

HONG KONG / JUDGMENT

RE PANG KA HO AND ANOTHER

[2023] HKCFI 2511**COURT**

Court of First Instance

DECIDED

27 September 2023

CASE / FILE NUMBER

HCMP1397/2023

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bjbj HCMP 1397/2023

**[2023] HKCFI 2511 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MISCELLANEOUS PROCEEDINGS NO. 1397 OF 2023**

IN THE MATTER of ALL THOSE pieces or parcels of land known as Section A of Lot No. 1748 and The Remaining Portion of Lot No. 1748 both in Demarcation District No.76 (hereafter collectively referred to as the said Properties) and IN THE MATTER of the Mortgage registered in the Land Registry by Memorial No. N54074 originally against Lot No. 1748 both in Demarcation District No.76 and now against Section A of Lot No. 1748 and The Remaining Portion of Lot No. 1748 both in Demarcation District No.76 in favour of CHAN MUK SHANG (the said Mortgage) and IN THE MATTER of an application for declaration/order under Section 12A of the Conveyancing and Property Ordinance, Cap.219 and IN THE MATTER of Order 88 of the Rules of the High Court, Cap.4A, Laws of Hong Kong

PANG KA HO (

JUDGMENT

THE APPLICATION By an Ex Parte Originating Summons filed on 28 August 2023, the applicants applied for an order pursuant to section 12A of the Conveyancing and Property Ordinance (Cap 219, Laws of Hong Kong) (the CPO) that the properties known as Section A of Lot No. 1748 and The Remaining Portion of Lot No. 1748 both in Demarcation District No.76 (collectively, the Lands), upon payment into Court of a sum of money, be free from a mortgage registered in the Land Registry against the Lands in favour of Chan Muk Shang (the Mortgagee) dated 9 January

1923 (the Mortgage). THE LAW Section 12A of the CPO provides that:

- (1) Where land is subject to any encumbrance, whether immediately realizable or payable or not, and the encumbrancer is out of the jurisdiction, cannot be found or is unknown, or if it is uncertain who the encumbrancer is, the court may, if it thinks fit, on the application of the party for the time being entitled to redeem the encumbrance, direct or allow payment into court of a sum of money sufficient to redeem the encumbrance and any interest thereon.
- (2) Upon payment into court of the sum referred to in subsection (1), the court may, if it thinks fit, and either after or without any notice to the encumbrancer, as the court thinks fit, declare the land to be free from the encumbrance, and make any order for conveyance or vesting order as appropriate, and give directions for the retention and investment of the sum of money paid into court and for the payment or application of the income thereof, and for the payment of an amount certified by the court to be the reasonable costs of the applicant in making the application, such amount to be deducted from the sum of money paid into court.
- (3) On application by the encumbrancer or any person entitled to the money or fund in court, the court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application. On an application made under section 12A of the CPO has been given by Deputy High Court Judge Lam (as Lam PJ then was) in *Re Cheung Chi Wang & Another* [2002] 1 HKLRD 409. There are three stages in this application: The first stage is for the party for the time being entitled to redeem the encumbrance to obtain a direction or approval of the court regarding payment into court provided it is shown that the encumbrancer is out of the jurisdiction, cannot be found or is unknown, or if it is uncertain who the encumbrancer is. In the second stage, on the basis that payment into Court is made pursuant to the Court's approval, the Court will consider the exercise of its discretion and declare the land to be free from the encumbrance. At this stage, the Court has the discretion to decide whether notice should be given to the encumbrancer. The matter would come to its third stage when the encumbrancer or any person entitled to the money paid into Court applies to the Court for payment. DISCUSSION Having considered the affirmation filed in support of this application, I am satisfied that: The applicants are the respective registered owners of the Lands; The Lands are still subject to the Mortgage; The applicants are entitled to redeem the Mortgage. I am also satisfied that reasonable steps have been undertaken to locate the Mortgagee but in vain. Since the Mortgagee cannot be found, section 12A(1) of the CPO is engaged. In respect of the payment to be paid into Court, Mr Chan for the applicants agreed that the sum be fixed at \$5,460. Having regard to the amount owed (including interest) under the Mortgage and the notional annual interest rate of 20% which was adopted, I accept that the proposed sum is reasonable. ORDER By reasons of the aforesaid, I make the following orders as proposed by the applicants: Leave be granted to the applicants to pay into Court a sum of \$5,460 being a sum sufficient to redeem the Mortgage and any interest thereon;

