

HONG KONG / JUDGMENT

# PUN CHING CHAU v. SUEN KAR CHUN AND ANOTHER

## COURT

Court of First Instance

## DECIDED

15 June 2007

## CASE / FILE NUMBER

HCMP1050/2007

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bjbj @29. HCMP 1050/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL  
ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MISCELLANEOUS PROCEEDINGS NO.  
1050 OF 2007

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IN THE MATTER of Carry Strong Dyeing Factory Limited and IN THE MATTER of Section 121 of  
the Companies Ordinance, Chapter 32 of the Laws of Hong Kong

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BETWEEN PUN CHING CHAU Plaintiff and SUEN KAR CHUN 1st Defendant CARRY STRONG  
DYEING FACTORY LIMITED 2nd Defendant

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Before: Hon Kwan J in Chambers Date of Hearing: 15 June 2007 Date of Decision: 15 June 2007

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## DECISION

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This is an application taken out under section 121 of the Companies Ordinance, Cap 32, for inspection of the documents of a company known as Carry Strong Dyeing Factory Limited ( the Company ) by a director. The plaintiff and the 1st defendant are equal shareholders and the only directors of the Company. All along, the plaintiff played a passive role in the Company, whereas the 1st defendant was responsible for the day to day management and he kept all the books of accounts. In early 2004, the plaintiff refused to sign directors report and financial statements for the year ended March 2003, as he suspected improper dealings in the business. He did not however ask for inspection of documents until December 2006, through his solicitors. By a letter of the plaintiff s solicitors to the 1st defendant dated 22 December 2006, the plaintiff asked for

inspection of eight categories of documents: documents relating to loans from the 1st defendant or Whole Light Industries Limited ( Whole Light ) to the Company; documents relating to sales between the Company and Whole Light; documents relating to transactions between the Company and Whole Light; documents relating to expenses of the Company and Whole Light; the ledgers of the Company; documents confirming the number and details of bank accounts of the Company; all bank documents; and all documents relating to the transactions of related companies from 1992 to 1997. The 1st defendant asked for time to locate the documents requested, claiming that he had no help from any one to tidy up and find the documents, as the Company had ceased business since 2004. On 9 March 2007, the 1st defendant indicated to the plaintiff that the documents could be inspected. Notwithstanding this, the plaintiff did not carry out inspection of those documents and this originating summons was issued on 31 May 2007, seeking an order from the court to carry out inspection. The 1st defendant has appeared by counsel seeking dismissal of the application. Mr Liu gave the court a 13-page submission and a supplemental submission of 5 pages. With respect to counsel, this seems to be over the top. Counsel s submissions would not improve with elaboration and repetition, particularly if the matter is a relatively simple one. The grounds of the 1st defendant s opposition may be summarised as follows. Firstly, the 1st defendant asserted that the application is unnecessary, as he has never denied the plaintiff the right to inspect the documents that he has requested. Secondly, the 1st defendant claimed that the plaintiff was unreasonable in asking to inspect the documents on a weekday. He could only give inspection on a Sunday, as he has to work in Shenzhen for 4 to 5 days each week to supervise a factory which is a joint venture of the Company with a Mainland party. He claimed to be indispensable to the production process due to his expertise in dyeing and he must stay in Shenzhen to oversee the production, so he could not come to Hong Kong at all to give inspection of the documents to the plaintiff except on a Sunday, which is his rest day. He had offered to give inspection on 3 Sundays 18 March 2007, 13 May 2007 and 10 June 2007. He alleged that the plaintiff had himself to blame in not seeking inspection earlier in 2004, before the Company ceased business. If inspection had taken place at that time, the Company would still have employees in Hong Kong; it would not be necessary for the 1st defendant to attend to discovery personally and this could take place on a weekday. He contended that it would not be reasonable to require him to incur expenses in engaging a professional, such as a legal representative, to act on his behalf in producing the documents for inspection on a weekday. I reject the above contentions without hesitation. It is disingenuous to say that the 1st defendant never denied the plaintiff s right to inspect the documents, considering the unreasonable terms and conditions he insisted upon before he would allow inspection, and this is quite apart from the question whether inspection should take place on a weekday or on Sunday. On 22 March 2007, the 1st defendant refused to provide photocopies of such documents as might be requested after inspection. On 17 April 2007, he insisted that the plaintiff must accept all these conditions before he would agree to give inspection: (1) inspection was to take place on a Sunday 13 May 2007 at 4 pm; (2) the plaintiff must be present throughout; (3) the plaintiff could bring along one representative who may be an auditor or any other person for inspection; and (4) he would not answer any question raised by the plaintiff s representative, and if the plaintiff had any question, he would have to raise it with the 1st defendant face to face. When the plaintiff s

