HCCW 378/2024

[2025] HKCFI 919

**IN THE HIGH COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**COURT OF FIRST INSTANCE**

COMPANIES (WINDING-UP) PROCEEDINGS NO 378 OF 2024

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IN THE MATTER of WELL SUPREME DEVELOPMENT LIMITED (尚偉發展有限公司)

and

IN THE MATTER of SECTION 177(1)(d) OF THE COMPANIES (WINDING UP AND MISCELLANEOUS PROVISIONS) ORDINANCE (CAP. 32)

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Before: Hon Linda Chan J in Court

Date of Hearing: 24 February 2025  
Date of Judgment: 24 February 2025

Date of Reasons for Judgment: 4 March 2025

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R E A S O N S F O R J U D G M E N T

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1. This is a classic case of abuse where the petitioners (who are administrators of a shareholder) (“**Petitioners**”) have misused the winding up proceedings for the purpose of putting an end to a long term investment in property undertaken by 2 shareholders in circumstances where (1) the loans advanced by both shareholders are not repayable on demand; (2) the company still holds the property the value of which far exceeds the mortgage loan owed to the mortgagee and the company is solvent; and (3) the remaining shareholder (who is the opposing contributory) has not obstructed the sale of the property and is agreeable to have the property be sold and the proceeds be distributed amongst the shareholders.

Background

1. The Petitioners are the administrators of the estate of Ms Cheung Shuk Ling Zoe, deceased (“**Deceased**”).
2. The Deceased and Ms Cheuk Chi Shim, the opposing contributory to the petition (“**OC**”), are the only shareholders of Well Supreme Development Limited (“**Company**”) and their shareholding is equal.
3. As stated in the petition presented on 27 June 2024 (“**Petition**”):
   1. the Company was incorporated on 18 June 2012 under the former Companies Ordinance (Cap 32);
   2. its paid-up capital is HK$2;
   3. “the primary object is property investment. Since the incorporation of the Company, the Company has never conducted and does not conduct any other business save for property investment”;
   4. the Company holds Units A, B, C and D on 1/F & the Staircase at Park View Building, No. 29, 31, 33 & 35 Pak Tai Street, Kowloon (“**Property**”); and
   5. according to, and as acknowledged in, the audited financial statements of the Company for the year ended 31 March 2021 (“**2021 AFS**”), the Company owes HK$8,989,624, being a loan made by the Deceased to the Company as shareholder and director (“**Loan**”).
4. Pausing here, it is clear as the Loan was advanced for the purpose of financing the investment in the Property, it was *not* repayable on demand.
   1. This is consistent with the Petitioners’ own case that the Company only has nominal capital, its “primary object” is “property investment”, and the Loan was advanced by the Deceased to the Company as shareholder’s loan.
   2. Such fact can readily be seen from the 2021 AFS (referred to in the Petition) as well as the audited financial statements of the Company for the year ended 31 March 2022 (“**2022 AFS**”) referred to by the OC. In both the 2021 AFS and the 2022 AFS, the Loan was recorded under “non-current liabilities” as “amount due to a shareholder”. In the note relating to the Loan (note 7), the Loan was described as “the balances with a director/shareholder are interest free, unsecured and will not *[sic]* repayable within next twelve months”.
5. It is also clear from the 2022 AFS that:
   1. the *only* current liabilities of the Company were (a) bank borrowings of HK$10,039,725 (“**Bank Loan**”); (b) accrued charges of HK$568,573; (c) deposit received in the amount of HK$194,000; and (d) tax payable of HK$44,898, and the total current liabilities was HK$10,769,357;
   2. the only current assets of the Company were cash and cash equivalents in the amount of HK$77,839;
   3. the Property had been leased out and the rental income generated was HK$406,000 (and HK$420,000 in 2021) (note 2);
   4. the net carrying value of the Property was HK$27,593,942 (note 6); and
   5. the Bank Loan was secured by a floating charge over the Company’s properties and the guarantee provided by the directors (note 8).
6. Nevertheless, in the face of the above facts and matters, which are *not* in dispute, the Petitioners through Messrs. Deacons, served a statutory demand on the Company on 3 June 2024 requiring it to repay the Loan within 21 days thereof (“**SD**”).
7. Quite why the Petitioners suddenly considered that the Loan had become repayable on demand was not explained in the SD.
8. Indeed, it is clear from the SD that the Petitioners did *not* have any personal knowledge of the circumstances under which the Loan had been advanced to the Company or the basis for contending that the Loan had become repayable on demand. This can be seen from the way the Loan was described in the SD:

“When incurred: The date when the debt was first incurred is pending further discovery and not currently within the personal knowledge of the [Petitioners].

