

HONG KONG / JUDGMENT

RE CHARTER VIEW DEVELOPMENT LTD

COURT

Court of First Instance

DECIDED

8 June 2007

CASE / FILE NUMBER

HCCW45/2006

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b|bj of|vU\ gP ance, Cap. 32 of the Laws of HKSAR

Before: Hon Kwan J in Chambers Date of Hearing: 8 June 2007 Date of Decision: 8 June 2007

D E C I S I O N

There are two summonses before me, both issued on 16 February 2007. One is by the petitioner and the other by the 2nd and 3rd respondents. The petitioner's summons is under Order 24 rule 11, for inspection of the share register of the 2nd respondent, Super-Style International Limited. The summons of the 2nd and 3rd respondents is under Order 26 rule 3(2). They seek an order that 2 of the interrogatories served by the petitioner on 18 January 2007 should be withdrawn. These interrogatories are questions 2 and 4. By question 2, the sole director of the 2nd respondent, Tse Kin Wah David (), is required to identify the documents by which the 2nd respondent became his company, as asserted in paragraph 17 of his 2nd affidavit filed on 29 June 2006. By question 4, he is required to state the shareholders of the 2nd respondent as at 1 May 2000 and 31 December 2000, and the shareholders and directors of the 2nd respondent as at the date of the presentation of the petition on 26 January 2006. The petitioner's solicitors have taken the view that if they should successfully oppose the summons of the 2nd and 3rd respondents regarding the withdrawal of the interrogatories, there would be no need for the petitioner to pursue its own summons for inspection. So the petitioner sought leave to withdraw its summons. The only matter of contention regarding the petitioner's summons is the question of costs, which I will deal with at the end. The principles relating to interrogatories that a party should be required to answer are not in dispute. They must be relevant and necessary, either for disposing fairly of the cause or matter or for saving costs. They are not confined to matters directly in issue, but must have at least some bearing on the questions in issue. I will first look at the amended petition to ascertain the issues. The company being the subject of the petition, Charter View Development Limited (the Company), was incorporated on 6 May 1993. At all material times, 900

shares in the Company were issued. The Company was established as a corporate vehicle to acquire land in the New Territories for a development described as the Yim Tin Tsai project in the petition. In January 1994, the petitioner and the 3rd respondent subscribed to the shares of the Company and became shareholders. The petitioner was allotted 210 shares and the 3rd respondent 90 shares. It is not in dispute that the petitioner, Patkie Investments Limited, is owned by Tsang Wing Kei Wilkie (Tsang) and his wife; and that the 3rd respondent, Catdave Investments Limited, is owned by Tse and his wife. The remaining 600 shares in the Company were allotted to 3 companies controlled by a group of investors referred to as the Cheng group in the affidavits filed. It was pleaded in the petition that in July 2000, as a result of a share swap agreement, the 600 shares in the Company held by the companies controlled by the Cheng group were transferred to the 2nd respondent. It was further pleaded that the Company was a quasi-partnership between the petitioner, the 2nd respondent and the 3rd respondent, for the development of the Yim Tin Tsai project, and that Tsang and Tse are the only directors of the Company at present. In 1999, the Company and 2 other companies, Best Resources Development Limited and Golden Rich Enterprises Limited, formed a joint venture company known as AOL Limited to pursue the Yim Tin Tsai project. By a joint venture agreement in November 2000, each of the 3 companies was to contribute land acquired by them to the joint venture and in turn each would be allotted shares in AOL Limited. The joint venture did not materialize, Best Resources Development Limited was wound up in September 2004, and the Company was not able to contribute land to the joint venture. It was alleged by the petitioner that the purpose of the Company has failed. Further, the petitioner alleged that Tse on behalf of the 2nd and 3rd respondents controlled and managed the Company. He is in possession of agreements and title deeds of land acquired by the Company, and he refused to provide or share information of the title documents, or the management information, with the petitioner. The 2nd and 3rd respondents have not procured completion of the acquisition of land in the Yim Tin Tsai project, and have locked up the investment of the petitioner. For the above reasons, the affairs of the Company were conducted in a manner unfairly prejudicial to the petitioner. The petitioner seeks winding-up relief to realize the assets of the Company, so that the land acquired by the Company thus far could be realized and distributed to its members. Alternatively, the petitioner seeks relief under section 168A of the Companies Ordinance, Cap. 32. The petitioner seeks an order that its costs in the petition are to be paid by the 2nd and 3rd respondents. On the face of the petition, I cannot detect any relevance of who owned the shares of the 2nd respondent to the issues in dispute in these proceedings. I also note from the petition that it is the allegation of the petitioner that the 2nd respondent was controlled by Tse. Mr Maurellet for 2nd and 3rd respondents submitted that the dispute as to ownership of the shares in the 2nd respondent is a collateral issue, and that the interrogatories are a fishing exercise. The dispute as to the ownership of the shares in the 2nd respondent arose in this way. In the 2nd affidavit of Tse filed on 29 June 2006, he referred to the 2nd respondent, a company incorporated in the British Virgin Islands, as his company. In the 4th affidavit of the Tsang filed on 9 August 2006, Tsang responded to this and he wondered how Tse has come to own the 2nd respondent. He referred to the shares swap in 2000, made as part of a settlement between him and the Cheng group. The Cheng group agreed to give up their interests in the Company and relinquish their interests in land in the Yim Tin Tsai