solicitor Ms Tsang went with a representative of Ferrier Hodgson Ms Choi to carry out inspection at the registered office of the Company in a factory building in Kwun Tong on 13 May 2007, Miss Tsang was refused entry. Only Ms Choi was allowed in and she was told that the process of inspection would be recorded on video. Ms Choi had to abandon the attempt at inspection as she was concerned for her personal safety. On 14 and 23 May 2007, the 1st defendant wrote to the plaintiff, insisting that the plaintiff must be present at the process of inspection throughout. I consider these terms sought to be imposed by the 1st defendant in allowing inspection to take place unreasonable. It was necessary for the plaintiff to issue the originating summons on 31 May 2007. The plaintiff has the right as a director to inspect documents. He is entitled to inspect the documents himself, or he may do so by his solicitors, accountants, or other agent as authorised by him. The plaintiff is also entitled to take copies of such documents as he may wish after inspection. If there are no photocopying facilities at the registered office, which appeared to be a godown, the 1st defendant should allow such of the original documents to be removed by the plaintiff for photocopying, on the undertaking that the plaintiff would return them within a specified time. There is no suggestion that the documents involved in the inspection by the plaintiff are so voluminous that they could not be removed conveniently. The Company, according to the 1st defendant, had ceased business, so it would have no present need for the documents sought to be inspected by the plaintiff. If the documents were taken away for a few days to be inspected by the plaintiff and his advisers, on the undertaking of the plaintiff's legal advisers that the documents would be returned within, say, 7 days, this would not have caused inconvenience or prejudice to any one. If the 1st defendant should regard it inconvenient for him to attend to inspection on a weekday, I cannot see why it is not feasible for him to provide all the original documents to the plaintiff for inspection on the above undertaking to return the documents. There are other alternatives open to the 1st defendant as well. He is not required to attend to the inspection personally, assuming that he cannot spare even half a day from his work in Shenzhen. He can engage solicitors to attend to the matter on his behalf. If he does not wish to incur legal expenses, he can ask a staff in his factory or any other person he could trust to attend to the matter. The 1st defendant's insistence on inspection to take place on a Sunday is a difficulty of his own making. There is no good reason why inspection should not take place on a weekday during normal office hours. I make the following orders:

- (1) the 1st defendant is to produce to the plaintiff and give access to all books of accounts, management accounts, working papers, bank statements, cheque stubs and copies, contracts, instruments of transfer, statutory records, company documents and all documentation of the Company, at its registered office, or at such other place as may be agreed by the parties, from 9 am to 5 pm on Monday to Friday (other than a public holiday), for inspection by the plaintiff or the plaintiff's representatives, and permit copies to be taken; and

- (2) the plaintiff's costs of this application are to be paid by the 1st defendant. (S Kwan) Judge of the Court of First Instance High Court Mr Lee Tung Ming, instructed by Messrs Anthony Siu & Co., for the plaintiff Mr Liu Man Kin, instructed by Messrs Bernard Wong & Co., for the 1st defendant PAGE - 1udk 1udk 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 XUok XUok hccw (for Susan Kwan only).dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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