

HONG KONG / JUDGMENT

CWG v. MH AND OTHERS

COURT

Court of First Instance

DECIDED

14 November 2012

CASE / FILE NUMBER

HCMP643/2012

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HCMP 643/2012

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

MISCELLANEOUS PROCEEDINGS NO 643 OF 2012

BETWEEN

CWG

Applicant

AND

MH

1st Respondent

WH

2nd Respondent

MVF LIMITED

3rd Respondent

WM

4th Respondent

EH

5th Respondent

LS LIMITED

6th Respondent

BM

7th Respondent

Before

:

Deputy High Court Judge B Chu in Chambers (not open to public)

Dates of Hearing: 8 November 2012

Date of Handing Down of Ruling: 14 November 2012

R U L I N G

(Handwriting Expert Application)

The applicant wife has taken out a summons in the midst of the trial of her Part IIA Application seeking, among other things, an order that her former husband R1 and/or his mother R2 to produce the originals of certain documents for inspection and forensic examination (“Inspection Application”), and further for leave to adduce handwriting expert evidence for the purpose of forensically examining the handwriting signatures of R2 on these documents (“Handwriting Expert Application”).

The Inspection Application was made under Order 24 rule 10, 11, and 13 of the Rules of the High Court (“RHC”). The applicant has also issued a notice for inspection under O 24 r 10 of the RHC on the same day of her summons. The Handwriting Expert Application was made under o 38 of the RHC.

The relevant documents are documents which have been produced by R1 (“Schedule 1”) and those produced by a witness for R1 and/or R2, a Ms Anita Lo (“Schedule 2”).

The Schedule 1 documents contain:

(i)

15 Minutes of shareholders’ meetings of 3 offshore companies (“Offshore Companies”) held on 27 June 1997, 30 June 1997 and 31 July 2001, 17 April 2010, 1 June 2010 and signed by R2 (“the Offshore Minutes”);

(ii)

4 Powers of Attorney (“PA”), respectively a General PA signed by R2 on 4 June 2002, a Special and a General PA signed by R2 respectively on 29 March 2012, and the final General PA signed by R2 on 8 June 2012;

The Schedule 2 documents contain:

(i)

3 Minutes of Meetings of Directors of the company ACE, respectively on 9 March 2009, 22 October 2009, and 28 February 2010, and minutes of an EGM on 26 January 2009 (“ACE Minutes”);

(ii)

Resolutions of MVI (Panama) (“MVI Resolutions”) of 20 August 2008.

To summarise, the 15 Offshore Minutes were signed respectively in 1997, 2001 and 2010. One of the 4 PAs was signed in 2002, and the other 3 were all signed in 2012 and given to one Mr Seeger, an US attorney. The ACE Minutes were in 2009 and 2010 and the MVI Resolutions were in August 2008.

Mr Leung, 2nd Counsel for the applicant, made the oral submissions on behalf of the applicant in relation to her applications, while Mr Li SC made joint submissions on behalf of R1, R2 and R3. The applicant’s summons seemed to have been served on all three respondents, although the applicant is only seeking orders against R1 and/or R2.

GROUND OF THE APPLICANT’S APPLICATIONS

At the commencement of the hearing, it seems clear from Mr Leung’s submissions that the originals of the documents in Schedule 1 and 2 are sought for the sole purpose for the Handwriting Expert Application only. I therefore propose to deal with the Handwriting Expert Application first.

The applicant’s Handwriting Expert Application is mainly based on the following grounds:

(i)

There were inconsistencies in the documents of the Offshore Companies produced by R1 in that the Register of Directors of one of these companies as at 14 October 2011 did not reflect that R2 was still a director, as stated on a Certificate of Incumbency dated 11 October 2012, which states that R2 has been a director since 27 June 1997, and further the Minutes in relation to the appointment of R1 in the 3 Offshore Companies were missing;

(ii)

The expert report (“Browne’s Report”) which the applicant had already obtained and which she sought leave to produce gave a basis for further investigation;

(iii)

The manner as to how the documents came to be produced;

(iv)

R1's general lack of full and frank financial disclosure.

