

HONG KONG / JUDGMENT

CHEUNG SIU YU v. KE JUNXIANG

[2024] HKCFI 3579

COURT
Court of First Instance

DECIDED
16 December 2024

CASE / FILE NUMBER
HCA1020/2014

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bjbj e: Madam Recorder Eva Sit SC in Court Date of hearing: 17 June 2024 Date of Judgment: 16 December 2024

JUDGMENT

This is the trial of an action commenced by the Plaintiff against the Defendant for breach of an oral agreement. The Plaintiff s case is that he and the Defendant entered into an oral agreement for him to subscribe for shares in CIL Holdings Limited (stock code 0479.HK) Listco), of which the Defendant was Chairman at the time, for HK\$20,000,000, which the Defendant undertook to buy back in 6 months for HK\$30,000,000, and if the share price of Listco dropped below the subscription price in the meantime the Defendant would make payment of the difference to the Plaintiff which would be counted towards the total price of HK\$30,000,000 at the end. Until he ceased to defend the action (see REF _Ref184635521 \r \h below), the Defendant disputed the Plaintiff s case, and claimed that the arrangement between the parties was of a different nature, namely for the Plaintiff to procure a loan of HK\$20,000,000 for the Defendant for a tenor of 6 months, with interest of HK\$10,000,000. Although the action was commenced in June 2014 (shortly after the dismissal of the bankruptcy petition presented against the Defendant in HCB No. 5542 of 2013, 2013 Petition , see below), after close of pleadings in late 2014 no further action was taken by the Plaintiff to progress this action until 2019. Thereafter, the action proceeded at a slow pace, and was only set down for trial in August 2023, which trial then took place on 17 June 2024. Three months before the trial, on 19 March 2024, the Defendant was adjudged bankrupt on the petition of a creditor who appeared to be unrelated to the parties to this action. On 3 June 2014, the Official Receiver, as provisional liquidator of the property of the Defendant bankrupt, notified the Court that she did not intend to appear and defend and counterclaim in this action. Upon obtaining leave under section 12 of the Bankruptcy Ordinance (Cap. 6) (with the consent of the Official Receiver given on terms), the Plaintiff proceeded with the trial on 17 June 2024. In the circumstances, the Court s task is to determine whether the Plaintiff is able to demonstrate, on a

balance of probabilities, that the pleaded oral agreement existed and had been breached. In so doing, the Court will have regard to all the pleadings, witness statements and documentary evidence in the trial bundles, save and except the Defendant's Witness Statement dated 30 June 2022 and the Defendant's 2 affirmations filed in the 2013 Petition (which he sought to adopt in this Witness Statement), since the Order of Madam Justice Lisa Wong dated 25 January 2024 expressly provides that the witness statements shall be expunged in the event that the witness did not attend trial to verify the truth thereof and be cross-examined.

THE FACTS The relevant personalities in this action are:- the Plaintiff, who is said to be an active investor in the Hong Kong stock market. He was in control of a company called Man Fung (Holding) Company Limited (Man Fung); the Defendant, who at the material time was the Chairman of Listco; and Mr Cheung Siu Chung (also known as Cheever Cheung) (Cheever Cheung), who has an accountant and solicitor background, and operated his own consultancy business in the financial sector. It is clear from the SMS correspondence disclosed that the Defendant and Cheever Cheung had been acquainted prior to 2012, and the contents of such correspondence indicate that Cheever Cheung had assisted the Defendant on various business-related matters. On 19 November 2012, Listco announced that it would be placing 50,000,000 shares at a price of HK\$0.40 per share, which would constitute approximately 4.77% of the enlarged share capital of Listco, to no less than 6 independent placees. By a letter dated 21 November 2021 to the Plaintiff, Business Securities Limited, a firm of securities brokerage, referred to a recent telephone conversation with the Plaintiff whereby the Plaintiff confirmed he would subscribe for 49,880,000 of Listco's placing shares, which the Plaintiff confirmed in writing on the same day. Upon completion of the aforesaid placement, on 29 November 2012 the Plaintiff was allotted 49,880,000 shares in Listco. Although there is a dispute between the parties as to their purpose, it is not in dispute that the Plaintiff was in possession of the following personal cheques issued by the Defendant:-

