

HONG KONG / JUDGMENT

SINGH HARDEV v. DOKE JITENDRA AND ANOTHER

[2018] HKDC 889

COURT

District Court

DECIDED

26 July 2018

CASE / FILE NUMBER

DCCJ2569/2016

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DCCJ 2569/2016

[2018] HKDC 889

IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
CIVIL ACTION NO. 2569 OF 2016

BETWEEN:

SINGH HARDEV
Plaintiff
and
DOKE JITENDRA
KINNS ENTERPRISE LIMITED
1st Defendant
2nd Defendant

Coram:

His Honour Judge Harold Leong in Court

Date of Hearing:

7-8 and 24 May 2018
Date of Judgment
26 July 2018

JUDGMENT

This is a claim for an alleged unpaid loan. The claim The plaintiff s case appeared simple enough: he was a close friend of the 1st defendant and has lent 4 personal loans to him in the total amount of HK\$225,500. The 1st defendant gave to the plaintiff 3 cheques drawn under his name and 2 cheques drawn under the 2nd defendant purported for repayment but all were dishonoured. The plaintiff therefore commenced this action. The 1st defendant, on the other hand, denied this completely and claimed that the cheques were drawn for purchase of wine and liquor from the plaintiff s company, Royal Wines & Spirits HK Limited (Royal Wines) by the 2nd defendant, and since the deliveries were not made, he had notified the bank to stop payment on the cheques. Rather surprisingly, neither the plaintiff produced any loan document nor the defendants produced any liquor purchase invoices. As such, the evidence was mainly from oral evidence of the plaintiff and the 1st defendant. Background : the Intended Acquisition of Royal Wines The plaintiff is a Hong Kong resident and was the sole director and shareholder of Royal Wines. His other partner was Mr. Hardeep Singh (Hardeep) who was also a shareholder. Royal Wines was a company trading in wine, beer and liquor business. The 1st defendant is from Mumbai and is the sole director and shareholder of the 2nd defendant which is in the wine and liquor import and distribution business. Against this background, there was an intended acquisition of Royal Wines by the 1st defendant s wife (Mrs. Doke) and the 1st defendant s business partner, Mr. Lalit Jain (Mr. Jain). During the trial, the plaintiff was extremely evasive when it came to this acquisition: he initially claimed that he did not know anything and claimed that only Hardeep knew. I will go into more details when I discuss the evidence of the parties below, but the plaintiff eventually admitted that there was an agreement to sell Royal Wines to Mrs. Doke and Mr. Jain. There was no disagreement (eventually, by the plaintiff) that the 1st defendant introduced Mr. Jain to the plaintiff and Hardeep around mid-2015 and a sale price of HK\$1.75M was agreed. The parties agreed to attend the office of Buttar & Associates (Buttar) on 11 June 2015 to finalise the deal. However, this intended sale and purchase appeared to be a complete fiasco. The 1st defendant (and the intended purchasers, Mr. Jain and Mrs. Doke) did not instruct any lawyers and admitted that he thought he could trust Buttar because they were accountants . However, the plaintiff only referred to Buttar as the company secretary . Whatever role Buttar played in the transaction, no sales contract for Royal Wines was prepared. The only document produced before the court was a Written Resolutions of all the shareholders of Royal Wines dated 11 June 2015 prepared by Buttar (the Written Resolution) (page 143 of the trial bundle) which stated: The following resolution were passed:

