

HONG KONG / JUDGMENT

RE REGALTRONIC LTD

COURT

Court of First Instance

DECIDED

15 May 2012

CASE / FILE NUMBER

HCCW193/2003

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bjbjqPqP HCCW 193/2003 IN THE HIGH COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION COURT OF FIRST INSTANCE COMPANIES (WINDING-UP)
PROCEEDINGS NO. 193 OF 2003

IN THE MATTER of the Companies Ordinance, Chapter 32 of the Laws of Hong Kong and IN THE
MATTER of REGALTRONIC LIMITED

Before: Hon Harris J in Chambers Date of Hearing: 15 May 2012 Date of Judgment: 15 May 2012

DECISION

I have before me a summons issued by the Official Receiver on the 22 December 2011, which seeks various orders in relation to the liquidation of the company. Principally what is sought is an order for the removal of the current liquidators, Mr Fung Wing Yuen and Mr Pang Hoi Choi Robin, of Fung & Pang CPA Limited, and their replacement with Mr Kong Chi How Johnson and Mr Wu Shek Chun Wilfred, both of BDO Limited. That part of the application has not proved contentious. The current liquidators have not contested the application for their removal and replacement. In brief, the reason why the Official Receiver has sought their removal relates to the way in which they have dealt with a proportion of the receipts during the course of the liquidation of the company's assets. It would appear that although initially the liquidators paid receipts into the Companies Liquidation Account, as required by section 202 of the Ordinance, towards the end of the liquidation they ceased to do so. A total sum of \$88,790.95 was retained by them. The Official Receiver also complains that the liquidators filed accounts for the periods from 1 April 2006 to 30 September 2011 very late, in breach of section 203(1) of the Ordinance and also failed to furnish the Official Receiver with other information required, pursuant to section 203(3). There are two other complaints contained in the Official Receiver's report for the

purposes of this application. The first is non-renewal of the liquidators bond or security, in breach of section 195 of the Ordinance, and secondly, failure to submit certificates of audit of the cash book by the committee of inspection as required by Rule 62 of the Companies (Winding-up) Rules. The burden is upon the Official Receiver to persuade the court that there is good cause for removal of a liquidator. As I have already noted, this part of the application has not been disputed and I do not need to spend much time on it, although I do need to be satisfied that it is appropriate for the court to exercise its powers at the invitation of the Official Receiver to remove them. The court's approach to such applications is described as follows by Kwan J, in the *Liote Property Management Limited & Others* [2006] 2 HKLRD 106 at page 108G-I: In the exercise of this discretion, the court may take all the circumstances into consideration and if the court finds it desirable, on the whole, that a liquidator should be removed, the court may remove him (*In re Marseilles Extension Railway and Land Company* (1867) LR 4 Eq 692 at 694 per Malins, VC). Fair play to the liquidator himself is not to be left out of sight, but the measure of due cause is the substantial and real interest of the liquidation (*Re Adam Eyton Ltd, Ex P Charlesworth* (1887) LR 36 Ch D 299 at page 306, per Bowen LJ). I am satisfied, having had regard to matters complained of by the Official Receiver, which I have summarised above, that it is appropriate for the court to order the removal of the liquidators. The more difficult part of the application concerns the consequential orders. A principal complaint, as I have already mentioned, concerns the failure to pay just over HK\$88,000 into the Companies Liquidation Account. Section 202 (2) provides: Subject to the proviso to subsection (1) where any such liquidator (other than the Official Receiver) receives any money in such capacity he shall (a) in the case of a sum not exceeding HK\$50,000 pay the money without any deductions therefrom to the Companies Liquidation Account not later than 14 days after its receipt; (b) in the case of any other sum forthwith pay the money without any deductions therefrom to the Companies Liquidation Account. Subsection (2) (a) then goes on to add a penalty provision for non-compliance: Where a liquidator retains any sum (including part of any sum) in contravention of subsections (2)(a) or (b) then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained at the rate of 20 per cent per annum and shall be liable to disallowance of all or such part of his remuneration as the court may think just and be removed from his office by the court and shall be liable to pay any expenses occasioned by reason of his default. The Official Receiver's position is that there has been a clear breach of section 202(2). That breach was brought to the liquidators' attention by a letter dated 20 March 2007, but the liquidators have never remedied the breach. The Official Receiver says in these circumstances there is no reason why the liquidators should not pay the significant amount of interest provided for by subsection (2)(a) and the Official Receiver also submits that the liquidators' fee should be disallowed. It is not in dispute that the money that was retained by the liquidators was, in fact, spent on expenses of the liquidation, including HK\$43,000 in respect of solicitors' fees. However, it does not seem to me that that in itself is sufficient excuse to justify the court not imposing the interest penalty. There may be cases, although they will probably never come to court at all, where a failure to pay money into the liquidation account in accordance with subsection (2) has arisen as a result of a clerical or administrative error. In those circumstances the court might well take the view, if the matter came before it at all, that it was appropriate not to impose interest. However, that is not this case.