project. In return, Tsang's group of companies, including the companies owned by the Tsang family and the Tse family (the shareholdings of the two families were in the ratio of 7 to 3), gave up their interests in certain land-holding companies elsewhere (also held in the ratio of 7 to 3). Tsang said he had never consented to Tse or Tse's family to have majority control of the Company and he would investigate into the shareholding of the 2nd respondent. In the 8th affidavit of Tsang filed in February 2007, he asserted that the 2nd respondent is the corporate vehicle of Tse family and the Tsang family, to hold interests in land through the Company. It is pertinent to note that Tsang never said expressly what the respective interests of him and Tse in the 2nd respondent should be, whether in any affidavit or in the correspondence exchanged between solicitors. There is no application to further amend the petition, since Tse made the assertion that the 2nd respondent is his company a year ago. It does not appear that the shares swap in July 2000 with the Cheng group would have any bearing to the issues in dispute. I ask how this dispute as to the ownership of the 2nd respondent would help to resolve the issues raised in the petition. Mr Fong for the petitioner said it is the petitioner's case that the Company was formed on the basis of personal relationship between Tsang and Tse to jointly develop the Yim Tin Tsai project, and there was a quasi-partnership on that basis. It has been denied by the 2nd and 3rd respondents that there was any quasi-partnership; their stance is that the relationship was purely commercial. Mr Fong argued that if evidence should be adduced that the 2nd respondent was established by Tse and Tsang to hold 600 shares in the Company, that would support the petitioner's case that the Company was a quasi-partnership. I do not agree. Tse and Tsang had subscribed to the shares in the Company in the beginning in 1994 through their respective companies, being the petitioner and the 3rd respondent. In their affidavits in these proceedings, they have deposed to their collaboration in land development projects in the Company and in other companies. In my view, the state of ownership of the 2nd respondent in July 2000, when the 2nd respondent took the transfer of 600 shares in the Company - whether the 2nd respondent was owned by Tse and Tsang jointly, whether Tsang was the majority shareholder in the 2nd respondent, or whether the 2nd respondent was owned solely by Tse - would not assist in any material way in resolving the issue if the Company was established on the basis of their personal relationship. Mr Fong further contended if evidence should be obtained as to how Tse came to own the 2nd respondent, this would be a dilution of the shareholding of the petitioner in the Company and that would be another reason for relief in this petition. The 2nd respondent holds 600 shares in the Company throughout, there was no dilution of the petitioner's shares in the Company. I agree with Mr Maurellet that no case is made out to require the 2nd respondent by its director to answer questions 2 and 4 of the interrogatories. I grant the relief sought in paragraph 1 of the summons issued by the 2nd and 3rd respondents. I give leave to the petitioner to withdraw its summons issued on 16 February 2007. I order the petitioner to pay the costs of the 2nd and 3rd respondents in the two summonses issued on 16 February 2007 in any event. (S Kwan) Judge of the Court of First Instance High C 1udk 1udk 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\$&`G 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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