1. Mr. Jain...and Mrs. Doke...will pay HKD1,750,000 for the Goodwill and deposit directly to the company s bank account.

2. Mr. Jain...and Mrs. Doke...has given 5 cheques: HSBC cheque no...dated 11 June 2015 amounted HKD400,000 payee: Singh Hardeep HSBC cheque no...undated amounted HKD400,000 payee: Buttar & Associates HSBC cheque no...undated amounted HKD400,000 payee: Buttar & Associates HSBC cheque...undated amounted HKD400,000 payee: Buttar & Associates HSBC cheque...undated amounted HKD150,000 payee: Buttar & Associates
3. Mr. Singh Hardev and Mr. Singh Hardeep will jointly settle the outstanding loan under the company's bank account with Bank of East Asia. 4. On or before 11th June 2015, all assets or liabilities for this company will bear by Mr. Jain...and Mrs. Doke...
5. Mr. Singh Hardev and Mr. Singh Hardeep will jointly take care the matter for audit arrangement and tax issues for year ended 31 March 2015. It is hereby certified that the above is true extract from the Minutes of the Meeting of the Board of Directors...and that the resolutions set above was duly passed... Present shareholders/members: Mr. Singh Hardev (signature) Mr. Singh Hardeep (signature) Mr. Jain... (signature) Mrs. Doke... (signature) It would appear that the Written Resolution is the only document that contained any terms of agreement of the acquisition of Royal Wines. Suffice to say, this so-called agreement was so problematic that one would wonder why the 1st defendant, who informed the court that he had 20 years of working experience in multinational banks and import export companies...completed his graduation from the University of Mumbai in commerce etc. , would allow it to be signed. It would have been plain to any person with reasonable knowledge of business to spot that the Written Resolution does not mention any transfer of shares: it only stated that Mr. Jain and Mrs. Doke were paying HK\$1.75M for the goodwill . No definition was given for goodwill but I wonder whether this meant that Mr. Jain and Mrs. Doke was paying HK\$1.75M for only the use of the name Royal Wines . However, paragraph 4 went beyond this, it specified that that they also have to bear all assets and liabilities of Royal Wines on or before 11 June 2015 . The drafting is ambiguous but perhaps it might mean they have to bear all assets and liabilities from 11 June 2015 onwards. Further, the arrangement for payment was unclear as there were 4 undated cheques for the balance of the goodwill purchase and there was no provision as to when these should be made payable. It was also strange that this document was titled Written Resolution of all the shareholders/ members but then stated the above is true extract from Minutes of the Meeting of Board of Directors . It could not have been both a members resolution and a director's meeting minutes and it appeared that whoever prepared it has simply adopted a pro-forma document but failed to delete the unneeded passages. Of course, at that stage, of all the signatories, only the plaintiff was the director and only the plaintiff and Hardeep were the shareholders. It is unclear what capacities Mr. Jain and Mrs. Doke were under when signing this document. In any case, a Notice of Change of Director was submitted to the court (pages 146 to 149 of the trial bundle) which showed that, on the same day (11 June 2015), the plaintiff resigned as the sole director and Mr. Jain and Mrs. Doke were appointed as directors of Royal Wines. As mentioned above, the 1st defendant, rather surprisingly, appeared to have very little knowledge of company law because during the trial, he told the court that he thought that Royal Wines now belonged to Mr. Jain and Mrs. Doke notwithstanding that

there has been no transfer of shares and no agreement terms for any future transfer of shares. It was only under cross examination that the 1st defendant first claimed that there was an agreement that 25% of the shares should be transferred on 11 June 2015. This was not recorded in the Written Resolution and never came up in his pleadings nor witness statement, and the 1st defendant did not put this to the plaintiff. I do not find this convincing. Despite his resignation as the director, the plaintiff admitted that he did not instruct the banks holding the accounts of Royal Wines to change the authorization signatories. Further, the plaintiff had continued to manage the business of Royal Wines but it was not clear who gave the plaintiff such capacity. Importantly, the bank records (page 155 of the trial bundle) showed that on 22 June 2015, the bank account of Royal Wines at Standard Chartered Bank (not Bank of East Asia as revealed in the Company Minutes) was closed down after the withdrawal of HK\$219,392.60 which was the entire sum that the bank account had been holding. Thus, it appeared that Royal Wines actually held two bank accounts (one at Bank of East Asia and the other at Standard Chartered Bank) but only one (Bank of East Asia) account was mentioned in the Written Resolution. The 1st defendant claimed that he was authorised by Mr. Jain to sit in the office of Royal Wines. He attended the office of Royal Wines the next day after the signing of the agreement, i.e. 12 June 2015. The 1st defendant believed that the agreement was that the plaintiff and Hardeep should settle all liabilities before 11 June 2015. However, when he attended the office, he discovered various liabilities. He claimed that he had paid a total of around HK\$225,000 in one month to settle Royal Wines liabilities. He raised objections but the plaintiff told him that Hardeep was in the UK and he would settle all this when he returned. It was also around this time that the 1st defendant claimed that he discovered the Standard Chartered account and that the withdrawal (and closing of the account) was made without notification to him nor the then directors (i.e. Mr. Jain and Mrs. Doke). The 1st defendant also accused the plaintiff of deliberately concealing this bank account. The 1st defendant also claimed that he was locked out of the office of Royal Wines altogether after 11 July 2015. All these were disputed by the plaintiff. Although the plaintiff initially agreed that there was an oral agreement given by him and Hardeep that they have to settle all liabilities of Royal Wines including bank loans on or before 11 June 2015, he later denied this, and said that the agreement was to settle all liabilities after they received the full payment of HK\$1.75M. He also disagreed that they did not disclose the Standard Chartered bank account but he remained silent on the allegation that he withdrew the cash and closed the account. In any case, the plaintiff (and / or Hardeep) had tried to cash the cheques for the balance of the goodwill purchase but they were not honoured. So on 18 August 2015, there was another Written Resolutions of all the shareholder/members of Royal Wines (page 158 of the trial bundle) that passed the resolution that :