Cheque No.	Amount (HK\$)	Date written	
698737	1,670,000	22 January 2013	
Cheque 2	698738	1,670,000	22 February 2013
Cheque 3	698739	1,670,000	22 March 2013
Cheque 4	698740	1,670,000	Copy not available and only notice of dishonour is available
Cheque 5	698741	1,670,000	22 May 2013
Cheque 6	698742	20,000,000	22 May 2013
Cheque 7			It can be seen from the above that (i) the cheque numbers are sequential, and (ii) when one examines the copies the amount on each cheque was printed by a machine. These indicate these cheques were likely issued in one batch at the same time. Further, the Defendant confirmed that there was a cheque for HK\$1,670,000 dated 22 December 2012 (Cheque 1 which the Plaintiff stated he had received but had lost hence it was never presented for payment. On the Plaintiff's case, Cheques 1 to 7 were provided by the Defendant to Cheever Cheung, who then provided them to him on 29 November 2012. There appears to be no dispute that the name of the payee was left blank on each of these cheques. On 3 December 2012, there was a meeting between the Plaintiff, the Defendant and Cheever Cheung. There does not appear to any dispute that this was the first occasion when the Plaintiff and the Defendant met each other. Meanwhile, the trading price of Listco's shares was in continuous decline. On 19 November 2012 (date of announcement of placement) the share closed at HK\$0.40, but by 29 November 2012 it dropped to HK\$0.350, then by 3 December 2012 to HK\$0.345, by 14 December 2012 to HK\$0.226, by 3 January 2013 HK\$0.189, by 1 March 2013 HK\$0.111 and by the end of May 2013 HK\$0.080. In addition to Cheques 1 to 7 above, there was another series of

cheques issued by the Defendant, and there is no dispute that they were issued in favour of the Plaintiff (though the name of the payee was also left blank in each case). On 3 or 6 December 2012, the Defendant issued a cheque HK\$2,000,000 (number 698745) post-dated to 13 December 2012 (Cheque A). On 15 January 2013, in response to the Plaintiff's chasers for payment, the Defendant urged the Plaintiff not to deposit the cheque, and (i) paid HK\$530,000 cash to the Plaintiff, and (ii) issued a cheque for HK\$1,170,000 (number 748054) date 15 January 2013 (Cheque B). The amounts in (i) and (ii) above, together with (iii) cash of HK\$300,000 paid by the Defendant to the Plaintiff on 4 January 2013, came to HK\$2,000,000. Cheque B was presented by the Plaintiff on 17 and 23 January 2013, and was dishonoured on each occasion. On 31 January 2013, the Defendant issued another cheque for HK\$1,170,000 (number 748055) post-dated to 3 February 2013 (Cheque C). For completeness, I should mention that Cheque A and Cheque C were presented on 19 and 22 February 2013 respectively, and were dishonoured on each occasion. The SMS correspondence between (i) the Plaintiff and the Defendant between 4 December 2012 and 8 April 2013 and (ii) Defendant and Cheever Cheung between 22 January 2012 and 18 June 2013 have been placed before the Court. The SMS correspondence between the Plaintiff and the Defendant shows that since 13 December 2012, the Plaintiff had been consistently and regularly chasing the Defendant for payment, and the Defendant did not deny liability but put forward various reasons as to why he could not get hold of the money, or pleaded for more time to arrange for the funds. I will return to these below. On 10 January 2013, Listco's share price closed at HK\$0.180, and on that day the Plaintiff sold 10,000,000 Listco shares. By the end of January 2013:- the Plaintiff had received from the Defendant (i) HK\$300,000 cash on 4 January 2013; (ii) HK\$530,000 cash on 15 January 2013; and (iii) HK\$500,000 on 22 January 2013; the Plaintiff was in possession of Cheque A (which the Defendant urged him not to present), Cheque B (presented and dishonoured twice) and Cheque C; and the Plaintiff was also in possession of (at least) Cheques 2 to 7. Pausing here, there is a draft shares transfer agreement in Chinese under the Defendant's hand, which stated (inter alia) that:- Party A had subscribed for 50,000,000 Listco shares at HK\$0.40 per share and agreed to transfer all such shares to Party B at a consideration of HK\$0.60 per share. The aforesaid sale and purchase should be completed within 6 months from the date of signing of the agreement. Within 10 days of signing, Party B should pay Party A HK\$2,000,000, and the remainder of the HK\$10,000,000 profit portion of the total consideration of HK\$30,000,000 would be paid by instalments in 6 months at HK\$1,670,000 commencing on 22 January 2013, with the last payment (as well as the balance of HK\$20,000,000) payable on 22 June 2013. After the agreement took effect, Party A undertake that it would not sell the Listco shares whether publicly or by private means, and whatever might be the changes in Listco share price Party A's entitlement would be capped at HK\$30,000,000. Upon signing, Party A would assign voting rights on the shares to Party B, and must vote on all matters concerning Listco as per Party B's direction. The Defendant claimed that this draft agreement was shown to the Plaintiff in January 2013, whereas the Plaintiff said it was only shown to Cheever Cheung in early February 2013. Anyhow, it is clear that both parties were aware of it, for the Defendant referred to it in his SMS message to the Plaintiff on 11 March 2013 @ 18:51, when the Defendant claimed that he had agreed with Cheever Cheung to complete the document and complete the transaction, and that without such document the Plaintiff had no basis to support any receipt of payment. In early

