fonfair was expected to accumulate a surplus out of rental income. On 1 August 2008, Fonfair's board resolved that the proportion of the surplus which represented Harbour Front's interest in Fonfair be set-off against the sums owed by Harbour Front. Neither Harbour Front nor its solicitors objected to the Fonfair's proposed course of action.

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39. At the 2010 AGM of Fonfair (held on 23 November 2010), an interim report was prepared by Messrs. Lau & Au Yeung.

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40. On 23 November 2016, Fonfair issued the 2015 Interim Report.

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41. On 23 November 2016, Fonfair issued the 2016 Interim Report.

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F. **AGREED FACTS RELEVANT TO HARBOUR FRONT'S SERIOUS ATTEMPT TO REMEDY OR HAS REMEDIED ITS BREACHES OF THE SHAREHOLDER'S AGREEMENT**

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42. On 30 March & 2 April 2015, Harbour Front petitioned for the winding up of Money Facts and Fonfair in HCCW 111 & 116/2015 respectively (the "2015 Petitions").

A 43. The 2015 Petitions were heard on 5-9, 13 June 2017. B

C 44. By a letter dated 7 June 2017 (halfway through the trial of the 2015 Petitions), Harbour Front through its then solicitors informed YK Leung that it was prepared to pay to Fonfair within 2 working days of notification:- D

E (1) An amount inclusive of the principal and interest which YK Leung alleged Harbour Front should pay to rectify the breaches identified under the 2004 Judgment; and F

G (2) A further amount to cover the estimated legal and other costs which Harbour Front may have to incur for the determination or adjudication of the total liability of Harbour Front. H

I 45. By letter dated 5 July 2017, Harbour Front made a further offer to Fonfair (“without any admission or affecting our rights”) to make reparations, and amongst other things tendered to Fonfair a cheque of HK\$3,022,000. By letter dated 19 July 2017 and 10 August 2017, Harbour Front repeated its offer dated 5 July 2017 and requested for confirmation of the amount due by Harbour Front to Fonfair. Fonfair responded to and rejected the offers and requests on 15 August 2017. J K L M

N 46. On 5 October 2017, this Court dismissed the 2015 Petitions. Reasons for judgment was delivered on 15 February 2018. O

P 47. On 15 March 2018, Harbour Front filed Notices of Appeal in CACV 68 & 69/2018 to appeal against this Court’s order dismissing the 2015 Petitions. Q

R 48. By letter dated 24 July 2018, Harbour Front proposed to pay Fonfair HK\$12,762,695.14 or alternatively, the same sum as interim payment for the question of quantum to be adjudicated. Fonfair rejected Harbour Front’s proposal in its letter on 3 August 2018. S

T 49. On 9 August 2018, Harbour Front offered to pay Fonfair HK\$15,616,705.23 (i.e. the full sum under Appendix I to IV of 2016 Interim Report) as security U V

and HK\$1,000,000 as security for legal costs, pending adjudication of quantum owed by Harbour Front. Fonfair rejected Harbour Front's revised proposal on 16 August 2018.

50. On 29 September 2018, Harbour Front through its solicitors tendered a cheque of HK\$11,467,293.47, being the full sum under Appendix I to III of 2016 Interim Report, to Fonfair.

51. On 8 October 2018, Fonfair rejected Harbour Front's proposal.

52. On 13 October 2018, Harbour Front through its solicitors, indicated its acceptance of the reconciliation exercise based on figures stated in the 2016 Interim Report.

53. By letter dated 16 October 2018, Fonfair did not accept Harbour Front's proposal.

54. By letter dated 22 October 2018, Harbour Front through its solicitors Messrs. Yiu & Associates ("**Yiu & Associates**") provided that:

"purely for the purpose of settlement without farther delay, we hereby re-confirm on behalf of Harbour Front its acceptance of the execution of the one off "reconciliation exercise" based on the figures contained in the 2016 Interim Report ("Settlement by Reconciliation Exercise"), which is Fonfair's/ YKL's own proposed and insisted form of settlement to fully and finally settle and to purge Harbour Front's past breaches including those of the Shareholders Agreement."

55. On 20 November 2018, Harbour Front filed a request for the dismissal of the appeal in CACV 68 & 69/2018. On 28 November 2018, the CA ordered the dismissal of the appeal.

G. AGREED FACTS RELEVANT TO THE LITTLEWOODS OFFER

56. By Notices for annual general meeting ("**2008 AGM**") dated 12 August 2008, the directors of Money Facts and Fonfair informed the shareholders of an offer from Messrs. Littlewoods Solicitors on behalf of their client (i.e. the

A “Littlewoods Offer”) to purchase the Yau Tong Property and Yau Tong Marine
B Lot No. 1.

C 57. This Court found that Harbour Front did not commission a valuation of the Yau
D Tong Property and did not form a view as to whether the Littlewoods Offer was
E high or low or commercially advantageous to Fonfair.

F 58. On 26 August 2008, Harbour Front commenced HCA 1598/2008 against
G directors of Money Facts (including YK Leung) for (*inter alia*) a declaration
H that YK Leung was in breach of the Shareholders Agreement and an injunction
I restraining YK Leung from voting in the 2008 AGM.

J 59. On the next day, 27 August 2008, Harbour Front took out an urgent application
K for interim injunction against the Money Facts directors (including YK Leung)
L to restrain them from voting on the Littlewoods Offer at the 2008 AGM.

M 60. On 29 August 2008, Recorder Kwok SC dismissed Harbour Front’s application
N as an abuse of process and held that the application was “frivolous and
O vexatious”. The learned Recorder ordered indemnity costs be paid by Harbour
P Front forthwith.

Q 61. On 2 September 2008, Harbour Front wrote a letter to Littlewoods Solicitors.