1. Mr. Jain...and Mrs. Doke...fails to fulfill the requirement to pay the Goodwill fee amounted to HKD1,750,000 as declared on the Written Resolutions...dated 11 June 2015 at 5pm.

2. Mr. Singh Hardev and Mr. Hardeep has granted the extension to Mr. Jain...and Mrs Doke...for paying the Goodwill fee by 28 August 2015.
3. The Written Resolutions of all the shareholders...dated 11 June 2015 will not be executed if Mr. Jain...and Mrs. Doke...failed to meet the deadline. It is hereby certified that the above is a true extract from the Minutes of the Meeting of the Board of Directors of the Company and the resolution above was duly passed in accordance... Present shareholders/members Mr. Singh Hardev (signature) Mr. Singh Hardeep (signature) This was also problematic because this document again titled itself to be a Written Resolutions of all Shareholder/members as well as Minutes of the Meeting of the Board of Directors . The directors at the time were Mr. Jain and Mrs. Doke who obviously did not sign the document. In fact, the 1st defendant denied that Mr. Jain and Mrs. Doke were ever informed of this extension of time . He said that he had been waiting for Hardeep to contact him but he never did. There was another Notice of Change of Company Director (pages 159 to 162) dated 26 August 2015 which appeared to show that Mr. Jain and Mrs. Doke had ceased to be the director and the plaintiff was re-appointed as the director. In court, the plaintiff reluctantly agreed that the deposit of HK\$400,000 was forfeited and thus not repaid to Mrs. Doke or Mr. Jain. He also admitted that Royal Wines was later sold to a third party in December 2015. The plaintiff's case Against this background and timeline, the plaintiff alleged that he had made 4 personal loans to the 1st defendant. First of all, I understand that the plaintiff was living in public housing and, despite being the director and shareholder of a liquor trading company, described his job as loading, unloading and delivering wines and liquor, and dealing with Indian speaking clients. As such, I find it inherently improbable that he would make a personal loan of HK\$225,500 (even to a close friend , which the 1st defendant disputed), which was interest-free, without any collaterals, and without any signed documentations of the loan or repayment terms. There was not even a hastily scribbled note. Secondly, this was at the time when the 1st defendant was supposedly helping to buy Royal Wines for HK\$1.75M for his wife and Mr. Jain. One would have expected that if he was then asking the plaintiff for a loan, the plaintiff must be rather mystified. One would expect the plaintiff to ask many questions: What was this money for? Why are you short of money? Are you sure that your wife and Mr. Jain can pay the balance sum for purchase? If you yourself is short of money, why don't you ask your wife or Mr. Jain? Why ask me? As it happened, it seemed that the plaintiff was quite happy to hand over a considerable amount of cash on 4 occasions over 3 weeks (from 25 June to mid-July) because, as he alleged, on each occasion, the 1st defendant said that he needed to pay someone and his business was not running smoothly etc. I will now go into more details about each alleged loan. The plaintiff's case was that he lent the 1st defendant HK\$90,000 in cash on 25 June 2015 (the 1st Loan), HK\$50,000 in cash on 8 July 2015 (the 2nd Loan), HK\$45,500 in cash on 15 July 2015 (the 3rd Loan) and HK\$40,000 in cash a few days after 15 July 2015 (the 4th Loan). The 1st Loan The plaintiff claimed that he handed over HK\$90,000 to the 1st defendant in the Kwai Chung MTR station after withdrawing the cash from the Hang Seng bank. The bank statement of the plaintiff's own bank account at Hang Seng Bank produced did document such a withdrawal on 25 June 2015