February 2013, the Defendant informed Cheever Cheung that he had agreed with the Plaintiff to discuss the issue of payment after Chinese New Year, on 19 February 2013. The SMS records show that on 19 February 2013 the Plaintiff attempted to reach the Defendant but there was no response. Since 19 February 2013, the Plaintiff presented various cheques for payment (by inserting the name of Man Fung), all of which were dishonoured:- On 19 February 2013, Cheque A was presented. On 22 February 2013, Cheque C was presented. On 14 March 2013, Cheques 2 and 3 (post-dated to 22 January and 22 February 2013) were presented. On 26 March 2013, Cheque 4 (post-dated to 22 March 2013) was presented. On 26 April 2013, Cheque 5 (post-dated to 22 April 2013) was presented. On 31 May 2013, Cheques 6 and 7 (both post-dated to 22 May 2013) were presented. Following the earlier instances of dishonoured cheques, on 19 March 2013 the Plaintiff s former solicitors gave notice of dishonour of Cheques 2, 3 and A to the Defendant and demanded payment. This was rejected by the Defendant s solicitors on 23 March 2014 and 26 April 2013, and in the latter letter the Defendant s solicitors claimed that Cheques 1 to 7 were interest instalments for an intended loan of HK\$20,000,000 which Cheever Cheung was supposed to arrange for the Defendant, and Cheques A and C were part of the HK\$2,000,000 arrangement fee for the aforesaid loan, which was never finalized or drawn down. Meanwhile on 15 April 2013, Man Fung caused a statutory demand to be served on the Defendant. A bankruptcy petition was then presented against the Defendant in the 2013 Petition. At the hearing of the 2013 Petition on 15 May 2014, Deputy High Court Judge Le Pichon dismissed the 2013 Petition. In her Reasons for Judgment 27, the learned Judge identified a number of matters in the Man Fung s accounts of events troubling, namely (i) the placing of Listco shares would not have solved the Defendant s financial predicament an why would the Defendant have taken on additional obligations when he was in financial straits; (ii) the Plaintiff had committed himself to taking up Listco s shares without delivery of any cheque from the Defendant; (iii) the then allegations concerning Cheque A could not square with the contention that the Plaintiff s guaranteed profit was HK\$10,000,000, and (iv) discrepancies with respect to whether the Plaintiff subscribed for 50,000,000 or 49,880,000 Listco shares, and whether the guaranteed profit was HK\$10,000,000 or HK\$10,020,000. Following that, on 9 June 2014, the Plaintiff commenced this action. The oral agreement pleaded The pleaded agreement was an oral agreement said to have been entered into between the Plaintiff (on his own behalf and on behalf of Man Fung) and the Defendant in early November 2012, whereby:- the Plaintiff agreed to subscribe for 50,000,000 new shares to be allotted by Listco at the price of HK\$0.40; the Defendant would buy back the aforesaid subscribed shares from the Plaintiff within a period of 6 months at the price of HK\$0.60, ie at a total consideration of HK\$30,000,000; the aforesaid total consideration would be constituted by 2 components - (i) HK\$10,000,000 (varied to HK\$10,020,000 by the Defendant s conduct subsequently with the amounts stipulated in Cheques 1 to 7, which the Plaintiff consented to by acceptance of such Cheques) as guaranteed profit by 6 monthly instalments, by 6 post-dated cheques issued by the Defendant; and (ii) the remaining HK\$20,000,000 would be paid at the end of the 6-month period by another post-dated cheque issued by the Defendant; and during the 6-month period, if the share price of Listco should fall below HK\$0.40, the Defendant would, at the Plaintiff s request, deposit the price difference of the shares (ie HK\$0.40 less prevailing share price) with the Plaintiff, which would be brought into account at the end of the 6-month period