The applicant's proposed expert Mr Browne was sent scanned copies of documents containing 2 groups of signatures of R2, the 1st group of "Questioned Signatures" on "Questioned Documents" and the 2nd group of "Controlled Signatures" on "Reference Documents". Mr Browne was instructed to examine and compare the signatures. None of the originals of those documents were available to him.

It is to be noted that Mr Browne was only instructed by the applicant to examine copies of the 15 Overseas Minutes and the 4 PAs, and not the ACE Minutes nor the MVI Resolutions.

Mr. Browne summarized his findings to be:

(i)

There is strong evidence indicating that the Questioned Signatures dated 2010 and 2012 were not signed at that time;

(ii)

There is moderate evidence to suggest that all the Questioned Signatures were not written later than 2002

THE LEGAL PRINCIPLES

The legal principles in relation to the application for handwriting expert evidence can be found in the Court of Final Appeal's decision in *Nina Kung v Wong Din Shin*. The general principles on 'forgery' as gleaned from the *Nina Kung* case have been set out and summarized in the respondents' Joint Submissions as follows:-

“(a)

The party alleging forgery of document(s) of another bears the evidential burden of 'adducing evidence sufficiently cogent and probative to raise the issue of forgery' [para 180 per Ribeiro PJ];

(b)

Following *Re H* [1996] AC 563, though the party alleging forgery requires proof on a standard of 'balance of probabilities', the standard has to be applied 'flexibly' in factoring in the 'inherently greater improbability of serious misconduct as compared with lesser forms of misconduct, and therefore requiring the person bearing the burden of proving the allegation to prove it with evidence of a commensurate cogency' [para 182 per Ribeiro PJ, para 625 per Lord Scott];

(c)

If ‘forgery’ is wished to be taken ‘for consideration by the Court’ (as an issue). There shall be a ‘standard of cogency which must be satisfied before evidence is considered sufficient to raise a case’. When weighing up and assessing the probabilities in relation to the evidence adduced by the party as evidence of forgery, the Court must bear in mind the ‘seriousness of the misconduct alleged, recognizing that it carries an inherent degree of improbability’. When allegations of forgery is combined or necessitated with conspiracy of some other parties, evidence of very high standard of cogency was necessary before the Court [para 184 per Ribeiro PJ, para 624-625 per Lord Scott];

(d)

In cases of ‘forgery’, especially when the Court is ‘invited to reach a conclusion of forgery as an inference to be drawn on the basis of circumstantial evidence’, any such ‘inference’ must be properly grounded in the primary facts found. The Court guards against ‘indulging in conjecture under the guise of drawing an inference where the primary evidence does not logically and reasonably justify the particular inference in question’. It is not permissible merely to ‘choose what may be considered to be the more likely of two guesses if neither is properly justified by the primary facts found’ [para 185-186 per Ribeiro P J];

(e)

By adopting HKSAR v Lee Ming Tee (2003) 6 HKCFAR 336, the conclusion of ‘forgery/conspiracy’ or other serious misconduct cannot be ‘reached by conjecture’ or ‘mere balance of probabilities’, but must be established on compelling evidence for inferences to be drawn to ‘sufficiently overcome the inherent improbability’. Such principle emphasizes the ‘unacceptability of drawing inferences of serious misconduct such as forgery on the basis merely of suspicion an approach which immediately lends itself to conjecture and prejudice’ [para 187 and 234 per Ribeiro P J];

(f)

In assessment of evidence in ascertaining whether there was a forgery, the ‘most important class of evidence is that which bears directly on that issue’, is the direct evidence of attesting witnesses. Circumstantial evidence is already much more remote. The opinion from handwriting expert is regarded to be ‘inherently of less weight and importance than the direct evidence, particularly where the experts are divided and their evidence inconclusive’ [para 249 per Ribeiro PJ];

