

HONG KONG / JUDGMENT

RE LEUNG CHING YEE

COURT

Court of First Instance

DECIDED

6 September 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

LEUNG CHING YEE Applicant 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 IN
THE MATTER of an application under Section 185(1) of the Securities and Futures Ordinance,
Cap. 571 and IN THE MATTER of CHAN CHIN YUEN

Before: Hon Reyes J in Court Date of Hearing: 6 September 2007 Date of Judgment: 6 September
2007

J U D G M E N T

I. INTRODUCTION The Securities and Futures Commission (SFC) acting by Ms. Leung applies for
an Order that Mr. Chan Chin Yuen (Mr. Chan):-

- (1) attend before Ms. Leung to answer questions relating to an investigation into alleged stock
market manipulation; and,
 - (2) be punished for failing to turn up at any interview ordered by me; and,
 - (3) pay the costs of the present application by the SFC on an indemnity basis.
- II. BACKGROUND
By a Direction dated 11 May 2007 Ms. Leung was appointed by the SFC to investigate possible
acts of false trading, price rigging and stock market manipulation in relation to the shares of
Asia Standard Hotel Group Ltd. By a Notice dated 17 May 2007 issued under Securities and
Futures Ordinance (Cap.571) (SFO) s.183 Ms. Leung required Mr. Chan to attend an interview
on 29 May 2007 at the SFC's offices. The Notice stated that the purpose of the interview was
for Mr. Chan to assist Ms. Leung in her investigation. Ms. Leung and another investigator

(Mr. Chan Tak Ching (CTC)) went to Mr. Chan's Lai Chi Kok office on 17 May 2007. There CTC handed a letter containing the Notice to Mr. Chan and summarised its contents. On 25 May 2007 Ms. Mandy Cheung, an employee of Mr. Chan, returned the letter (including the Notice) to Ms. Leung and CTC. CTC, however, asked Ms. Cheung to take the letter (including the Notice) back to Mr. Chan. On 29 May 2007 Mr. Chan did not attend the scheduled interview. Instead Mr. Chan left Hong Kong via Lok Ma Chau for the Mainland on the same day. He left at 1305 hours, 85 minutes before the interview time of 1430 hours. He did not return to Hong Kong until 1444 hours on 3 June 2007. On 4 June 2007 Ms. Leung telephoned Mr. Chan. He said that, although he had received the Notice, he never opened the letter bearing it. He claimed not to have known of the interview time and venue. Ms. Leung pointed out that during her visit on 17 May Mr. Chan had been told of the Notice's contents. She told Mr. Chan that he was required to attend an interview on the following week. Mr. Chan replied that he could not be sure that Ms. Leung was from the SFC. Ms. Leung invited him to call her at the SFC to verify her identity. Mr. Chan was given an opportunity to file evidence in opposition to the application before me today. He has not done so and indeed is absent from today's hearing.

III. DISCUSSION I am satisfied on the evidence before me that Mr. Chan wilfully disobeyed the Notice by failing to turn up at the interview scheduled for 29 May 2007. He would have known the purpose, venue and time of the interview because he was orally informed of those matters by CTC on 17 May 2007. But, without proper justification or reasonable excuse, he simply left Hong Kong immediately prior to the time of the interview on 29 May 2007. It is not a valid excuse that Mr. Chan deliberately refrained from opening the letter in which the Notice was contained. Plainly, Mr. Chan has not been cooperative. He is subject to an obligation under SFO s.183 to assist the SFC in its investigations. He has done the contrary. He has avoided being at an interview which he knew full well he was supposed to attend. In those circumstances, I am prepared to exercise the Court's power under s.185 to compel Mr. Chan to attend to be interviewed by Ms. Leung at the SFC's premises. The SFC asks that I punish Mr. Chan for failing to attend at the interview on 29 May 2007. I have power to do so under SFO s.185(1)(b) as if [Mr. Chan] ... had been guilty of contempt of court. On behalf of the SFC, Mr. Bell asks that I commit Mr. Chan to imprisonment for his failure to attend before Ms. Leung on 29 May. But that is not what the Motion before me asks as presently drafted. The Motion simply asks that I should punish Mr. Chan if he fails to comply with any Order by me requiring him to attend at an interview before Ms. Leung. In my judgment, it would be appropriate at this stage for Mr. Chan to be served with a copy of my Order requiring him to attend before Ms. Leung for an interview at a specified place and time. The Order will be endorsed with the usual penal notice warning Mr. Chan that a failure to attend will render him liable to imprisonment, fine, sequestration of assets, or other appropriate punishment. I will adjourn sine die with liberty to restore that part of the SFC's application seeking that Mr. Chan be punished by imprisonment. In the event that Mr. Chan fails to attend at an interview with Ms. Leung as required by my Order, the SFC's application for his committal to imprisonment may be restored on giving Mr. Chan 48 hours' notice. If the SFC still seeks to punish Mr. Chan for his failure to attend on 29 May, it can apply to amend its Motion or issue a new Motion requesting such relief. On costs, it

seems to me appropriate that Mr. Chan should pay the costs to date of the SFC's application on an indemnity basis, such costs to be taxed if not agreed. (A. T. Reyes) 1udk 1udk 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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Prepared on 29 October 2026 · Esheria