

HONG KONG / JUDGMENT

CHAN MING HUNG v. TRIGENIUS TELEGAME TECHDEVELOP LTD

COURT

District Court

DECIDED

4 July 2007

CASE / FILE NUMBER

DCCJ3418/2006

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bjbj DCCJ3418/2006 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION CIVIL ACTION NO. 3418 OF 2006 BETWEEN CHAN MING HUNG Plaintiff and TRIGENIUS TELEGAME Defendant TECHDEVELOP LIMITED Coram: H H Judge Chow in Chambers (Open to the public) Date of Hearing: 4 July 2007 Date of Decision: 4 July 2007 D E C I S I O N This is the Defendant s application to set aside the judgment entered against it on 29th August 2006, and the charging order absolute dated 9th Oct., 2006 on the Defendant s asset to be discharged. Under paragraph 2 of the Statement of Claim, the Plaintiff claims that upon the request of the Defendant, the Plaintiff lent the Defendant in the sum of HK\$80,000.00 for the decoration of the Defendant s registered office in May 2004. In paragraph 8 of his affirmation the Plaintiff says that he and Li Kam Chuen, Aonce, (one of the directors of the Defendant) were to shoulder half of the decoration fee of the subject premises, which is \$190,000. Under paragraph 9 of his affirmation, the Plaintiff claims that he and Li Kam Chuen, Aonce were to be responsible in equal shares for the decoration work and that he used his personal cheques to pay for the decoration expenses. Under paragraph 14 of his affirmation, the Plaintiff claims that he paid \$80,000 for and on behalf of the Defendant. So according to the Plaintiff s affirmation, he had to pay half of the decoration fee of \$95,000, and he paid \$80,000 for the Defendant in respect of the decoration expenses. So he paid a total of \$175,000, but he did not condescend into particulars as to how and under what circumstances the said sum of \$175,000 was paid. He did not exhibit any documentary proof to support his claim in this respect. On the other hand, the Defendant s case is that the Plaintiff did not give the Defendant \$80,000 at all. So it is never indebted to the Plaintiff. It is difficult for me to decide on paper which version of the parties is to be accepted because the witnesses concerned have not gone to the witness-box and told this court what actually happened because the trial has not yet started. The trial will take place in the future if there is any. In Centaline Property Agency Ltd. v Grandco (Holdings) Limited HCA No. 20614 of 1998, Judge Tong quoted the principle enunciated by Godfrey JA in Premier Fashion Wears Ltd.: ...where the outcome of the action very much depends on whose version is likely to be accepted, it could be difficult to form a provisional view of the probable outcome of the action. In these circumstances, the appropriate question to ask would be whether the defence could well be

established at trial, and if the Defendant's version could well be believed at trial, it follows that the defence has a real prospect of success (see *O Mark Polyethylene Products Pty Ltd v Reap Star Ltd*. [2002] 2 HKC 330 at 335 and 337). Now, I have to ask myself, according to the evidence unfolded before me by way of affirmations by the Defendant's witness, whether the Defendant's version could well be believed at trial. My answer is . The Plaintiff has failed to condescend into particulars about how, when and where the sum of \$175,000 was paid. In particular, no particulars were given for the sum of \$80,000 as claimed in the Statement of Claim. He could have easily done that. That indirectly supports the Defendant's version that the Plaintiff did not give the \$80,000 at all. Secondly, Mr Li Kam Chuen, Aonce states in his affirmation that in May 2004, the Defendant company was financially abundant. That piece of evidence appears not to have been contradicted by the Plaintiff. What the Plaintiff said at most in this respect is that he was not aware that Mr Wong Chu Kong lent money to the Defendant company. Not being aware of is one thing; whether Mr Wong Chu Kong did lend the Defendant company is another. For these two reasons, I consider that the defence disclosed now could well be established at trial and therefore I set aside the judgment entered against the Defendant and I also set aside the charging order absolute. I therefore make an order in terms of paragraphs 1, 2, 3, 4 and 5 of the summons. (Discussion re amendment of summons) Save that the days of 14 mentioned in paragraph 3 and 4 be changed to 28 days. (Discussion re costs) There is no evidence from the Plaintiff to contradict the Defendant's evidence that in early June 2006, the three directors of the Defendant company, including the Plaintiff, unanimously agreed that in order to cut down the unnecessary expenses, they should start working at home. They also unanimously agreed that they should try to sell the workshop which would become useless to them if they worked at home. At the end of the meeting, they agreed that they should clear their respective personal belongings and vacate the workshop by the end of June

2006. Thereafter, the electricity and internet subscription, etc. were cut. The writ of summons was filed on 13 July 2006. So the writ of summons obviously was served sometime in mid-July after the said agreement. The Plaintiff knew at the time of serving the summons that nobody would be in the registered office. So in order to alert the attention of the two other directors of the Defendant company, he should have done something effectively to bring the proceedings to their attention so that they could properly defend the case. One of the means is to send the writ of summons to the addresses of the other two directors, but obviously this was not done. So although the Plaintiff has complied with the relevant section of the Companies Ordinance regarding service of the writ of summons on the registered office of the Defendant company, obviously, he knew that it would not serve any purpose at all because of the said agreement in early June
2006. In the circumstances, he knew that there would be nobody from the Defendant company to defend the case, and I think that this is wrong for him to do so. I therefore order that the Plaintiff should bear costs of this application, to be taxed, if not agreed. (Discussion re certificate for counsel) With certificate for counsel. (Chow) District Court Judge Mr Bowie Yip, of Messrs Wong & Poon, for the Plaintiff Mr Jackie Ip, instructed by Messrs Paul W Tse, for the Defendant PAGE - PAGE CRT7/4.7.2007/SC DCCJ3418/2006/Decision A B C D E F G H

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