(g)

Adverse inferences can only be drawn from a failure to testify by the (defending) party if there is a need to meet an established ‘prima facie case’ of forgery. ‘No question of drawing adverse inferences arises unless the party alleging forgery adduces evidence of a sufficient cogency to raise a prima facie case of forgery and of the implied conspiracy’. If such party does not cross the relevant evidential threshold, the omission of the other side to testify ‘amounts to nothing’ and does not help the party proving forgery to ‘fill any gaps’ in the ‘forgery and conspiracy case’. [para 367 to 369 per Ribeiro PJ, para 643 per Lord Scott];

(h)

The evidence on handwriting cannot and should not be considered as if there were no other evidence. If there is other evidence on the issue proving the disputed signatory, in particular if there are witnesses to such signing, then notwithstanding the handwriting experts' evidence to the contrary, the Court can still hold the documents to be genuine. In essence, the Court prefers 'the evidence of witnesses who actually saw and heard what happened over that of a handwriting expert' [paras 12 to 15 per Chan PJ, also see *Fuller v Strum* [2002] 1 WLR 1097, para 393 per Ribeiro PJ]."

There is no dispute in relation to the above principles.

HISTORY OF PRODUCTION OF THE RELEVANT DOCUMENTS

The Offshore Minutes and the 4 PAs

It has always been the applicant's case that R1 had told her that he was/is the beneficial owner of the Offshore Companies, and that even at the date of incorporation of each of these companies, when there was only one bearer share issued, R1 was the beneficial owner of the bearer share. R1 has always denied these allegations and has maintained that the beneficial owner has been his mother R2.

R1's case was made known to the applicant as early as his 1st Form E of 21 April 2010, when he stated that he did not have any beneficial interest in any of the companies which he listed in a schedule attached to his 1st Form E. This schedule included the 3 Offshore Companies. R1 further indicated on another schedule attached to his 1st Form E that he was only a past director of the 3 Offshore Companies.

The applicant filed her 3rd affirmation after receipt of R1's 1st Form E. According to her, she suspected that R1 had resigned from his directorships in all the companies, including the 3 Offshore Companies only recently, and she had further said that R1 resigned in April 2010 from all the relevant companies as a result of her divorce proceedings.

Subsequently, in answer to the applicant's further request, R1 again confirmed that he did not hold any interest and/or beneficial interest in the 3 Offshore Companies. He further declined to provide the details of the identities of the shareholders and beneficial owners of the 3 Offshore Companies, as he maintained that the 3 Offshore Companies were beneficially owned by his mother R2. His position was further made clear to the applicant in his 2nd and 4th affirmations .

Eventually, R1 in his 12th affirmation of 8 March 2012 produced a letter dated 31 January 2012 to R2 from R2's US attorney, a Mr Seeger, enclosing a PA from R2 dated 13 June 2001, and a copy of a letter dated 4 January 2012 to R2 from Mr Seeger enclosing a Certificate of Good Standing, Register of Members, Register of Directors respectively of the 3 Offshore Companies. Upon receipt of these documents, the applicant had pointed out that the information provided was not complete, and she then sought the historical searches of these Offshore Companies together with the Offshore Minutes.

The applicant had further attempted to issue a subpoena on a company Offshore Incorporations HK Limited to produce full historical record and search of the companies. Since the registered agents for the 3 Offshore Companies were in fact Offshore Incorporations Limited BVI and/or Offshore Incorporations Limited Bahamas ("OIL"), the Hong Kong Office of OIL did not have the requested documents in their possession and later this subpoena was not proceeded with. There was no evidence as to whether the applicant instructed any BVI or Bahamas lawyers in those offshore jurisdictions to try and obtain the necessary information independently from the registered agents OIL. None of the Offshore Companies were joined as parties to the main proceedings.