Upon the demise of the Deceased on 12 November 2018, the [Petitioners] investigated the assets and liabilities of the estate of the Deceased.

The existence of the debt was revealed in the [2021 AFS].

At this stage, the [Petitioners] can only confirm that the debt was incurred prior to 12 November 2018.

Description of debt: The Company obtained a loan from the Deceased, a shareholder and director of the Company at the time.”

1. Unsurprisingly, the Company was not able to comply with the SD as it was not at liberty to sell the Property (which remained subject to the security created in favour of the bank) and did not have sufficient cash at its disposal.
2. In the Petition, other than referring to the SD and the Company’s failure to comply with the same, there is *no* plea on the factual basis for contending that the Loan was repayable on demand or why the Company was liable to repay the Loan upon the demand made by the Petitioners. Such plea is plainly necessary as the 2021 AFS upon which the Petitioners rely showed that the Loan was a non-current liability of the Company, rather than a current liability.
3. Nowhere in the Petition has the factual basis for contending that the Loan had become a current liability or due and payable by the Company has been pleaded.
4. In the affirmation filed on 15 January 2025 by the OC on behalf of herself and the Company (“**OC 1st**”), she opposed the Petition on the grounds that the Company is solvent and the Petition constitutes an abuse of process[[1]](#footnote-1). In support thereof, she deposed to the following facts and matters:
   1. The Company is a “mere corporate vehicle to hold [the Property]”, which was purchased in late 2012 at HK$32 million. Assuming the Property could be sold at this price, after repaying the Bank Loan and associated expenses, there should be net proceeds of HK$22.8 million[[2]](#footnote-2).
   2. The Company had since May 2024 defaulted in making repayment of the Bank Loan. In July 2024, the bank commenced mortgagee proceedings against the Company, the Petitioners and the OC. As at 15 August 2024, the amount outstanding under the Bank Loan was HK$8.86 million[[3]](#footnote-3).
   3. The 2022 AFS, being the latest audited financial statements having been prepared, show that the amounts due to the Petitioners (i.e. Loan) and the OC (HK$10,984,896) were “Net-Current Liabilities.” The net sale proceeds should be sufficient to repay the Loan and the amount owed to the OC.[[4]](#footnote-4)
   4. The Deceased and the OC bought 4 real properties (including the Property) for investment purpose (collectively “**4 Properties**”), each of them was held by a shell company[[5]](#footnote-5) and was subject to a mortgage loan (collectively “**4 Companies**”)[[6]](#footnote-6).
   5. Since the demise of the Deceased in November 2018, the OC had attempted to work with the Petitioners including inviting them to join the boards of the 4 Companies and contribute to the monthly payment of the mortgage loans but the Petitioners refused. The OC attempted to sell the 4 Properties but unable to obtain any acceptable offer[[7]](#footnote-7).
   6. In 2023, without the OC’s knowledge, the Petitioners commenced winding up proceedings against Fai Wang and GS. The OC only became aware of the proceedings when she was invited to attend the creditors meetings. The OC did not challenge the winding up orders as she agreed to have the properties be sold since she had not been able to communicate with the Petitioners “smoothly”[[8]](#footnote-8).
   7. Amongst the 4 Companies/4 Properties: (a) the property held by GS had already been acquired by Urban Renewal Authority (“**URA**”) prior to its winding up but the Petitioners failed to disclose such fact[[9]](#footnote-9); (b) the property held by Fai Wang was sold by the liquidators through public auction at a price below its market value. The liquidators’ fees for each of GS and Fai Wang would be HK$800,000 to HK$1 million[[10]](#footnote-10); and (c) as for Cosmos, the Petitioners presented a winding up petition against it in HCCW 424/2024, and the OC opposed as winding up would only jeopardise the interests of the shareholders[[11]](#footnote-11).
   8. While the OC agrees with selling the Property and applying the proceeds to repay the Loan, she believes that winding up would not be in the best interests of the Company as the Property will be sold in public auction and the Company has to bear the liquidators’ expenses[[12]](#footnote-12).
   9. Even if the Property were sold at 20% discount of the purchase price (HK$25.6 million), after paying the Bank Loan and the expenses, there would still be sufficient proceeds to repay the Loan and the amount owed to the OC[[13]](#footnote-13).
   10. After the OC became aware of the “tragic situation” of Fai Wang and GS, the OC had proposed to sell her shares in Cosmos and the Company but to no avail, and she is now prepared to buy out the Petitioners’ shares to prevent its winding up[[14]](#footnote-14).
   11. The Petition should be dismissed as (a) the Company is willing to sell the Property and repay the Loan; (b) the Company is solvent and is able to repay the Bank Loan and the Loan after the Property is sold; (c) the Petitioners are welcome to join the board and be involved in the sale of the Property; and (d) the dispute with the Petitioners is a merely a shareholders’ dispute and should be resolved commercially and rationally[[15]](#footnote-15).
5. The approach of the court in dealing with winding up petition on insolvency ground is well established. It is difficult to see why having read the grounds in opposition set out in OC 1st, the Petitioners still considered that the Petition, which only relies on the alleged failure of the Company to comply with the SD, could be maintained.
6. On 21 January 2025, the parties filed a consent summons to seek an extension of time for the Petitioners to file an affirmation in reply, vacating the callover hearing before this Court on 27 January 2025, and adjourning the Petition for arguments on a date to be fixed in consultation with counsel’s diaries with 3 hours reserved.
7. As the joint letter sent by the Petitioners’ solicitors did *not* state any reason as to why the Petition should be adjourned for arguments with 3 hours reserved, this Court had to read the court file to see if there was any proper basis for the proposed adjournment. After reading the Petition and OC 1st, this Court considered that the Petition should be heard at a Monday hearing. By letter dated 23 January 2025, the parties were informed of the directions and this Court’s observations on the Petition:

