

HONG KONG / JUDGMENT

RE THE COMFORT CARE CONCERN GROUP

COURT

Court of First Instance

DECIDED

6 June 2007

CASE / FILE NUMBER

HCMP955/2007

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bjbj HCMP 955/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MISCELLANEOUS PROCEEDINGS NO. 955 OF 2007

IN THE MATTER of THE COMFORT CARE CONCERN GROUP and IN THE MATTER of the
Companies Ordinance, Chapter 32 of the Laws of Hong Kong

Before: Hon Barma J in Chambers Date of Hearing: 6 June 2007 Date of Decision: 6 June 2007

DECISION

This is an application made ex parte by The Comfort Care Concern Group (the Company) by an originating summons dated 21 May 2007 seeking an order, pursuant to section 111(2) of the Companies Ordinance (Cap. 32) (the Ordinance), that a general meeting of the Company be called, and that one member of the Company present in person or by proxy shall be deemed to constitute a meeting. The application is supported by an affirmation of Ng Ping Yiu, the chairperson of the Company s Council (which is its board of directors). The Company was incorporated as a limited company on 1 March 2002. Prior to that it had since 1987 been an unincorporated association under the Societies Ordinance. It is an exempt charitable institution under section 88 of the Inland Revenue Ordinance, and has been exempted, pursuant to section 21 of the Ordinance, from having to use the word limited in its name. The Company held its Annual General Meeting for 2005 on 15 October 2005. On 11 August 2006, the Council resolved to hold its Annual General Meeting for 2006 on 20 January 2007. That meeting was held as resolved upon, and at the meeting, the Company s audited accounts for the year ended 31 March 2006 were approved. Thereafter, on 14 February 2007, it submitted its annual return and accounts to

the Companies Registry for filing. However, the documents submitted were rejected by the Companies Registry which advised the Company that no annual general meeting for 2006 had been held in that year, contrary to section 111(1) of the Ordinance, which provides that an annual general meeting must be held in each year, and within 15 months after the preceding annual general meeting. Apart from section 111(1), clause 8 of the Company s articles of association contains the same requirements. In the affirmation filed in support of the application, it was explained that while the Council was conscious of the need to hold an Annual General Meeting within 15 months of the last one, it had overlooked the fact that it was also necessary (under both section 111(1) and clause 8) to hold an Annual General Meeting in each calendar year, and had thus failed to realize that the 2006 Annual General Meeting should have been held in the calendar year 2006, and not in January 2007 as the Council had resolved. Section 111(2) of the Ordinance provides that if there is default in holding a meeting in compliance with subsection (1), the court may, on the application of any member of the company, call or direct the calling of a general meeting and give ancillary or consequential directions. Such directions include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting. I am satisfied by the evidence that the omission to hold an AGM of the Company in the calendar year 2006 was due to inadvertence, and that this is accordingly an appropriate case to exercise my discretion under section 111(2) to grant the relief which is sought. I shall therefore make an order substantially in the terms of the draft which has been submitted. (Aarif Barma) Judge of the Court of First Instance High Court Mr T Lee, of Messrs Hobson & Ma, for the Applicant 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 1udk 1udk i\$&`G HCMP.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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