R2 was, however, joined as a party to the main proceedings and eventually, on 10 August 2012, R2 was ordered to produce full and complete historical company searches in relation to the 3 Offshore Companies. Subsequent thereto, the Overseas Minutes were purportedly obtained by Mr. Seeger from OIL and they and the 4 PAs were produced in a 2nd affirmation by R2 about 2 months later, on 9 October 2012. The applicant then objected to all R2's affirmations being read out as evidence, but this was on the ground that as R2 was not going to make herself available to be cross examined. At no time in the applicant's affirmations in relation to that application did she raise any queries in relation to the authenticity or the purported dates of R2's signatures on the Overseas Minutes and the 4 PAs.

On 10 October 2012, the applicant had also issued a further application for further discovery against R1 and an order was made accordingly. In R1's affirmation filed on 15 October 2012, in compliance of this order, the Overseas Minutes and the 4 PAs were produced again by R1.

The applicant's counsel Mr Chow then applied on 16 October 2012 to attempt to exclude the Overseas Minutes and the 4 PAs on mainly the same basis that R2 could not attend the trial for cross examination. However, again in none of the applicants' affirmations in support of that application had the applicant raised any issues in relation to the signatures of R2 on the Overseas Minutes and the 4 PAs.

At the hearing of the applicant's then application, this Court was of the view that the Minutes were part of the chain of documents leading to the information recorded on the Register of Shareholders and Directors of these 3 Offshore Companies kept by OIL and thus they should not be excluded. So far as the 4 PAs were concerned, they were all delivered to Mr Seeger being the attorney appointed by R2 under the PAs, and he had acted on them and was the one who produced copies of them. This Court decided also not to exclude them.

HISTORY OF PRODUCTION OF THE ACE MINUTES AND THE MVI RESOLUTIONS

The Ace Minutes and the MVI Resolutions were produced by Ms Anita Lo in her 7th affirmation on 31 August 2012 as exhibits LLC-4, LLC-5, LLC-9, and LLC-13. Ms Lo has been a secretary for R1 and/or R2.

Since receipt of the above affirmation, the applicant had filed further affirmations prior to her present summons, and in none of her affirmations did she query the signatures of R2 on the ACE Minutes and the MVI Resolutions. Moreover, the applicant has by now already completed her evidence, and during her oral evidence, she has not mentioned anything at all about her queries on R2's signatures on these documents.

DISCUSSION

So far as the suspicious circumstances alleged by Mr Leung on behalf of the applicant are concerned, I am of the view that the inconsistency in the records as to R2's directorship and a possible missing minute in relation to the date of R1's appointment as director could be clarified with OIL. There is no sufficient evidence at this stage that R1 was deliberately trying to conceal the date when he was appointed as a director of those 3 Offshore Companies. R1 has just started giving evidence at the trial, and he has already confirmed that he was appointed a director together with R2 at the time when the 3 Offshore Companies were acquired, and that he had remained a director until he resigned in April 2010, while R2 has continued to remain as a director todate.

Another suspicious circumstances which the applicant relies on was the way the Offshore Minutes and the PAs were produced and R1's lack of full and frank financial disclosure.

The applicant in fact did not apply to add R2 as a party to the main proceedings until 24 April 2012, and R2 was only ordered to be joined on 14 May 2012. As mentioned earlier, the order for discovery against R2 to produce the historical searches of the Offshore Companies was not made until 10 August 2012. I accept that R1 had been asked to produce such documents for some time, which he failed to do so. However, his position from almost day one has been that R2, and not him, was/is the beneficial owner of these Offshore Companies and this has been made known to the applicant as early as April 2010, together with his resignations as directors of these companies. It is therefore not clear as to why it took the applicant almost 2 years to apply to join R2 as a party.