“the Company is clearly solvent and the debts admittedly owed to the Petitioner and the Opposing Contributory do not appear to be payable on demand”.

1. Surprisingly, even after reading the Court’s observation, the Petitioners still insisted on pursuing the Petition. On 14 February 2025, the Petitioners filed a 2nd affirmation which runs to 13 pages (“**Ps 2nd**”) in reply to OC 1st, the contents of which may be summarized as follows:
   1. The updated valuation of the Property is HK$29 million, the net sale proceeds after repaying the Bank Loan will be HK$19,802,636[[16]](#footnote-16).
   2. According to the 2022 AFS, the total amount owed to the Petitioners and the OC was HK$19,974,520, which exceeds the net sale proceeds. This has not taken into account other miscellaneous liabilities and the uncertainty in selling the Property at HK$29 million[[17]](#footnote-17).
   3. According to the statement of affairs of GS dated 31 May 2024 signed by the OC (“**SOA**”), the Company owed HK$10,473,175 to GS (“**GS Debt**”). The OC deliberately failed to disclose the GS Debt and rely on the 2022 AFS. If the GS Debt is included as liability, the Company is “hopelessly insolvent”[[18]](#footnote-18).
   4. The 4 Companies were established by the Deceased and the OC “with a view of property investment”. The Petitioners had no involvement in the affairs of the 4 Companies and were not familiar with the Deceased’s property investments. Based on the financial information of the 4 Companies to which she had access, the “facts alleged in [OC 1st] as regards the financial position of the Company are grossly misleading as a result of material non-disclosure”[[19]](#footnote-19).
   5. The property held by GS was purchased at HK$11 million in December 2010 which was subject to a mortgage loan. The mortgage loan was discharged and the sale to URA at HK$22,571,000 was completed on 26 April 2021[[20]](#footnote-20).
   6. The Petitioners through Messrs. Deacons obtained the audited financial statements of GS up to 31 March 2022 which show that it had net profits of HK$13,928,114. Following their enquiries, the Petitioners were told that the OC “held up” HK$15,815,940 and left a balance of HK$11,331,085. The OC decided not to distribute the balance on the grounds that (a) the 4 Properties had been acquired “as a whole investment”; (b) the balance would be used to settle the outstanding liabilities owed by the Company, Cosmos and Fai Wang to the banks (which were secured by the OC’s personal guarantee) and other payables owed to third parties; and (c) cash was required to pay monthly loan repayments and daily expenses of the 4 Companies. No distribution was made to the Petitioners and they had been kept in the dark[[21]](#footnote-21).
   7. The Petitioners did not accept that the 4 Companies should be looked at as a whole. On 4 December 2023, the Petitioners presented a petition in HCCW 534/2023 to wind up GS on “just and equitable” ground. In the absence of any opposition, on 3 April 2024, a Master made a winding up order against GS[[22]](#footnote-22).
   8. The GS Debt must have come from the proceeds belonging to GS which was inappropriate. The Petitioners only became aware of the GS Debt from the SOA. Apart from receiving repayment of shareholder’s loan due to the Deceased’s estate through a cheque issued by the OC for HK$3,940,105, the Petitioners had not received any sale proceeds from GS. The winding up petition presented against GS was “done as a last resort due to the uncooperative behaviour of [the OC]”. But for the winding up of GS, the existence of the GS Debt (and the debts owed by Fai Wang and Cosmos) would never have come to light. This call into question whether the OC had been managing the 4 Companies and carrying the legacy of the Deceased “in a proper and honest manner, and hence it was entirely necessary that a provisional liquidator be appointed to fully investigate the affairs of [GS]”[[23]](#footnote-23).
   9. While the Petitioners are prepared “to act reasonably in a commercially sensible manner”, any negotiation for sale of the Property would have to involve the bank given the mortgagee action. This was a “very surprising development” as the balance held up by the OC should be sufficient to repay the Bank Loan. In any event, the mode of sale or negotiation for buy-out are “merely distractions from the underlying problem which is the financial state of the Company that even a sale of the Property would not salvage”[[24]](#footnote-24).
   10. The Company has not raised any *bona fide* dispute to the Loan which is acknowledged in the AFS. Winding up is “the only and most effective recourse” the Petitioners can resort to. They had no knowledge of the management of the 4 Companies and did not find it to be in the best interest of the 4 Companies to join the board or take an active management role. However, the non-distribution of sale proceeds by GS and the creation of the GS Debt which suggest that the OC had “improperly managed the financial affairs of the [4 Companies] to the detriment of the shareholders and the creditors”. A winding up order would be in the best interests of the Company and its shareholders and a liquidator can be appointed to properly investigate the financial affairs of the Company. The same liquidator can be appointed across the 4 Companies to save costs and facilitate investigation in light of “the suspicious intra-companies transactions”[[25]](#footnote-25).
2. I set out the contents of OC 1st and Ps 2nd at some lengths to illustrate how the Petitioners have misused the summary proceedings of winding up on insolvency ground to achieve what is in effect an exit from the long term investment jointly undertaken by the Deceased and the OC, when they knew full well that there was no basis to contend that the Loan was repayable on demand.

