**LATEST DEVELOPMENTS IN DISPUTE RESOLUTION**

Date: 12 July 2018

1. **Fok Hing International Co Ltd v Liu Hsiao Cheng – [2018] HKEC 1885**

Date of Decision: 12 July 2018

Fok Hing International Company Limited (“**FHI**”) is 1st defendant and Wong Shu Wai (“**Wong**”) is 2nd defendant against Liu Hsiao Cheng (“**Liu**”), who is appealing the dismissal of an application to produce and provide several classes of documents.

These four classes of documents consisted of:

1. Class 1 documents: Audited financial statements (“AFS”) of FHI relating to the Trading JV
2. Class 5 documents, namely: those relating to alleged reported losses of FHI under ‘Internal Accounts’ as shown in the March 2012 Summary and June 2012 Summary (**“Summaries”**)
3. Class 6 documents, namely: those relating to alleged amounts owed to Liu as shown in the Summaries
4. Class 7 documents, namely: those relating to the purported Provision for Doubtful Debts as reported in FHI’s AFS for the financial year ending 31 March 2008

The Court referred to the underlying objectives in Order 1A of the Rules of the High Court (“**RHC**”) and to *Billion Lead Investment Ltd v Union Joyce & Others* in deciding whether discovery should be ordered.

The Court stressed that no order for discovery should be made unless it is necessary either for disposing fairly of the cause or matter, or for saving costs. The Court should take a proportionate approach in balancing matters of (i) substantive rights against effectiveness, (ii) expeditious disposal of cases and (iii) procedural economy. Other objectives that the Court should also keep in mind are those of cost effectiveness and and ensurance of fairness between the parties.

Applying the above, the Court refused the request for discovery for all the classes of documents. The relevance of Class 1, Class 5 and Class 6 Documents was not satisfactorily established. Furthermore, the disclosure sought is not necessary for disposing fairly of any issues or for saving costs. For Class 7 Documents, Court could see no basis for Liu’s submissions that Wong’s claiming that he did not hold any documents in this category, was not worthy of belief, and that Wong’s efforts in this regard was insufficient to discharge his duty of disclosure.

**UPDATES IN DETAIL**

1. **Fok Hing International Co Ltd v Liu Hsiao Cheng – [2018] HKEC 1885**

Date of Decision: 12 July 2018

*Background*

* 1. Fok Hing International Company Limited (“**FHI**”) is 1st defendant and Wong Shu Wai (“**Wong**”) is 2nd defendant. In the original claim, they sought repayment of HK$1 million, which they claim to be a loan to Liu Hsiao Cheng (“**Liu**”).

* 1. Liu, in his defence, claims this is prepayment of certain profits he is entitled to. Liu argues that in early 2000, Wong invited Liu and his wife to be his business partners in a trading joint venture (“**Trading JV**”).
  2. The agreement relating to this trading joint venture agreement (“JV Agreement”) was an oral one. They agreed that Liu and Wong would each own 50% of Trading JV as equity partners. The Trading JV would run through FHI (as its agent).
  3. In August 2008, pursuant to the JV Agreement and as 50% equity partner of Trading JV, Liu requested 50% of the cumulative profits of Trading JV.
  4. Wong suggested that audited accounts of FHI for financial year ending in 31 March 2008 was not finalized and so the Trading JV’s cumulative profits could not be paid out. Wong instead suggested paying Liu HK $1 million first as prepayment of his profit share. Once the audited accounts of FHI were available, Wong would then work out the respective profit share of himself and Liu.
  5. Wong has, since then, neglected to account for Trading JV’s profits to pay Liu the profit share from May 200 to March 2008, and for the financial years thereafter.
  6. Liu claims he is not liable to repay the HK$1 million and counterclaims for HK$6,455,443 which is his profit share from May 2000 to March 2008 less HK$1m in repayment. He also claims for his profit share of Trading JV’s cumulative profits from 1 April 2008 to date.

*Issue*

* 1. In the present application, Liu is appealing the dismissal of an application to produce and provide several classes of documents. These classes of documents are:

1. Class 1 documents, namely: Audited financial statements (“AFS”) of FHI to the extent they relate to the Trading JV or the trading business conducted by Liu
2. Class 5 documents, namely: All notes, documents and records relating to alleged reported losses of FHI under ‘Internal Accounts’ as shown in a March 2012 Summary and a June 2012 Summary (“**Summaries**”)
3. Class 6 documents, namely: All notes, documents and records relating to alleged documents owed to Liu as shown in the Summaries
4. Class 7 documents, namely: All notes, documents and records relating to the purported Provision for Doubtful Debts in the sum of HK$5,878,826 as reported in FHI’s AFS for the financial year ending 31 March 2008

*Applicable legal principles*

* 1. The Court referred to the underlying objectives in Order 1A of the Rules of the High Court (“**RHC**”) when considering whether discovery should be ordered. As stated in *Billion Lead Investment Ltd v Union Joyce & Others*:

“… In deciding whether any document relates to a matter in question in the action, whether any document is or has been in the possession, custody or power of a party, and whether discovery of a document sought is necessary either for disposing fairly of the cause or matter or for saving costs, the Court should always bear in mind the objectives of cost effectiveness, expeditious disposal of cases, proportionality, procedural economy and ensurance of fairness between the parties.

…

The Court must take a proportionate approach...”

*Decision*

* 1. For Class 1 documents, the relevance of the documents was doubted. The documents in this class were not necessary for disposing fairly of any matter and would unnecessarily add to the costs incurred.

* 1. For Class 5 and Class 6 Documents, the Court stressed that whilst they related to entries in the Summaries, they are not the Summaries themselves. The Summaries have been disclosed. The Class 5 and Class 6 Documents also related to the financial records of GIIL another company that Liu and Wong have run, but is distinct and different from Trading JV. Relevance has not been established. The disclosure sought is not necessary for disposing fairly of any issues or for saving costs.
  2. For Class 7 Documents, Court could see no basis for Liu’s submissions that Wong’s claiming that he did not hold any documents in this category, was not worthy of belief, and that Wong’s efforts in this regard was insufficient to discharge his duty of disclosure.

*Conclusion*