Anyway, it appears that on 23 August 2012, on behalf of the Offshore Companies, Mr. Seeger wrote to OIL to seek the full and complete historical files on the 3 Offshore Companies, and further on 27 August 2012, he wrote to several archives/records companies seeking files of these companies. These were eventually sent by Mr. Seeger on 4 October 2012 to R2's solicitors. In fact, on the same day, Mr. Seeger also sent a copy of his letter to R2's solicitors to the applicant's solicitors.

R2 formally filed an affirmation to produce the documents sent by Mr. Seeger on about the day before the commencement of the trial. Notwithstanding such lateness, I do not see at this stage how such delay would cast any suspicion on R2's signatures on the Offshore Minutes and the 4 PAs. In any event, as I have said earlier, this issue was not raised by the applicant at all at the time when R2 produced these documents.

As mentioned earlier, R1 then produced the same documents again after R2's affirmations were not admitted as evidence, and I made an order admitting the Offshore Minutes and the 4 PAs. Again, at that time, the issue of the Questioned Signatures was not raised. The first hint of some sort of expert report was being awaited by the applicant was made on 26 October only, the Friday before the Monday when the applicant's present summons was being issued.

Mr. Leung has asked this Court to look at R2's signatures in March and June 2012 and compared to those of hers in September 2012 which he submits are markedly different. Although there appears to be differences, there could, however, be many reasons for such differences.

The applicant relies heavily on the Brown Report to support her claim that there should be further investigation into R2's Questioned Signatures. From the Browne Report, it appears that the applicant is not at this stage alleging 'forgery' in that the Questioned Signatures on the Questioned Documents were not actually signed by R2. Rather, the applicant's case at this stage is that the Questioned Documents were not signed by R2 on the dates they were purported to be signed.

Mr. Browne had said that the actual authorship of the Questioned Signatures was not part of his examination. The evidence from the Browne Report at this stage was that the examination of the Questioned Signatures showed that they had all appeared to have been fluently written and that they were written evenly and many seemed to have been written in one sitting, notwithstanding the dates on which they were purportedly written.

The applicant's case can be gathered from her latest 51st affirmation when she referred to R1 asking her to sign on pieces of blank paper in about 1990's and thereafter used her signatures on documents that she had never seen. From her statement, the applicant seems to be alleging that R2 had also been asked to sign in the same manner on blank pieces of paper. So far as I could recall, this was the first time the applicant made such an allegation concerning R2 and this was 2 days before the hearing of her summons, and after she had completed her oral evidence.

In any event, in order to persuade this Court that leave should be given for the applicant to submit handwriting expert evidence, this Court should be satisfied that there is at least a prima facie case that the Questioned Documents were not signed by R2 on the respective dates of those documents.

There is no evidence at all to suggest that R2 was not of sound mind on or before 2001. The evidence was that R2 used to manage the business of a Macau company in her capacity as a director. It is not disputed that R2 returned from Macau to Hong Kong in about February 2002 to take up permanent residence here. It is the applicant's case that her relationship with R2 was a very good one to the extent the applicant would often stay overnight with R2 at the latter's home on Old Peak Road since about 2004. This seems to have continued until about October 2009, when the applicant was not allowed to return to the Estoril Court flats, or to the Hunghom Office or to R2's home by R1. It is further the applicant's case that her relationship with R2 was such a good one that R2 had entrusted the applicant with 3 expensive diamond rings, rather than R1.

Anyway, no reason has been advanced by the applicant as to why R2 would need to sign her signatures on blank paper to give to R1, whether before 2001 or thereafter. Mr. Seeger was instructed to obtain the historical files of the 3 Offshore Companies from OIL which included the Offshore Minutes. It was R2 who instructed Mr. Seeger to provide the applicant with requested information which included the 4 PAs. It was further R2 who first produced the Offshore Minutes and the 4 PAs in her affirmations filed herein. R2 is opposing the applicant's present summons, and although there is no affirmation from her and she is now in hospital, her position is clearly that she does not dispute those Offshore Minutes and the 4 PAs were signed by her on the dates stated therein.