Discussion

1. The relevant principles governing winding up petition on insolvency ground which are well established. As stated in *Re China Oceanwide Group Limited* [2023] HKCFI 455, §§16-32:
   1. A petitioner seeking to wind up a company is required to present a petition in compliance with the requirements of the Companies (Winding up and Miscellaneous Provisions) Ordinance (Cap. 32) (“**CWUO**”), the Companies (Winding-Up) Rules (Cap. 32H) (“**CWUR**”) and the Forms contained in the Appendix to the CWUR where applicable (§16).
   2. Where a petitioner seeks to wind up a company on insolvency ground, it bears the burden of proving that the company is unable to pay its debts (s.177(1)(d) of CWUO). If a petitioner relies on deemed insolvency under s.178(1)(a), a statutory demand “in the prescribed form requiring the company to pay the sum so due”[[26]](#footnote-26) has to be served on the company (§18).
   3. Rule 3B of CWUR sets out the requirements of the form and the contents of statutory demand. In particular, rule 3B(4) provides that “the amount of the debt claimed must be limited to that which has accrued due as at the date of the demand”[[27]](#footnote-27) (§19(1)-(6)).
   4. For a petition on insolvency ground, a petitioner is required to state not just the debt remains unpaid, but also “the facts on which the petitioner relies” (§§19(7)-(8), 20).
   5. It is not open to a petitioner to rely on any facts or grounds not fairly stated in the petition and asks the court to make a winding up order against the company on the bases of any unpleaded facts or grounds. The petition is the document which sets in motion the jurisdiction of the court to wind up a company under s.177(1) of the CWUO, and the court would be concerned to see that the requirements prescribed by the CWUO and CWUR for invoking the statutory remedy are complied with (§§21-24).
   6. It is *no* answer for a petitioner to say that the relevant facts and grounds upon which it relies have been stated in the affirmations, or that there is no unfairness for a petitioner to rely on such unpleaded facts and grounds. There is no provision under the CWUO or the CWUR which allows a petitioner to change or supplement its case against a company by way of affirmations. Nor is it the practice of the Companies Court to allow a petitioner to expand its case by way of affirmations. There is a long line of authorities where the court emphasised the requirement that a petition must set out the facts and matters relied upon by a petitioner in justifying a winding up order, and any defects or omissions cannot be cured by supporting affidavits (§§26-27).
   7. The requirement that a petitioner cannot expand its case by affidavit applies with greater force to a creditor’s petition as such petition is almost invariably determined by the court summarily and the company is entitled to know what case it has to meet at the hearing. The court insists on such requirement as otherwise the company and the court would have to trawl through the voluminous affirmations and exhibits. The same approach has been adopted by the Companies Court in the UK. Where there are mistakes, misstatements or omissions in the petition, the petition will have to be amended with leave of the court, *unless* the court can be persuaded that the mistake is trivial and that the defect in the petition ought to be waived (§§28-29).
   8. The court expects the practitioners and the parties to comply with the requirements of the CWUO and the CWUR and abide by the principles discussed. Save in exceptional circumstances or where it is impracticable for the petitioner to apply for leave to amend the petition, the court would *not* allow a petitioner to rely on any grounds or factual matters not fairly covered in the petition even if such grounds or matters have been stated in the affirmations filed in the proceedings (§32).
2. At the hearing, Ms Theresa Chow, counsel for the Petitioners, submits that by reason of the following facts and matters, the court should grant an immediate winding up order against the Company.
3. First, the Loan arose out of a shareholders’ loan made by the Deceased to the Company. The Company is deemed insolvent as it failed to comply with the SD[[28]](#footnote-28).
