

HONG KONG / JUDGMENT

# GLORY GOLD LTD v. STAR PLAY DEVELOPMENT LTD

## COURT

Court of First Instance

## DECIDED

17 August 2007

## CASE / FILE NUMBER

HCA1078/2005

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj HCA 1078/2005 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE  
REGION COURT OF FIRST INSTANCE ACTION NO. 1078 OF 2005

-----

BETWEEN GLORY GOLD LIMITED Plaintiff and STAR PLAY DEVELOPMENT LIMITED Defendant

-----

Before: Deputy High Court Judge Muttrie in Chambers Date of Hearing: 10 May 2007 Date of  
Reasons for Judgment: 17 August 2007

-----

## REASONS FOR JUDGMENT

-----

The plaintiff appeals against the order of Master B Kwan dated 14 March 2007 striking out the plaintiff's action on the ground that the Statement of Claim disclosed no reasonable cause of action. The plaintiff was the tenant and the defendant the landlord of the 2nd floor of a building. They had a formal tenancy agreement dated 19 November 2003, but on the basis of an earlier agreement the plaintiff operated a Cantonese restaurant in the 2nd floor since 1 July 2003. The plaintiff's claim is for rescission of the agreement and damages, on the ground of misrepresentation which is pleaded alternatively as fraudulent, negligent or innocent misrepresentation. Put simply, the plaintiff's case is that before any agreement was reached, the defendant (through an agent) in answer to an inquiry by the plaintiff's director represented to him that:

- (a) it would not allow another Cantonese restaurant to operate on the 3rd floor in competition with the plaintiff on the 2nd floor; and

- (b) it would lease the 3rd floor to four specialist food stalls, and it produced a design plan indicating the same; and the plaintiff took the lease in reliance on this representation. However the defendant did in fact lease the 3rd floor to another Cantonese restaurant, and the competition damaged the plaintiff's business. The plaintiff pleads that the representation was false because the defendant did not intend to lease out the 3rd floor to four specialist food stalls; it did in fact not divide the 3rd floor into four food stalls; it did intend to lease the 3rd floor to a restaurant; and it did not intend to prevent competition with the plaintiff. Again put simply, the defendant's case on the representation is that it was not made. Instead, its agent in answer to the inquiry told the plaintiff's director that no decision had yet been made as to the use of the 3rd floor, which might be leased to a restaurant, karaoke or beauty business; and no design plan was produced. The only issue for decision is whether, on the pleadings, there is a sufficient case for fraudulent misrepresentation. There is an entire agreement clause, but that could never protect the defendant against its own fraud, if fraud be proved. Mr Lam, counsel for the defendant, argues and Mr Chan for the plaintiff does not dispute this that the pleaded fact that the 3rd floor was never divided into four food stalls is equivocal as to whether or not the representation that it would be so divided was false. Of course that is right. The fact of the later lease to another Cantonese restaurant business is also equivocal. Mr Lam argues that fraud must be pleaded distinctly and with the utmost clarity and any inference of fraud based on circumstantial evidence must be properly grounded on primary facts; *Ming v Ming* [2006] 2 HKLRD 831. He also relies on *Three Rivers District Council & Ors v Bank of China No. 3* [2003] 2 AC 1 at 291-3 where Lord Millet explains the principles relating to the pleading of dishonesty. In brief an allegation of fraud or dishonesty must be sufficiently particularised, and particulars of facts which are consistent with honesty are not sufficient. If particulars of dishonesty are insufficient, the defect cannot be cured by an unequivocal allegation of dishonesty; such an allegation is effectively an unparticularised allegation of fraud. The application to strike out is made on the ground that there is no reasonable cause of action, i.e. under Order 18 Rule 19 (1)(a) of the Rules of the High Court. Evidence does not come into consideration for the purposes of this appeal. Looking at the Statement of Claim in isolation, I would agree with Mr Lam. There is at best an unequivocal allegation of dishonesty; that the plaintiff intended something other than what it said it intended. But no facts are pleaded apart from the equivocal fact of non-performance of the stated intention, in support. No facts are pleaded from which dishonesty could be inferred. The situation is very like that of a dishonoured cheque; the fact of dishonour does not mean that the drawer must have intended, when he drew the cheque, that it would not be met. He could have run out of funds in the meantime. Here the defendant could have honestly stated an intention, but later changed its mind. The point is, however, that this application comes at a late stage in the pleadings. The defendant has pleaded to the plaintiff's allegations. The defendant does not plead to an honest statement of intention overtaken by a later change of mind. It pleads that it made an entirely different statement of its intention. This puts a quite different complexion on the matter, and I cannot deal with it as if the defendant's pleadings did not exist. Mr Chan says, as I understand him, that if the plaintiff proves its case as pleaded, it must follow that the

defendant made the representation pleaded and thereby stated an intention it did not in fact have and so was dishonest. I think this must be right. If the plaintiff proves the facts it pleads, it means that the defendant (through its agent) made a statement of its intentions with regard to the 3rd floor which, on its own case, must have been untrue, and produced a plan in support of that untrue statement. It follows, in my view, that this matter must go to trial. I therefore allow the appeal and make an order in terms of the application stated in the Notice of Appeal. (G.P. Muttrie) Deputy High Court Judge Mr Jeremy Chan, instructed by Messrs C P Cheung & Co., for the Plaintiff Mr Paul Lam, instructed by Messrs Tang & So, for the Defendant PAGE - A 1udk 1udk P" (# i\$&`G Muttrie-HCA.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

### Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

**ORIGINAL SOURCE**      [https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=58263](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=58263)

**CASE PAGE**      <https://chat.esheria.ai/case-law/hong-kong/glory-gold-ltd-v-star-play-development-ltd-2007>

Prepared on 28 October 2026 · Esheria