Ms Anita Lo has filed a 9th affirmation to support R1 and/or R2 to oppose the applicant's summons. As to the Offshore Minutes, Ms Lo says that she was the one who had personally sent the original signed Offshore Minutes to either Mr. Seeger or solicitors Messrs CK Mok & Co for further handling after signing by R2. She was recently informed by R2's solicitors that CK Mok & Co had said according to their information and knowledge, the originals of these Offshore Minutes might have been delivered to the registered agents. No doubt, upon receipt of the Offshore Minutes, changes would be recorded in the registers of members and directors. If necessary, OIL can be asked to clarify as to whether the Offshore Minutes, whether originals or copies, were received by them on about the purported dates of signatures as there may be provisions in the BVI/Bahamas Companies Acts regulating changes in memberships and directors.

As to the 4 PAs, the originals are with Mr Seeger. Mr Seeger has produced a declaration from an US Notary Public who confirmed that she saw the 4 PAs from R2 to Mr Seeger. R2 first signed a Power of Attorney in 2001, which was signed by R2 at the American Consul in Hong Kong, which is good for 20 years and this PA is not challenged by the applicant. The 1st PA seems to relate to only R2's property in the United States.

Then, according to Mr Seeger, the 2nd PA was signed by R2 in 2002 to 'strengthen' the first one and to extend to all properties, or corporate shares or assets beneficially owned by R2. The 2nd PA was not signed in the presence of any witnesses. The 3rd PA , a Special PA and the 4th PA, a General PA were signed by R2 in the presence of 2 witnesses, Ms Anita Lo and Mr Au Man Wai on 29 March 2012, and the 5th PA was again signed by R2 in the presence of the same 2 witnesses on 8 June 2012. The 2nd to 5th PAs are part of the Questioned Documents. Although the 2nd one was not witnessed, the date of its receipt by Mr Seeger can be sought from Mr Seeger, so could the other 3 PAs. Mr Seeger has now filed an affirmation in support of R1 and R2 and in opposition to the applicant's summons, and Mr Seeger has indicated that he is willing to give evidence by way of video link.

Anyway, both Ms Lo and Mr Au will be coming to Court to testify and clarification can be sought from them as to the R2's signatures on those PAs witnessed by them.

There was no reference in the Browne Report to the ACE Minutes or the MVI Resolutions.

As mentioned earlier, the ACE Minutes and the MVI Resolutions were produced by Ms Lo at the end of August 2012 and the applicant has not in any of her own affirmations or during her oral evidence queried R2's signatures on these documents.

In Ms Anita Lo's latest 9th affirmation filed to oppose the applicant's summons, she now says that she had always handed original signed minutes of meetings of ACE to the applicant. In fact copies of 3 out of the 4 ACE Minutes seemed to be produced by HSBC after a subpoena by the applicants. So far as the MVI Resolutions, Ms Lo says that was drafted by a Mr Raymond Lai of CK Mok & Co and after signing by R2 in presence of Ms Lo, she cannot recall whether she gave the original to the applicant or to UBS for further action. R1 has also filed his 33rd affirmation to confirm that he does not have in his possession, custody, power or control any of the originals of the documents in Schedule 1 or Schedule 2.

As submitted by Mr Li, what the applicant seems to be implying is some sort of conspiracy by R1, R2, Anita Lo Au Man Wai, Mr Seeger, CK Mok & Co and Mr Raymond Lai, the registered agent OIL. I accept that Anita Lo and Au Man Wai are employees of R1 and/or R2, but perjury is a serious allegation. They have not yet given evidence nor have they been cross examined. There is no sufficient evidence before me at this stage they were not present at the signing of the 3 PAs on which they signed as witnesses, or what Ms Lo has said in her 9th affirmation is not truthful. Mr Seeger is an US attorney and he has now filed an affirmation and is willing to testify, and there is no sufficient evidence that what he has said so far is not correct. There is further no sufficient evidence that OIL is not a neutral third party.