4. Second, this Court’s “initial views” (stated in the letter to the parties) were based on “the misleading and partial disclosure of [OC 1st]”. “Hopefully by now, the fact that the Company is **hopelessly insolvent** is evident in [Ps 2nd]”. Reliance is placed on (a) the GS Debt revealed in the SOA, and (b) the updated valuation[[29]](#footnote-29). Taking into account the GS Debt, the total liability of the Company is HK$39,645,059 and “thus it is in the red by **over HK$10.6M**”[[30]](#footnote-30).
5. Third, appointment of a liquidator (preferably the same person as GS’s liquidator) is necessary to investigate the Company’s financial affairs managed by the OC[[31]](#footnote-31). In this regard:
   1. The existence of the GS Debt cannot be disputed. The holding up of HK$15.8 million by the OC was “contrary to the structure of the [4 Companies]”.
   2. The only explanation for the GS Debt is that GS lent the amount held up by the OC to the other 3 companies including the Company. There are “serious doubts as to the propriety of these intra-company transactions and whether [the OC] had been managing the [4 Companies] properly, especially when notwithstanding the suggestion that the [GS Debt] was to meet the Company’s mortgage repayments, that was apparently not done resulting in the mortgagee action. This further calls for the winding-up of the Company and necessitates proper investigation in the Company’s affairs by a liquidator”.[[32]](#footnote-32)
   3. The Loan is not disputed, “including whether or not the shareholder’s loan was payable on demand. There is no abuse of process.”[[33]](#footnote-33)
6. Fourth, the Petition is not an abuse of process[[34]](#footnote-34):
   1. To show that the presentation of a winding up petition would be an abuse of process, a debtor has to demonstrate that the creditor knows or should know that there is a genuine defence to the claim at the time when the application is issued (*Alco Holdings Ltd v World Crown Investments Ltd* [2023] 1 HKLRD 335, §4, per Harris J).
   2. The jurisdiction of the court to dismiss a petition based on an undisputed debt on the grounds of collateral purpose must be exercised sparingly. It is not necessary that a proper purpose should be a petitioner’s principal purpose (*Re ZPMC-Red Box Energy Services Limited*[2022] HKCFI 3256, §§57, 59, per Cheng J).
   3. The Company does not allege any *bona fide* dispute over the Loan or that the Petitioners “knows [*sic*] or should know that there is a genuine defence”, as there is simply none. There is no allegation of collateral purpose either.
   4. The Petitioners’ refusal to join the board does not change the fact that the Company is insolvent.
   5. Winding up of the Company would not cause the Property to be sold in a public auction as the Property is already subject to a mortgagee action commenced by the bank.
   6. Appointment of liquidator over the Company is in the interest of “the Company, the shareholders and all creditors as a class (including [GS]), to properly investigate the financial affairs of the Company”. The liquidators’ costs “can be mitigated by appointing the same liquidator to the [4 Companies]”. Orderly realisation of assets held by all 4 Companies can be negotiated by the single liquidator with relevant mortgagee(s).
7. I have no hesitation in rejecting the arguments.
8. No reliance can be placed on the Company’s failure to comply with the SD as the Loan was plainly *not* repayable on demand.
   1. It is common ground that the Loan was advanced by the Deceased for the purpose of financing the investment in the Property back in 2012. As the purpose of the Loan was to invest in the Property, it could not have been repayable on demand. Consistent with this, the Loan was classified as non-current liability in the 2021 and 2022 AFS.
   2. There was simply no basis (none has been identified in the SD or the Petition) for the Petitioners to suddenly to demand the Company to repay the Loan in June 2024.
   3. As the Loan was not repayable on demand, it was not due on the date the SD was served on the Company, and the Company could not be said to have failed to comply with the SD. It follows that the deeming provision under s.178(1)(a) cannot be relied upon by the Petitioners.