such that the total considerable payable by the Defendant to the Plaintiff would not exceed HK\$30,000,000. In other words, the oral agreement pleaded comprises 3 key elements

- (i) the Plaintiff to subscribe for 50,000,000 Listco shares; (ii) total consideration of HK\$30,000,000, including a profit element of HK\$10,020,000 made up of 6 monthly instalments; and (iii) an additional protection by way of payment to the Plaintiff on account when Listco's share price dropped below HK\$0.40 during the 6-month period. THE COURT'S APPROACH As indicated above, since this action is undefended, the Court would assess whether the Plaintiff is able to discharge his burden of proof to establish the oral agreement as pleaded existed on the balance of probabilities, in light of the materials before the Court. In this regard, while the Court has taken into account the observations of the learned Judge in the 2013 Petition, the Court focuses on the claim as pleaded in this action (without losing sight of any material inconsistency between the current pleaded claim and those averred in the 2013 Petition), as well as the evidence that has been adduced here. In particular, the extensive SMS correspondence between the parties had not been made available to the learned Judge in the 2013 Petition. The Court has also heard the Plaintiff and Cheever Cheung, who gave evidence before the Court. They were both very guarded in their answers, and readily jumped on to prompts given by the Plaintiff's counsel. I do not consider that the Court could rely on their testimony unless the same is supported by the documentary evidence. Given the claim is based on an oral agreement, and Ms Gekko Lan, counsel for the Plaintiff, accepted that there was no document that actually evidenced the terms of the oral agreement, the Court shall proceed with the fact-finding exercise by reference to contemporaneous documentation where it exists, or to its absence where one would expect it to be created, as well as inherent probabilities having regard to all the facts that are known: *Esquire (Electronics) Ltd v Hong Kong and Shanghai Banking Corporation Ltd* [2007] 3 HKLRD 439, 135.

ANALYSIS

For the reasons below, I find that the Plaintiff has established, on a balance of probabilities, the oral agreement pleaded with the key features identified in 30 above. First, the fact that the Plaintiff subscribed for 49,880,000 Listco shares out of a placement of 50,000,000 shares was a significant matter. Even disregarding the Plaintiff's suggestion that he had procured nominee placees to subscribe for the remaining 120,000 shares (for which there is no objective evidence to support), effectively the Plaintiff was underwriting the entire share placement. It is inherently improbable that the Plaintiff would have done so without any agreement or understanding with Listco, or rather the person in control of Listco, which in this case the evidence points to the Defendant, being its Chairman. The SMS exchanges between the Defendant and Cheever Cheung show that Cheever Cheung had been involved in Listco's share placement. On 9 October 2012, the Defendant asked Cheever Cheung when he could sign the placing agreement. Given both the Plaintiff and the Defendant confirmed Cheever Cheung acted as a go-between person for them, the Defendant's aforesaid SMS indicates that the Defendant was waiting for Cheever Cheung to locate a counterparty for the proposed placement. The subsequent events showed that Cheever