Mr Leung has relied on the fact that R2 has now refused to attend trial to be cross examined and argued that adverse inferences can be drawn. However, it is clearly stated in the Nina Kung case that adverse inferences can only be drawn from a failure to testify in such a context where there is a need to meet an established prima facie case .

Having considered all the above, I do not find that the applicant has adduced evidence of a sufficient cogency to raise a prima facie case on the authenticity of R2's signatures on the Schedule 1 and Schedule 2 documents and of the implied conspiracy.

PREJUDICE

R2's solicitors have also contacted an expert for his preliminary views. R2's expert is of the view that as Mr Browne was instructed to "concentrate particularly on the dates the signatures were purportedly made", this would require the application of ink-dating technique on the original documents bearing the Questioned Signatures, and that around the world there are only a handful of private laboratories providing such specialist service. Making use of the fact that signatures change with time, the Questioned Signatures can be examined and compared with a very large number of known specimens written over an extended period of time. For 24 signatures over 15 years, at least 10 specimen signatures will be required per year, and this will involve collecting 150 specimen signatures. R2's expert, however, emphasizes that this is not a well-established method which can only roughly estimate the time around which the Questioned

Signatures were produced, and thus only gives rise to results of low evidential value, and is time consuming. Finally, his estimate is that it will take 3 to 4 months to complete the exercise once the control specimens are available.

It seems Mr Browne has only examined 10 controlled signatures of R2, and yet Mr Li has pointed out that there are at least 70 signatures of R2 in the trial bundles, and queried why Mr Browne were only sent 10. Anyway, as Mr Li has pointed out it will take time to collect 150 specimen signatures and it may not even be possible to collect so many signatures.

A further 10 days have now been added to the original estimated 25 days, and the hearing of the applicant's summons is on the 21st day of the original 25 days. The applicant has already completed her oral evidence, and R1 has only just finished giving his evidence in chief.

First of all, it is not clear whether OIL has kept the originals of the Offshore Minutes. R2's solicitors have written to OIL on 5 November 2012 to make enquiries, but as at the date of the hearing, there has not yet been any reply. At the moment, it is only known that the originals of the PAs are with Mr Seeger and the whereabouts of the originals of the other Schedule 1 and 2 documents seem to be unknown.

If leave is to be given to the applicant to adduce expert evidence, R1 wishes to apply for leave to file evidence in answer, including possibly further evidence from Anita Lo, Au Wai Man, Mr Seeger and OIL. Further, the applicant will need to be recalled to be further cross-examined. The experts will need to give oral evidence as well.

Thus if the applicant's application is allowed, the trial will be disrupted and will have to be adjourned for at least 3 to 4 months. This is in my view extremely undesirable.

The 3 Offshore Companies were acquired more or less at the same time. The effect of the Overseas Minutes on 27 June 1997 was to appoint R2 as a director of the 3 Offshore Companies. According to R1's oral evidence, he was appointed as a director at about the same time together with R2. The effect of the Overseas Minutes of 30 June 1997 was to issue a new bearer share of the 3 Offshore Companies to be held by R2. No other shares were issued at that time.

The effect of the Overseas Minutes on 31 July 2001 was to allot and issue a 2nd share of one of these companies to another of these companies and it appears that R2 then became a 50% shareholder.

The Overseas Minutes on 17 April 2010 resolved the resignations of R1 from all these companies, and 2 of the other 3 companies were appointed as directors.

Then on 1 June 2010, a 3rd share of each of the 3 companies was allotted and issued to the other remaining company, so that since 1 June 2010, R2's shareholding in each of these 3 Offshore Companies appears to have been reduced to 33.33%, and the other 2 shares have been held respectively by the other 2 out of the 3 of these companies.