9. For this reason alone, the Petition must be dismissed.
10. As the Petition has *not* referred to any of the facts and matters raised by the Petitioners in Ps 2nd (and *no* application for leave to amend the Petition has been issued or even foreshadowed before the hearing), it is not open to Ms Chow to expand the Petitioners’ case by seeking to argue that by reasons of the unpleaded matters (summarized in §§22-24 above) the court should make a winding up order against the Company.
11. Nevertheless, in case the Petitioners wish to take the matter further, I will explain why the unpleaded matters and the arguments thereon are wholly without merit.
12. As regards the so-called “hopelessly insolvent” point (§22 above), it is premised on the *assumption* that the liabilities owed to the Petitioners, the OC and GS are due and payable. There is simply *no* evidence in support of such assumption. To the contrary:
    1. The OC confirms that the shareholders’ loans were advanced by the shareholders for investment purpose and, therefore, are not repayable on demand.
    2. The Petitioners do *not* (in Ps 2nd) dispute the fact that the Loan was advanced to the Company to finance the purchase of the Property for investment purpose. Nor do they take issue with the classification of the Loan as a non-current liability of the Company.
13. If, as I so find, the liabilities owed to the Petitioners, the OC and GS are not due and payable, there is no basis to suggest that the Company is unable to pay its debts.
14. Even if, contrary to my view, there is any basis to assume that the liabilities owed to the Petitioners, the OC and GS are due and payable, it is in any event erroneous for Ms Chow to only focus on the GS Debt as “additional liability” but without taking into account whether there was a corresponding increase in the Company’s assets. If, as the Petitioners assert, the fund representing the GS Debt has been used by the OC for her own purpose, the same amount must have become a receivable owed by the OC to the Company (an asset). There would be no change in the net asset position of the Company.
15. As regards the alleged need for investigation (§23 above), it is equally without merit. All that the Petitioners have done is to identify some transfers of funds between the 4 Companies which they consider to be “suspicious”. However, the Petitioners’ complaint must be seen against in context. After the demise of the Deceased (who had involvement in the management of the 4 Companies), the OC invited the Petitioners to participate in the management including to act as directors. The Petitioners for their own reasons did not want to be involved in the management and were content to let the OC to manage the 4 Companies as she had done in the past. Having agreed to let the OC to manage the Companies in the way she had done, it is not properly open to the Petitioners to complain about the OC’s decision to use the funds of GS (the only company which had realized its property) to finance the operation of the other 3 companies.
16. In my judgment, it is an abuse of process for the Petitioners to have resorted to the use of winding up for the purpose of achieving an exit from the Company in circumstances where:
    1. They knew that the Loan was not repayable on demand and could not properly form the subject matter of the SD. Such knowledge derived from (a) the fact that the Loan had been advanced by the Deceased to the Company for the purpose of investment in the Property; (b) the 2021 AFS where the Loan was classified as non-current liability and not repayable within 12 months.
    2. No explanation has been proffered by the Petitioners as to why they were entitled to demand immediate repayment of the Loan in June 2024.
    3. Prior to presenting the Petition, the Petitioners were aware of and did use a petition for winding up proceeding on the “just and equitable” ground in the dispute between them and the OC.
17. Had the OC asked for costs to be paid on a higher scale, this Court would have ordered costs against the Petitioners on an indemnity basis to reflect the court’s disapproval of their conduct in misusing the summary proceedings of winding up on insolvency ground.

