

HONG KONG / JUDGMENT

**QUESTNET LTD v. WILFRED ROYCE LANE**

## COURT

Court of First Instance

## DECIDED

23 June 2008

## CASE / FILE NUMBER

HCA1475/2006

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bjbj P Q\* HCA 1475/2006 IN THE HIGH COURT OF THE HONG KONG ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE ACTION NO. 1475 OF 2006

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BETWEEN QUESTNET LIMITED Plaintiff and WILFRED ROYCE LANE 2nd Defendant

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Coram: Hon Chu J in Court Date of Hearing: 23 June 2008 Date of Decision: 23 June 2008

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DECISION

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This is the decision on the amended summons filed by the 2nd defendant on 10 June 2008, applying for discharge of the prohibition order granted by Master against him on 5 June 2008. Prior to the issue of this summons, the 2nd defendant had already made one application for discharge of prohibition order then in force against him. That application was refused in February of this year. This, therefore, is a renewed or another application to discharge prohibition order.

3. I understand that the 2nd defendant is, at the moment, appealing against the previous refusal to discharge the prohibition order. Nevertheless, as matter now stands, it is for the 2nd defendant to demonstrate that there has been a change of circumstances since the refusal in February 2008 to justify the court reconsidering the matter and discharging the prohibition order. It would not be proper for this court to revisit or reconsider matters that had already been argued and dealt with in the earlier application and the February decision.

4. For the purpose of the present application, the 2nd defendant primarily relies on two matters. The first is that the plaintiff has commenced enforcement proceedings against him in New Zealand. The second is that the prohibition order had an adverse effect on his income and livelihood. Specifically, it is said that there is a sponsorship agreement, which would be seriously affected or terminated if he were not able to present himself in person to the sponsors in Indonesia by a date that has now passed.
5. On the first point, apart from registering the default judgment against the 2nd defendant and bankruptcy proceedings in New Zealand, the plaintiff is also at the same time trying to enforce the judgment in Hong Kong. Among others, there is the examination of debtor proceeding that has been adjourned part-heard and will be resumed in the very near future. At the same time, the plaintiff is also seeking to enforce costs orders that are separate from the default judgment.
6. That being the position, the fact that there are enforcement proceedings in New Zealand, does not mean that the presence of the 2nd defendant in the jurisdiction is of no purpose at all. It is per se not a material change of circumstances that warrants the court reconsidering whether to discharge the prohibition order. It should also be noted that the 2nd defendant has resisted the enforcement proceedings in Hong Kong. He has, among others, applied to set aside the statutory demand. This, together with the fact that the examination of debtor proceeding is part heard, are good and cogent reasons why his presence in Hong Kong would be desired in connection with the enforcement proceedings in this action.
7. As to the second point about the effect of the prohibition order on his income or livelihood, much of the relevance and force is lost in light of the sentence passed this morning in the contempt proceedings against the 2nd defendant. Mr Leung made the point that the issue would re-present itself when the terms of imprisonment have been served. That is, however, based on certain speculations, including that the plaintiff might move for continuation or reissue of prohibition orders or that the further development in this case would not warrant a different approach to the question of whether the 2nd defendant's presence in Hong Kong would continue to be desired or required.
8. That aside, the hardship to the 2nd defendant if he is prevented from leaving the jurisdiction is a matter that had already been argued and considered in the earlier application for discharge. I do not consider the matters now raised provide grounds for reviewing the court's earlier decision.
9. I would also add that there is, in fact, an air of uncertainty as to what this sponsorship agreement is all about and what role the 2nd defendant has in it. Whether this is a sponsorship agreement made with him as a party or not is really unclear on the evidence available to the court. There is also no proven explanation as to the apparent necessity or importance of his intended travel to Indonesia to meet with the sponsors. For instance, we were not told why it was not possible for a meeting to be arranged within the jurisdiction, if indeed there has to be some discussions as to the continuation or further conduct of the

sponsorship agreement.

10. For the reasons that I have indicated, I am not persuaded that the court should exercise its power to discharge the prohibition order that is in existence. Accordingly, the amended summons is dismissed.
11. The 2nd defendant does not dispute costs. I therefore make an order that the costs of the application are to be paid by the 2nd defendant to the plaintiff, assessed on a gross sum basis in the amount of \$60,000. (C Chu) Judge of Court of First Instance High Court Mr Jos - Antonio Maurellet, instructed by Messrs Barlow Lyde & Gilbert, for the Plaintiff Mr Eric H K Leung, instructed by Finley & Co, for the 2nd Defendant 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 9!S\$A 9!AB 9!AB 9!S\$ 9!S\$AB 9!S\$AB 9!AB 9!ABa\$ &`#\$ Normal.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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