Cheung identified the Plaintiff as the counterparty. Immediately after the placement was completed, on 3 December 2012, the Plaintiff and the Defendant met. Although the Defendant alleged that the meeting was to discuss the loan he wanted to obtain, it would be surprising if the Chairman of a listed company was not interested and eager to meet a new 4.77% shareholder of his company whom he hitherto had not met before. More importantly, getting a friendly party to subscribe for the shares carried obvious benefits to the Defendant as Chairman of Listco. Although the placed shares only represented about 4.77% of Listco's shares, it is commonly known that public investors in the smaller-scale listed companies are usually inactive, and holding a bloc of 4.77% shares could provide meaningful influence to the decision-making process of the listed company in general meeting, especially when the resolutions are contested or controversial. The Plaintiff, being an ostensibly independent placee, had the additional benefit of not being a concert party with the Defendant. In this regard, it can be seen from the Defendant's SMS to the Plaintiff on 19 December 2012 @ 19:00 and his SMS to Cheever Cheung on 20 February 2013 @ 18:58 that the Defendant was reminding and expecting the Plaintiff to vote in favour of resolutions that he supported (for example, on the approval of the injection of a Tibetan mine into Listco, and appointment of new directors to Listco). Second, as mentioned in REF _Ref184672021 \r \h above, throughout entire correspondence (until the relationship decidedly turn sour in mid March 2013) not only did the Plaintiff consistently chase the Defendant for payment on a regular basis; the Defendant never denied his liability to pay; and further the Defendant actually acknowledged his liability to the Plaintiff to make payment of instalments at HK\$1,670,000. The more salient examples (for which there are many) are:- The 22 December 2012 @ 16:14 the Plaintiff SMS the Defendant to ask if the money was ready and whether he would pay on that day. That was the day on which the pleaded first instalment of the HK\$10,200,000 guaranteed profit fell due. The Defendant did not respond until the following day (23 December 2012 @ 13:35), when he replied that he was out raising funds, and once the funds were confirmed he would telephone the Plaintiff. When the Plaintiff reverted asking how much money the Defendant had at that point, the Defendant refused to answer and said he had to verify first. On 23 January 2013 @ 10:42, upon being informed by Cheever Cheung that the Plaintiff was upset with him, the Defendant said to Cheever Cheung that the last payment (g)R) ber 2012 (see (1) above), and this instalment should be a reference to the instalment that fell due on 22 January 2013, the day before the message. In further support of (2) above, when the Defendant responded to the Plaintiff's chaser by asking why the Plaintiff was pressing him so hard when he had just paid him HK\$500,000 cash on the previous day, @ 13:04 the Plaintiff reminded the Defendant there was another HK\$1,670,000 instalment due on that day (a clear reference to the second instalment due on 22 January 2013, though he would only be accountable to Cheever Cheung and he would settle with Cheever Cheung directly. In the SMS exchange between the Plaintiff and the Defendant on 11 March 2013, the two of them ended up in an argument, with the Plaintiff complaining that the Defendant had failed to pay yet again despite promises and threatened to take enforcement action. Even then, the Defendant did not deny liability, but only claimed that there was no written contract which the Plaintiff could rely on to enforce payment from him. Even after the parties' relationship had turned sour in mid March 2013, the Defendant was said to have asked a third party (Brother Tung) to inform the Plaintiff that he would pay HK\$3,500,000 by