(Linda Chan)

Judge of the Court of First Instance

High Court

Ms Theresa Chow, instructed by Deacons, for the Petitioners

Ms Cyndi Ho, instructed by Chan, Wong & Lam, for the Company and Opposing Contributory

Ms Rebecca Louie, of Official Receiver’s Office, for the Official Receiver

1. OC 1st §4 [↑](#footnote-ref-1)
2. OC 1st §§5-6, 9 [↑](#footnote-ref-2)
3. OC 1st §§7-8 [↑](#footnote-ref-3)
4. OC 1st §§10-11 [↑](#footnote-ref-4)
5. Namely, Fai Wang Investment Ltd (“**Fai Wang**”); Glory Genesis Holdings Ltd (“**GS**”), Cosmos Trinity Holdings Ltd (“**Cosmos**”) and the Company [↑](#footnote-ref-5)
6. OC 1st §§12, 15 [↑](#footnote-ref-6)
7. OC 1st §§14-16 [↑](#footnote-ref-7)
8. OC 1st §13 [↑](#footnote-ref-8)
9. OC 1st §17 [↑](#footnote-ref-9)
10. OC 1st §18 [↑](#footnote-ref-10)
11. OC 1st §§19-20 [↑](#footnote-ref-11)
12. OC 1st §21 [↑](#footnote-ref-12)
13. OC 1st §§22-23 [↑](#footnote-ref-13)
14. OC 1st §§24-26 [↑](#footnote-ref-14)
15. OC 1st§§27-30 [↑](#footnote-ref-15)
16. Ps 2nd §§5-7 [↑](#footnote-ref-16)
17. Ps 2nd §§8-10 [↑](#footnote-ref-17)
18. Ps 2nd §§11-12, 27-29, 33-37 [↑](#footnote-ref-18)
19. Ps 2nd §§13-15 [↑](#footnote-ref-19)
20. Ps 2nd §§16-19 [↑](#footnote-ref-20)
21. Ps 2nd §§20-24 [↑](#footnote-ref-21)
22. Ps 2nd §§25-26 [↑](#footnote-ref-22)
23. Ps 2nd §§30-32 [↑](#footnote-ref-23)
24. Ps 2nd §§38-40 [↑](#footnote-ref-24)
25. Ps 2nd §§41-46 [↑](#footnote-ref-25)
26. Underlined added [↑](#footnote-ref-26)
27. Underlined added [↑](#footnote-ref-27)
28. Ps’ Skeleton §§2-3 [↑](#footnote-ref-28)
29. Ps’ Skeleton §§4-5, 6.1, 14-20 [↑](#footnote-ref-29)
30. Ps’ Skeleton §21 [↑](#footnote-ref-30)
31. Ps’ Skeleton §6.2 [↑](#footnote-ref-31)
32. Ps’ Skeleton §§22-26 [↑](#footnote-ref-32)
33. Ps’ Skeleton §6.3 [↑](#footnote-ref-33)
34. Ps’ Skeleton §§27-31 [↑](#footnote-ref-34)