The applicant's case, however, is that the bearer shares were in fact in R1's possession, and that R1 had told her that whoever had the possession of the bearer share would be the beneficial owner, and thus R1 was the beneficial owner of the bearer share. If her case were to be established, then if the bearer share were then transferred to R2's name, then R2 should hold the share in trust for R1. In fact, the applicant's case is that R1 has always been the sole beneficial owner of all 3 Offshore Companies, and thus it seems that whether the Offshore Minutes were signed or not signed on the dates stated thereon would not have made any difference to her case.

As to the 4 PAs, namely the 2nd to the 5th one, the applicant did not challenge the 1st one, which is good for 20 years, and is thus still effective. The 2nd to the 5th PAs seem only to strengthen the 1st one. It is not clear as to how the applicant would suffer prejudice if her present applications are not allowed.

So far as the ACE Minutes and the MIV Resolutions are concerned, again, there were no details given by the applicant as to what prejudice would be suffered by her. One of the ACE Minutes of an EGM on 27 January 2009 was in fact signed also by the applicant and her own mother, and three of the other 4 ACE Minutes seemed to have produced by HSBC after a subpoena by the applicant.

In any event, assuming I am wrong, the applicant would suffer some prejudice if her application for expert evidence is not allowed, I am of the view that her application is far too late.

Even if it is not the applicant's fault for the late production of the Offshore Minutes and the 4 PAs, her summons is issued at a very late of the trial. Mr Li has referred this Court to the case of Winchester Cigarette Machinery Limited (Formerly John Payne Engineering Limited) v Michael John Payne, Gillian Mary Payne, when the defendants sought leave to introduce expert evidence about 3 weeks before the trial, and if allowed, it would be inevitable that the trial had to be adjourned. Although the judge accepted that prejudice might well be caused to the defendants if their application was refused, he took the view that the balance of justice was against such an adjournment and the application was dismissed. The appeal was subsequently dismissed.

Having considered all the circumstances of this case, on the balance of justice, I will not allow the Handwriting Expert Application.

INSPECTION APPLICATION

As for the Inspection Application, Mr Leung had referred this Court to the case of Re Ming John Fook which was an application in a probate matter for further inspection in view of allegation as to authenticity of documents in question. The plaintiffs in that case had inspected the share certificates, register of member and directors and the minutes of directors' meetings and considered that the signatures on them did not appear to be that of their father's and they applied for leave to inspect the documents further, with the objective to have the documents examined by experts. This was allowed by Yam J and the defendants appealed. The Court of Appeal dismissed the appeal on the basis that the authenticity of the documents would be of relevance and as the documents had been already been inspected earlier, although at that stage no order

for expert evidence had yet been made, they must be relevant.

The power of the court to make an order for production for inspection is discretionary and the order will only be made where necessary. An order will not be made if good cause to the contrary is shown. The party requesting inspection must satisfy the court that inspection is necessary either to dispose fairly of the matter or to save costs.

As mentioned earlier, the applicant's Inspection Application is only for the purpose of having the original documents forensically examined and thus it will be necessary for the original documents to be inspected if I were to allow the Handwriting Expert Application. There is no other evidence from the applicant as to why she wishes to inspect these original documents or why such inspection is necessary other than for the forensic examination by her expert.

As I have not allowed the Handwriting Expert Application, I will not allow the Inspection Application.

CONCLUSION

In view of all the above, I will dismiss the applicant's summons. As costs normally follow the event, I order the applicant to pay the costs of this application to R1, R2 and if any, R3.

(Bebe Pui Ying Chu)

Deputy High Court Judge

Mr Enzo WH Chow, Mr Eric HK Leung, Mr Chan Hei Ching, instructed by C T Chan & Co, for the Petitioner

Mrs Lisa D'Almade Remedios & Mr Samuel Yip, instructed by Tso Au Yim & Yeung for the 1st Respondent

Mr Li Chau Yuen SC, instructed by B C Chow & Co, for the
2nd Respondent

Mr Adrian But, instructed by Simon C W Yung & Co, for the
3rd Respondent

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