

HONG KONG / JUDGMENT

RE CHAN CHIN YUEN

COURT

Court of First Instance

DECIDED

31 October 2007

CASE / FILE NUMBER

HCMP1155/2007

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bjbj HCMP 1155/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MISCELLANEOUS PROCEEDINGS NO. 1155 OF 2007

IN THE MATTER OF an application under Section 185(1) of the Securities and Futures Ordinance,
Cap. 571, Laws of Hong Kong and IN THE MATTER of CHAN CHIN YUEN and IN THE MATTER
OF an application by Leung Ching Yee (in her capacity as an investigator directed by the
Securities and Futures Commission under Section 182(1) of the Securities and Futures Ordinance,
Cap. 571) against Chan Chin Yuen for an order of Committal

Before: Hon Reyes J in Court Date of Hearing: 31 October 2007 Date of Judgment: 31 October 2007

J U D G M E N T

I. INTRODUCTION This is an application to commit Mr Chan Chin Yuen to prison for contempt in
disobeying my Order dated 6 September 2007. II. BACKGROUND The initial background to this
case has been set out in my previous Judgment dated 6 September 2007. In that Judgment I found
that Mr Chan had disobeyed a Notice dated 17 May 2007 issued under Securities and Futures
Ordinance (Cap.

571) (SFO) s.183 requiring Mr Chan to attend an interview at the SFC. The interview was to assist
Ms Leung Ching Yee, an SFC investigator, in her investigation of possible acts of false
trading, price rigging and stock market manipulation relating to the shares of Asia Standard
Hotel Group Ltd. I exercised my power under SFO s.185 to make an Order compelling Mr
Chan to attend an interview with Ms Leung at SFC s premises at 10 am on 2 October 2007.
Attempts were made to serve Mr Chan personally with a copy of my Order at his residential
and business addresses. These were unsuccessful. The attempts were followed up by letters
from the SFC to Mr Chan which were inserted into the mail boxes at his residential and

business addresses on 11 September 2007. The letters set out the contents of my Order and pointed out that Mr Chan was expected to attend an interview on 2 October 2007. The letters stated the consequences of breaching my Order. The letters also requested Mr Chan to make an appointment with the SFC so that my Order could be served on him personally.

Telephone messages were left for Mr Chan and his wife to the effect that Ms Leung was seeking to serve my Order on Mr Chan personally. There was no response from Mr Chan. On 17 September 2007, upon the SFC's application, Master Roy Yu directed that personal service of my Order be dispensed with. Master Yu ordered that instead service should be effected by the following means:-

- (1) sending a copy of my Order by post to Mr Chan at his residential address;
- (2) inserting a letter containing a copy of my Order in the mail boxes of Mr Chan's residential and business addresses; and
- (3) leaving a copy of my Order at Mr Chan's business address. Substituted service was effected on 18 September 2007 by all the means directed by Master Yu. On 19 September 2007, the appointment letter that had been inserted into the mail box of Mr Chan's business address the week before was returned to the SFC by the post office. The letter was endorsed No such person in Chinese. Mr Chan in fact left Hong Kong on 27 September 2007. He did not return until 7 October 2007. He did not attend the interview on 2 October. On 8 October 2007 Ms Leung applied for Mr Chan to be committed to prison for contempt in failing to comply with my Order of 6 September 2007. I granted leave to apply for committal on 9 October 2007. I directed that service of all documents relating to the committal be by the methods set out in Master Yu's Order. On the basis that there was evidence that Mr Chan was seeking to evade service, I also directed that personal service of the committal papers be dispensed with. Substituted service of the committal documents (including copies of the Notice of Motion dated 12 October 2007 for today's hearing) was effected on 12 and 18 October 2007 by the means enumerated in Master Yu's Order. On 22 October 2007 an envelope which had been left at Mr Chan's business address was returned by the post office with the words No such person marked on it in Chinese. In response to inquiries by the SFC, staff at Mr Chan's business address acknowledged that Mr Chan was their boss but they did not know where he was. Mr Chan left Hong Kong on 27 October 2007. He has not yet returned. He has not appeared before me today. III. DISCUSSION The SFC has not had any direct communication with Mr Chan since its telephone conversation with him on 4 June 2007 mentioned in my previous Judgment (at 7). This is despite numerous attempts to contact Mr Chan both personally and by letters sent or left at his residential and business addresses. Mr Chan has simply failed to respond. But he appears to continue to live at his residential address and, at least, appears to be known at his business address. None of the letters sent or left at his residential address have been returned. Letters sent to his business address have been returned marked No such person. However, persons at the business address say they in fact know Mr Chan. In my view, it is a reasonable inference from all the facts that Mr Chan is fully aware of what is going on. Far from cooperating with the SFC, he seeks instead to evade

service and thereby avoid compliance with his obligation to attend an interview with Ms Leung under SFO s.183. Mr Chan must have known the purpose, venue and time of the 2 October interview as a result of the substituted service of the relevant papers (including a copy of my Order) on him. But he simply refused to turn up. Consequently, neither the lack of personal service of the committal papers nor Mr Chan's absence today is any good reason to adjourn these contempt proceedings. Not to proceed today would be to allow Mr Chan to flaunt his obligations under the law. Given Mr Chan's wilful obstinacy, I think that committal to prison is an appropriate remedy. I do not believe that a fine will be appropriate here. I am therefore prepared to sign a warrant for his arrest and committal. IV. CONCLUSION Mr Chan is to be committed to prison for his contempt in failing to attend an interview with Ms Leung at the SFC's offices on 2 October 2007 at 10 am contrary to my Order dated 6 September 2007. This being a matter of civil contempt, the duration of Mr Chan's imprisonment is obviously in his hands. It is open to him to purge his contempt and end his confinement by attending an interview with the SFC's investigator. I think that, in light of Mr Chan's uncooperative attitude, it is appropriate to make an Order that Mr Chan pay the costs of these proceedings on an indemnity basis. Mr Bell (appearing for Ms Leung) has asked that the warrant for committal be addressed to The Chief Bailiff and his assistants, the Commissioner of Correctional Services, the Commissioner of Police and each and every one of his officers in Hong Kong, and the Director of Immigration. This suggestion follows the precedent of *Secretary for Justice v. Choy Bing Wing* [2005] 4 HKC 416. There a similar amendment to the usual form was made to assist in the execution of the warrant. I think that it is right for a like amendment to be made here. Finally, Mr Bell applied for Ms Leung's earlier Notice of Motion dated 14 June 2007 to be amended. That amendment seeks an Order that Mr Chan also be punished for contempt in failing to attend an interview before Ms Leung on 29 May 2007. I allowed the amendment sought. But in light of the lateness of the Summons to amend the 14 June 2007 Motion (such Summons having only been taken out on 26 October 2007), I did not think that it was right to proceed today with the substantive consideration of the June 2007 Motion as amended. (A. T. Reyes) Judge of the Court of First Instance High Court Mr Adrian Bell, instructed by Securities and Futures Commission, Applicant in person Respondent in person - absent 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 i\$&p i8?T 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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