the end of March 2013 and asked the Plaintiff to stave off taking action against him. When no payment was received by the end of March 2013 and the Plaintiff chased him again on 3 April 2013 referring to the request made by Brother Tung on the Defendant's behalf, the Defendant did not deny the same and instead claimed that he could not read the message. Third, Cheque A was clearly connected to the difference in Listco share price. As indicated above, on 29 November 2012 (Friday) Listco's share price already dropped from HK\$0.40 and closed at HK\$0.35. On 1 December 2012 (Saturday), Cheever Cheung asked the Defendant via SMS if the Defendant could meet that day, and later forwarded a message to the Defendant which stated that the Defendant was asked to confirm the amount of the difference he had to pay on the following Monday. The following Monday was 3 December 2012. It is common ground that the Plaintiff, the Defendant and Cheever Cheung met on that day. Following that meeting, Cheque A (for HK\$2,000,000) was issued by the Defendant dated 13 December 2012 and handed over to the Plaintiff. There is a dispute over whether Cheque A was issued and handed over on 3 or 6 December 2012 and there was no clear evidence for the same. Nevertheless, if one uses the Listco share closing price between 3 to 6 December 2012, the difference between that and HK\$0.40 times the number of Listco shares held by the Plaintiff would be between the range of HK\$2,244,600 and HK\$2,992,800. The amount of Cheque A would be ballpark for the amount of the difference in share price, bearing in mind the fluctuation in the share price on a daily basis. Cheque A was dated 13 December 2012. Between 10 and 13 December 2012, there were SMS exchanges between the Plaintiff and the Defendant whereby the Defendant informed the Plaintiff that he was trying to work out the payment to the Plaintiff, and on 13 December 2012 the Plaintiff asked the Defendant whether he (the Defendant) could pay what was due on that day, to which the Defendant answered he could not. On 14 December 2012, Cheever Cheung SMS the Defendant that his boss's instruction was that if the Defendant could not confirm when he would make up the price difference, he (the boss) would sell the shares himself on the following Monday to balance out the price difference (due by the Plaintiff, would come to around HK\$8,700,000. In the premises, I find that Cheque A was issued to provide for the difference in Listco share price. The parties' correspondence and conduct indicate that the Plaintiff, while holding on to Cheque A, was actually expecting payment in cash which the Defendant repeatedly responded that he was trying to raise, and eventually did pay various sums in cash in January 2013. Cheque B was a replacement of Cheque A, in that by 15 January 2013 (when Cheque B was issued) the Defendant had already paid the Plaintiff cash of HK\$830,000, leaving a balance of HK\$1,170,000 which was the amount stated on Cheque B. Cheque C (in the same amount) was issued after Cheque B had been presented and dishonoured; hence a new cheque was needed to cover the outstanding balance. Fourth, the draft shares transfer agreement in Chinese referred to in REF _Ref184674089 \r \h above further supports the plea of oral agreement with the key features in REF _Ref184674136 \r \h above. Although this draft document was only prepared in January or February 2013 (and not at the time of the alleged oral agreement or for its purpose), (i) it is notable that it referred to an arrangement that contained all the features in the pleaded oral agreement (but extended the time frame by a month and also included the provision for HK\$2,000,000 which would be taken into account towards the cap of HK\$30,000,000); and (ii) the Defendant made it clear in his SMS on 11 March 2013 @ 18:51 that the transaction would be

completed once the document was signed and that it would provide a basis for the Plaintiff to enforce payment. In the premises, I do not consider that the parties were discussing a new arrangement; rather they were talking about perfecting the paperwork which would have given the Defendant a bit more time than if the Plaintiff proceeded the cash the other Cheques and then pursue the Defendant in legal proceedings in mid March 2013. Fifth, I do not consider the Defendant's plea that the arrangement was for Cheever Cheung to help him obtain a personal loan of HK\$20,000,000, that Cheques 1 to 7 issued for the purpose of interest and principal repayment, and Cheques A to C were for the loan arrangement fee that the Plaintiff made him pay, would hold water. First, as discussed above since 13 December 2012 the Plaintiff had continuously and regularly chased the Defendant for payment and the Defendant never denied liability, and that remained the case even after the Defendant had paid the Plaintiff cash totalling HK\$1,330,000. If it were the case that all of these payments related to an intended HK\$20,000,000 which never materialized, it is difficult to see why the Defendant would have paid and would not have protested, when he had not obtained any loan but had been paying the Plaintiff and being chased incessantly by the Plaintiff. Further, there was a heated SMS exchange between the Plaintiff and the Defendant on 9 March 2013, when the Plaintiff exploded after the Defendant's complaint that the Plaintiff presented a cheque for payment, and said that he had assisted in every request of the Defendant including arranging for a HK\$60,000,000 loan for him, but as the Defendant was unable to produce the promised guarantor the transaction fell apart. The Defendant did not deny the Plaintiff's statements. I therefore conclude that there were other dealings and discussions between the parties at the time including that relating to a proposed loan for the Defendant, but that was a separate transaction and not related to the oral agreement in issue. Sixth and finally, the documentary evidence shows that the Plaintiff sold 10,000,000 of the placed shares on 10 January 2013 at HK\$0.18, which may appear to be inconsistent with the alleged oral agreement as the Plaintiff was supposed to transfer the placed shares to the Defendant by the end of May 2013. However, in light of the matters above, I do not consider that this fact is able to undermine the conclusion that the oral agreement existed. The Plaintiff might have been in breach of the oral agreement by selling the shares, but (i) that was after a month since 13 December 2012 when he had consistently chased the Defendant for payment and the Defendant was unable to pay; (ii) the price of Listco shares was continuing to free-fall; and (iii) Listco shares were fungible, so if the Defendant were to perform his side of the bargain, it would have been open to the Plaintiff to acquire 10,000,000 Listco shares from the market to make up for the total number that he was required to transfer to the Defendant under the oral agreement. In the premises, I conclude that for the reasons above, the Plaintiff has established his case on the oral agreement as pleaded. As there is no real dispute that the Defendant had only paid the Plaintiff HK\$1,330,000 in cash (= HK\$300,000 + HK\$530,000 + HK\$500,000), the Defendant was clearly in breach of the oral agreement. As to quantum, the Plaintiff has, in mitigation, sold all the placed shares for a total of HK\$6,422,727.04. The sum to be awarded in favour of the Plaintiff should take into account the aforesaid as well as the cash payments received in REF _Ref184675767 \r \h above.

