

HONG KONG / JUDGMENT

RE OCEAN JET DEVELOPMENT LTD

COURT

Court of First Instance

DECIDED

18 April 2007

CASE / FILE NUMBER

HCCW440/2005

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b|bj m|vU\ gP nce, Cap. 32

Before: Hon Kwan J in Chambers Date of Hearing: 18 April 2007 Date of Decision: 18 April 2007

D E C I S I O N

This is an application issued by Lee Kwong Yin on 15 February 2007 to remove the liquidators of Ocean Jet Development Limited (the Company). The Company was ordered to be wound up on the petition of a creditor on 27 June 2006. On 14 September 2006, James Wardell and Chan Chi Yuen of Horwath Corporate Advisory Services Limited were appointed liquidators of the Company by an order of a Master under section 194 of the Companies Ordinance, Cap. 32. The Master also appointed a committee of inspection, made up of the petitioning creditor, Mr Lee and Harbour Jet Shipping Limited (Harbour Jet). Mr Lee is a director and shareholder of the Company; he is also a director and shareholder of Harbour Jet. Under section 196(1), a liquidator appointed under section 194 may be removed on cause shown. The burden is on the applicant to show good cause for removing a liquidator (Re Keypak Homecare Limited [1987] BCLC 409). Section 196(1) confers wide discretion on the court; cause shown is not limited to misconduct or personal unfitness (Re Liote Property Management Limited [2006] 2 HKLRD 106 at 108G to I). In various letters sent to the liquidators dated 17 October 2006, 8 November 2006, 22 January 2007 and 8 February 2007, Mr Lee has informed the liquidators that he wanted to remove them. His grievances or grounds for removing the liquidators may be summarized as follows:

- (1) The liquidators are funded by the petitioning creditor, there is doubt if they are independent and impartial.
- (2) The liquidators have acted on the instructions of the petitioning creditor, 2 examples were given in Mr Lee s affirmation in reply to show that they were not independent.

- (3) The liquidators have failed to look after the interests of Mr Lee and Harbour Jet as creditors of the Company.
- (4) The liquidators have failed to comply with section 207(2) in convening meetings of the committee of inspection once a month. I would consider each of these complaints. Contrary to Mr Lee's allegation, the liquidators are not employed by the petitioning creditor. They have received no funding from the petitioner so far. Mr Lee was told by the liquidators at a meeting on 3 November 2006 that the petitioner may provide funding to the liquidators for investigating into the assets and affairs of the Company. This was repeated clearly in the letter of the liquidators to Mr Lee dated 25 January 2007. Even if the liquidators were receiving funding from the petitioner, this in itself is not a matter for criticism (*Re Akai Holdings Limited* [2001] 2 HKLRD 411 at 422 E to I). As for the incidents complained of to substantiate the allegation of lack of independence, they are equally without substance. What happened was that on 9 January 2007 and 7 February 2007, the liquidators made site visits to the factory in Zhongshan without notifying Mr Lee in advance. Mr Lee claimed that the assets in the factory belong to him and what the liquidators did had seriously interfered with his rights. The liquidators have addressed this complaint by their letter to Mr Lee dated 25 January 2007. They stated that the factory is a factory of Zhongshan Zhengyang Shipping Manufacturing Company Limited - Nq\ck ad removed certain assets from the factory. So there was a need to inspect the factory with a view to preserving the assets without giving prior notice to Mr Lee. The liquidators have written to Mr Lee and Zhongshan Zhengyang to request for more information, and no reply was received from either. Regarding Mr Lee's assertion that he owns the assets at the factory, the liquidators have asked him to submit his claim with details of his assets and evidence to substantiate his assertion. No substantiation was provided by Mr Lee in correspondence. My attention was drawn by the liquidators to certain affirmations made by Mr Lee in July and August 2005 when he applied and obtained from this court a validation order permitting the Company to withdraw \$470,000.00 a month in the ordinary course of business of the Company. In the supporting affirmation of Mr Lee, he produced a balance sheet of the Company as at 15 May 2005, which was signed by him, showing that the Company had investments in Zhongshan Zhengyang of approximately \$35 million. In his affirmation in reply in the present application filed on 15 March 2007, Mr Lee exhibited for the first time a sale and purchase agreement of an investment dated 31 December 2001 and the minutes of an extraordinary general meeting of the Company of the same date, purporting to show that as at 31 December 2001, the Company had an investment interest in Zhongshan Zhengyang of RMB 4 million and that the Company had agreed to sell its investment to Mr Lee at that price, to be paid in 10 years time without interest. Whether Mr Lee has indeed any interest in the assets in the factory of Zhongshan Zhengyang is clearly a matter for the liquidators investigation. In the meantime, steps should be taken to preserve such assets. The liquidators have undertaken extensive investigation into other matters as well. What they have unravelled so far does give rise to concern. There was transfer of the Company's motor vehicle to Harbour Jet after the commencement of the winding up. The Company had disposed of its motor vessels to companies that in return

provided financial assistance to Mr Lee to discharge him as a bankrupt. The liquidators intend to investigate the payments made under the validation order. They will seek an order under section 211 for Mr Lee to deliver up the books and records of the Company as he has not been co-operative. The liquidators have no obligation to look after the interests of Mr Lee and Harbour Jet as creditors, as opposed to the interests of the creditors as a whole. The allegation that the liquidators were in dereliction of duty in not convening a meeting of the committee of inspection once a month is unfounded. There is no failure to comply with section 207(2) on the part of the liquidators. The obligation to meet once a month unless other arrangements are made is placed on the members of the committee of inspection, not on the liquidators. Besides, in the view of the liquidators, the committee of inspection cannot function at present, as 2 out of 3 members (Mr Lee and Harbour Jet) are in a position of conflict regarding the matters investigated by the liquidators. Mr Lee's application to remove the liquidators is wholly misconceived. I agree with the liquidators that this move might well have been initiated in an attempt to avoid further investigation into his conduct of the affairs of the Company. I dismiss this application. There is no reason why costs of the application should not follow the event. I order that the fees and expenses of the liquidators in this application be paid by Mr Lee personally, to be taxed if not agreed on the trustee basis. Mr Lee is also to pay the costs of the Official Receiver, which I assess on a gross sum basis at \$4,300.00. (S Kwan) Judge of the Court of First Instance High Court Mr Lee Kwong Yin, acting in person, present Mr James Wardell of Horwath Corporate Advisory Services Limited, for the Joint & Several Liquidators Ms Polly Yip, for the Official Receiver 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\$&`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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