Within 14 days after the payment into Court is made, the applicants do advertise in a widely circulated local Chinese newspaper a notice making known this Order and the fact of payment having been made into Court pursuant to this Order and stating that any person interested in the Mortgage and/or the payment aforesaid may apply within 14 days to be joined as a defendant to these proceedings; The applicants may after the lapse of no less than 21 days from the publication of the advertisement make a paper application pursuant to section 12A(2) of the CPO for a declaration that the Lands be free from the Mortgage; and There be no order as to costs. (H. Au-Yeung) Deputy High Court Judge Mr S. Y. Danny Chan of Leung Ki Hin & Co, for the applicants 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 ylb[bND> gdvx gdvx (#p# gdvx gdvx gdvx hFa hFa gdFa uoi`ZT hFa hFa hFa hFa hFa h%sd h ?p h%sd gd ?p gd%sd gd%sd xtmcmmtmcmcmcmcmmtmcm hSAo gd I gd I gdSAo c}u} }u}u hSAo gd I gd I gd I gd I gd I hSAo gd I gd I gd I gd I gd I gd I hSAo gd I gd I hSAo hSAo hSAo gdvx {q{b{q h%sd gdy-[gdy-[gdy-[gdy-[hy-[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 gdvx :pnN :py-[[Content_Types].xml _rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml \$O}) Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@ j!Q_ jyV` | PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .}x E /,EE\} theme/theme/_rels/ themeManager.xml.rels 5 6? \$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/ theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/ themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml XbzA 5@5E (,Zl gli'j =8|cW ~ZOQoGu [b9F ( P- 5Vlz drs/downrev.xmlL z|X^\_@ (OyQ3 [Content\_Types].xmlPK \_rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK [Content\_Types].xml dlyLho ;d]6 yJ.; \_rels/.rels fLV:\* ]m@= T;GI b9`5 drs/e2oDoc.xml [qV{i 1Y-I 'fB(ql4{ EX | (P5 drs/downrev.xmlL or.W3 [Content_Types].xmlPK _rels/.relsPK drs/ e2oDoc.xmlPK drs/downrev.xmlPK [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml Q1P JUU?` ` #R+^ 1Y.H Vz@y {M?9 U^N6 0JJ` *C N axK` @ZeV drs/downrev.xmlL x1ti [Content\_Types].xmlPK \_rels/.relsPK drs/e2oDoc.xmlPK drs/ downrev.xmlPK [Content\_Types].xml dlyLho ;d]6 yJ.; \_rels/.rels fLV:\* ]m@= T;GI b9`5 drs/ e2oDoc.xml ;)N qKG@ KZo, >3m+ 9@6E CtE8 GfB(hGA% /fyQ]W u'9 NjqP` A 7xqt A`>i O-T3 (Mo| y zle drs/downrev.xmlL z|X^_@ (OyQ3 [Content_Types].xmlPK _rels/.relsPK drs/ e2oDoc.xmlPK drs/downrev.xmlPK [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml fBmK X7Z2n VTV;] e`9f drvt Xz<1 `k!e4 vs#- q>ZO mZx\* tx)B{ drs/downrev.xmlL eRp# oj{S [Content\_Types].xmlPK \_rels/.relsPK drs/ e2oDoc.xmlPK drs/downrev.xmlPK [Content\_Types].xml dlyLho ;d]6 yJ.; \_rels/.rels fLV:\* ]m@= T;GI b9`5 drs/e2oDoc.xml uV{i)F\Q /_ \ ;KL' . =C n[Ay #Ez(#*Cv jpz4 Q;~c T(l Gprxp> n{'-: Yu[] 7MbV drs/downrev.xmlL x1ti [Content_Types].xmlPK _rels/.relsPK drs/ e2oDoc.xmlPK drs/downrev.xmlPK j1VB &z@; XJ` , "8f9\ U];D R9P[Y0 Nwe+?8 iU];D \+qXJ` tma|@1 CACV Jeannie MY MokSo Normal.dotm Windows User Microsoft Office Word

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