CONCLUSION

In light of my findings above:- I will allow the Plaintiff's claim against the Defendant in the amount claimed taking into account the deductions in REF _Ref184675767 \r \h REF _Ref184675844 \r \h above. I will dismiss the Defendant's counterclaim. As to interest, as noted in REF _Ref184675904 \r \h above, there is no evidence that the Plaintiff progressed this action between 18 September 2014 (close of pleadings) and 2 April 2019 (when the Plaintiff filed his case management summons), nor any explanation for such period of inaction. Accordingly, I will make an order nisi that interest on the sum in REF _Ref184676047 \r \h

- (1) above should run from 22 May 2013 save for the period from 18 September 2014 and 2 April 2019. As to costs, I see no reason why costs should not follow the event. Accordingly, {q{g h~| * zpbpXKA h.]% RaJa hE B gd:~ hqq! h]T]h] h'x0 yt74 yt74 hMgb hTF6 yt74 yt74 yt74 yt74 h2m h2m h2m gd:~ gdD} gdF2 h'x0 th`X`X`XPXPHP h1)] h'x0 gdC! gd%* gdTF6 gd?Y hHi3 hHi3 hHi3 (I will order that the Defendant do pay the Plaintiff's costs of the main claim and the counterclaim, to be taxed if not agreed. (Eva Sit SC) Recorder of the High Court Ms Gekko Lan, instructed by H.M. Tsang & Co, for the plaintiff The defendant did not appear Delisted in 2023. The Plaintiff claims they were for the 6 instalments of the guaranteed profit of HK\$10,020,000 and the Defendant claims they were for interest on the proposed loan, see 2 above. Amended Defence and Counterclaim 6(4)(a)-(b). Amended Statement of Claim 13.1(b). Amended Statement of Claim 13.1(c). Based on SMS exchange between the Plaintiff and the Defendant on 22 January 2013 @ 15:57, 23 January 2013 @ 12:26 & 13:04. Man Fung has assigned its causes of action with respect to the dishonoured cheques to the Plaintiff on 30 April 2014. Paragraphs 5 and 10 of the Amended Statement of Claim. PAGE PAGE - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V h n T - h, {W h, {W h n T - t c X I 8 - t e a Y a Y a Y a O I O h Z * \$ h Z * \$ g d A @ & ` # \$ h Z \* \$ y t 7 4 y t 7 4 y t 7 4 y t 7 4 y t 7 4 y t 7 4 p h \$ ? ` p h \$? ` 8 " p # [Content\_Types].xml \_rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml \$O} Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@ j!Q\_ jyV` | PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .}x E /,EE\} theme/theme/_rels/ themeManager.xml.rels 5 6? \$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/ theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/ themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> *Rm(z HCA2137/2004 hc_trans_05 JUDGE.DOT Windows User Microsoft Office Word judiciary HCA2137/2004 Title <?xml version="1.0" encoding="UTF-8" standalone="no"? ><b:Sources SelectedStyle="\APA.XSL" StyleName="APA" xmlns:b="http:// schemas.openxmlformats.org/officeDocument/2006/bibliography" xmlns="http:// schemas.openxmlformats.org/officeDocument/2006/bibliography"></b:Sources> <?xml version="1.0" encoding="UTF-8" standalone="no"?> <ds:datastoreItem ds:itemID="{6CD0C4F5-9277-4E70-8E5C-AAC6814CED8D}" xmlns:ds="http://

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