R 62. On 3 September 2008, Harbour Front appealed and applied for interim
S injunction pending appeal. This was dismissed by Kwan J (as she then was)
T (“**2008 Judgment**”). Kwan J dismissed Harbour Front’s application because
U Harbour Front remains in breach of the Shareholders Agreement, and has
V thwarted the first of the 3 purposes for which Money Facts was set up. It has
(up until then) made no reparation of the losses suffered by Fonfair as a result
of its misconduct in the misappropriation of rental income and the thwarting of
Fonfair’s attempts to recover the judgment debt of \$8.5 million for arrears of
rent owed by Universal Dockyard, which has been wound up in 2003.

63. Subsequently, Harbour Front’s appeal was heard and dismissed by the CA, who
found Harbour Front’s application an “abuse of process”.

64. On 5 September 2008, Fonfair’s solicitors (Messrs. Ho & Ip) wrote to Littlewoods to clarify that Harbour Front’s various court applications have been dismissed by the Court.

H. AGREED FACTS RELEVANT TO THE CHUNG SING OFFER

65. By Notices dated 20 March 2015, the board of Money Facts and Fonfair proposed EGMs for the two companies to be convened on 8 April 2015 for their shareholders to consider an offer received on 16 March 2015 from Chung Sing Real Estate Company Limited to purchase the Yau Tong Property at the price of HK\$365,000,000.00.

66. On 24 March 2015, Harbour Front made two offers:

(1) An offer to YK Leung to purchase all the shares owned by YK Leung in Money Facts and Fonfair at the price of HK\$30,400 per share; and

(2) An offer to Fonfair for the purchase of the Yau Tong Property at the price of HK\$379,600,000.00.

67. By letter dated 26 March 2015, Harbour Front requisitioned EGMs to be convened by Money Facts and Fonfair for resolutions to be passed to mandate Fonfair’s acceptance of Harbour Front’s purported offer to purchase the Yau Tong Property and the rejection of the Chung Sing Offer.

68. This Court found that Harbour Front had not commissioned a valuation of the Yau Tong Property before deciding to make its proposals.

69. By letter dated 27 March 2015, Harbour Front requisitioned EGMs to be convened by Money Facts and Fonfair on 8 April 2015 for resolutions to be passed to mandate Fonfair, in the event that Fonfair did not accept Harbour Front’s offer, to take all such steps necessary to sell the Yau Tong Property by way of public auction and/or public tender for the best obtainable price (“**Public Auction / Tender Proposal**”).

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70. On 30 March 2015 Harbour Front petitioned to wind up Money Facts and on 2 April 2015 petitioned to wind up Fonfair (the “**2015 Petitions**”). This Court found that there is a compelling inference given the history of this matter that the Harbour Front’s offers and proposals in March 2015 were not genuine but were made with a view to interfering in the sale of the Land to Chung Sing as were the presentation of the Petitions.

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71. On 8 July 2016, Fonfair applies for validation order to (*inter alia*) renew the lease of the Yau Tong Property. Harbour Front opposes the application for validation. On 14 February 2017, this Court grants validation to Fonfair.

H
I.
AGREED FACTS RELEVANT TO THE 2018 LAND PUBLIC TENDER

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72. On 9 October 2018, advertisements of the 2018 Land Public Tender were published in various newspaper.

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73. On 30 November 2018, the 2018 Land Public Tender closed.

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J.
AGREED FACTS RELEVANT TO THE HCMP 1987/2018 &HCMP 1988/2018 PROCEEDINGS

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74. On 12 November 2018, Harbour Front issued HCMP 1987/2018 and HCMP 1988/2018.

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75. On 23 November 2018, the Court granted an interim injunction in HCMP 1987/2017 restraining sale or disposal of the Yau Tong Property (unless with Harbour Front’s prior approval or consent)pending determination of the Petition or further order of the Court. The decision was upheld on appeal by the Court of Appeal on 23 August2019.

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AGREED FACTS RELEVANT TO THE IDL OFFER

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76. By letters dated 21 and 24 May 2019 from Savills (Hong Kong)Limited, acting for a prospective purchaser with an offer to purchasethe Yau Tong Property at the price of HK\$888 million. The name ofthe prospective purchase was

partially redacted and is referred to in these Petitions as “Investment Development Limited” (or “IDL”).

77. By a Notice of Extraordinary Meeting dated 29 May 2019, an EGM of Fonfair was scheduled to be held on 17 June 2019 for shareholders to consider the offer from IDL and to express their views as to what they consider to be appropriate in response. Money Facts had accordingly called an EGM to be held on 17 June 2019 by a Notice of Extraordinary Meeting dated 29 May 2019.

78. By a letter on 5 June 2019, Harbour Front, through Yiu & Associates, invited YK Leung to a without prejudice meeting on 17 June 2019, before the Money Facts’ and Fonfair’s EGMs.

79. The aforesaid 3 meetings were convened on 17 June 2019.

80. On 31 July 2019, Fonfair passed a written resolution which recited the relevant background and consideration in respect of the offer from IDL (revised on 29 July 2019 to the increased consideration of HK\$910,000,000 (the “IDL Offer”) and resolved to accept it.

81. The IDL Offer lapsed on 16 August 2019.

82. On 16 September 2019, YK Leung presented the Cross-Petition seeking buy-out of its shares in Money Facts.

83. By Summons dated 3 October 2019, Harbour Front applies to strike out and dismiss the Cross-Petition on the ground that it discloses no reasonable cause of action and/or is otherwise an abuse of process.

84. On 7 August 2020, DHCJ Jat SC dismissed Harbour Front’s Summons, but reasoned that “as presently advised, I am sceptical that YK’s pleaded case does fall within s.724(1)”.