HCA 28/2016

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINSTRATIVE REGION

COURT OF FIRST INSTANCE

ACTION NO. 28 OF 2016

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BETWEEN

Plaintiff

(incorporated in Malaysia)

and

Defendant

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Defendant’s Submission

(for hearing at 10:00am on 11 Nov 2016 before Deputy High Court Judge Ng in Chambers

in Court 2 of High Court)

1. It is the Defendant’s respectful submission that on about 31 October 2016, the Plaintiff served the following documents by hand to the office of the Defendant :
2. Generally Indorsement of Writ
3. Affidavit of Lane with exhibits
4. Sealed copy of the Injunction order of Deputy High Court Judge Ng dated 28 October 2016 made against the Defendant (“the Injunction Order”)
5. Sealed copy of the Disclosure Order of Deputy High Court Judge Ng dated 28 October 2016 made against geh Shta Bank Limited (“GSB”) and the Defendant (“the Disclosure Order”)
6. Skeleton Submissions of the Plaintiff used at ex-parte hearing on 28 October 2016; and
7. Summon issued on 27th October 2016 and returnable on 28 November 2016 at 10:00am
8. Paragraph 1 of the Disclosure Order is read as follows:

*“GSB shall within 24 hours of the service of this Order notify the Plaintiff’s solicitors of the current balance of account number 28, and all other accounts held by Bull International Co Limited (the “Account(s)”)*

1. If the Disclosure Order had been served to GSB, the Plaintiff’s solicitors should have already been informed by GSB that the outstanding balance of the mentioned account as of 28 October 2016 included the sum of US$28 and the said sum is sufficient to satisfy the whole claim of the Plaintiff stated in paragraph 1 or paragraph 2 of the Plaintiff’s indorsement of claim.
2. The Plaintiff’s case is that a sum of US$28 was sent from the Plaintiff’s account to the Defendant’s account in June 2016. Mr Virgo See said in paragraph 7 of his Affidavit that a true copy of the payment confirmation of the said sum of US$28 was exhibited at page 22 of “VS-1”. However, page 22 of VS-1 is just an email copy, and Mr See also did not exhibit any payment confirmation of the said sum to his affirmation.
3. I have been instructed that even if the Plaintiff can prove its innocent role in the alleged internet fraud, the Defendant is still having a strong defence against the claim of the Plaintiff when at the material times, it acted in good faith which had no notice of any wrongdoing and without any participation of the alleged email scam.
4. Under the circumstances, the Defendant does not oppose that paragraph 1 of the Injunction order made on 28 October 2016 against the Defendant’s bank account #28 with geh Shta Bank be continued, pending the outcome of the Plaintiff’s claim against the Defendant or until further order of the Court.
5. By reason that sufficient fund has been frozen in the Defendant’s bank account, the Defendant humbly applies for an order that paragraph 2 of the Injunction Order in which the Defendant is required to disclose the assets of an individual value of HK$28 or more to the Plaintiff within 21 days and the same should be served on the Plaintiff’s solicitors within 28 days of the service of the Injunction Order be discharged.
6. It is further submitted that the Plaintiff’s request for disclosure of the Defendant’s banking information for the purpose of tracing and recovery of the said sum US$28 is irrelevant and unnecessary in the circumstances, the Defendant would therefore further ask this Honourable Court to discharge paragraphs 2 and 4 of the Disclosure Order in which GSB was ordered to provide bank statements of the Defendant to the Plaintiff from 28 June 2016 to the date hereof and all account opening documents within 5 days and 10 days respectively of the service of the Disclosure Order.
7. Since the Defendant will have a strong defence against the Plaintiff’s claim, it is submitted that the appropriate cost order of the present proceedings is cost in the cause.

Dated the 28 day of November 2016

Counsel for the Defendant