As I have already mentioned, certainly from March of 2007 onwards, the liquidators clearly must be taken to have known that all receipts should have been paid into the Companies Liquidation Account and that if they didn't remedy the breach of subsection (2) they were at risk of having the interest penalty imposed on them. In the circumstances of this case it seems to me that it is appropriate for the court to require the liquidators to pay interest from the date of receipt of the moneys that should have been paid into the Companies Liquidation Account until the date that they pay interest. However, I accept that the breach of subsection (2) did not of itself benefit the liquidators or cause any apparent loss to the company's creditors. I think a fair way to deal with the matter is to allow the liquidators to retain the fees that they have been paid and to recover any outstanding fees that they can justify. There is one final matter. Not only did the liquidators fail to pay into the Companies Liquidation Account that proportion of the receipts that was used to pay solicitors fees. They did not, as required by Rule 179(2) of the Companies (Winding-up) Rules, have those fees taxed by the court prior to payment. In the circumstances the Official Receiver argues that it is appropriate for the HK\$43,000 that has been paid to be paid into the Companies Liquidation Account and for the liquidators to do what they should have done, which is to have the solicitors fees taxed. When the taxation has been completed they will then be paid so much of the HK\$43,000 as is allowed on taxation. It seems to me that that is an appropriate way of dealing with the matter. Finally, there is the question of the Official Receiver's costs. There have been two previous hearings which have been necessitated in large part because Mr Fung asked for the court's indulgence to file evidence. The total fees that the Official Receiver wishes to charge is \$59,185, which seems to me to be reasonable given the amount of work that the application would have entailed. I therefore make the following order:

- (1) That Mr Fung Wing Yuen and Mr Pang Ho Choi Robin, both of Fung & Pang CPA Limited be removed as liquidators of the company.
- (2) That Mr Fung Wing Yuen and Mr Pang Ho Choi Robin, be at liberty to file for the approval of the court a schedule of disbursements incurred in respect to the liquidation of the company within 14 days from the date of their delivery up of the books and documents of the company, and the updated accounts of the company in liquidation to the new liquidators. But in any event not later than two months from the date of the order.
- (3) Mr Fung Wing Yuen and Mr Pang Ho Choi Robin, do within 14 days from the date of the order return the solicitors fees paid by them to Messrs Lau & Chan in the sum of HK\$43,000 to the Companies Liquidation Account.
- (4) That Mr Fung Wing Yuen and Mr Pang Ho Choi Robin, do within 14 days from the date of the order pay the company interest on the sum of HK\$88,790.95, in contravention of section 202(2) of the Ordinance, at the rate of 20 per cent per annum prescribed by section 202(2)(a) of the Ordinance for the period of retention from the respective date of receipt to the payment of interest to the Official Receiver pursuant to this order.
- (5) That Mr Kong Chi How Johnson and Mr Wu Shek Chun Wilfred, both BDO Limited, be appointed the joint and several liquidators of the company.

- (6) That the Official Receiver s costs of and occasioned by this application be assessed in the sum of \$59,185 on the gross sum basis and be paid by Mr Fung Wing Yuen and Mr Pang Ho Choi Robin.
- (7) Finally, there be general liberty to apply. So if there are any problems, you can always come back. (Jonathan Harris) Judge of the Court of First Instance High Court Fung Wing Yuen, one of the Joint and Several Liquidators of Regaltronic Limited, appeared in person Pang Ho Choi, Robin, one of the Joint and Several Liquidators of Regaltronic Limited, was not represented and did not appear Ms Joyce Lam, of the Official Receiver s Office, for the Official Receiver PAGE - PAGE - CRT21/15.5.2012/CH HCCW193/2003/Decision 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 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 h;]m gdB2 gdj/y 9!ABa\$ VbznVbnV hj/y h8 I h~HY h~HY h|? h|? hj/y gdj/y hj/y h|? h|? h|? h|? h|? h|? h|? h|? gdj/y gd|? hj/y h8 I hj/y gdkS gdj/y hj/y gdj/y gdj/y hj/y gdfM wmcY &`#\$ h8 I urn:schemas-microsoft-com:office:smarts tags place w69 C hc_trans_06 JUDGE.DOT User Microsoft Office Word judiciary Title Microsoft Office Word Document MSWordDoc Word.Document.8

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