(page 123 of the trial bundle). About 1 week later, the plaintiff claimed that the 1st defendant gave him 3 cheques (page 89 of the trial bundle paragraph 11 of the statement of claim):-

- (a) a cheque...dated 17 July 2015...for the sum of HK\$30,000 ("the Cheque A");
- (b) a cheque...dated 24 July 2015...for the sum of HK\$30,000 ("the Cheque B"); and
- (c) a cheque...dated 31 July 2015...for the sum of HK\$30,000 ("the Cheque C")..." The plaintiff presented Cheque A around 17 July 2015 but was informed by the bank that the cheque was dishonoured on or around 20 July 2015. The plaintiff presented Cheques B and C (together with Cheques D and E (see below)) in the beginning of August 2015 and was informed by the bank that they were all dishonoured on or around 4 August 2015. The 2nd, 3rd and 4th Loan For the 2nd Loan, the plaintiff claimed that in early July 2015, he agreed to lend to the 1st defendant a further sum of HK\$50,000 to be repaid in 3 to 4 weeks time. The plaintiff claimed that he had withdrawn HK\$60,000 from the Hang Seng bank statement on 8 July 2015 and had kept HK\$10,000 for himself and lent the balance to the 1st defendant. A withdrawal of HK\$60,000 was documented in the relevant Hang Seng bank statement (page 124 of the Trial Bundle). For the 3rd and 4th Loan, the plaintiff alleged that the 1st defendant attended the office of Royal Wines on both occasions during which the plaintiff took the money from the office of Royal Wines to lend to the 1st defendant. When asked by the court as to the source of this cash, the plaintiff explained that Royal Wines always kept cash of HK\$50,000 to 60,000 in the office to pay suppliers because some of them accepted cash only. The court had pointed out to the plaintiff that this would mean that he, not being a director of Royal Wines at the time, took the liberty of taking office money belonging to Royal Wines to give to the 1st defendant as his personal loan on 2 occasions. The plaintiff did not provide any further explanation to this, claiming the privilege against self-incrimination as raised by his counsel, Mr. Carl Wou. The plaintiff's case was that 2 cheques were given for the repayment of these 3 loans. In his witness statement, the plaintiff stated (in paragraph 12): ...in or about late July 2015, the 1st defendant delivered to me another 2 cheques duly signed and postdated for the repayment:-
 - (a) a cheque....drawn by the 1st defendant on behalf of the 2nd defendant dated 1 August 2015...for the sum of HK77,301 (the Cheque D)
 - (b) a cheque...drawn by the 1st defendant on behalf of the 2nd defendant dated 1 August 2015...for the sum of HK\$58,000 (the Cheque E In court, the plaintiff said that he attended the office of the 2nd defendant where the 1st defendant gave him Cheque D and Cheque E. In the Statement of Claim (pages 44-45 of the trial bundle under paragraphs 3, 4 and 5), the plaintiff stated that the agreement was for the 2nd Loan, 3rd Loan and the 4th Loan to be repaid in 3 to 4 weeks after each of the dates the money was advanced. 3 to 4 weeks from the date of the 2nd Loan (8 July 2015) would be 29 July to 5 August 2015, from the date of the 3rd Loan (15 July 2015) would be 5th to 12th August 2015, and for the 4th Loan, it would be a few days after 5th to 12 August 2015. Thus, under these agreements, one would expect that the Cheque D and Cheque E would be made payable around early or mid-August. As the cheques

were both dated 1 August 2015 according to the plaintiff's witness statement, this clearly contradicted his pleadings in the Statement of Claim. The plaintiff said that he presented Cheque D and Cheque E (amongst others) early August 2015 and they were all dishonoured and returned marked refer to drawer on or about 4 August 2015 (page 47 of the trial bundle paragraph 10 of the Statement of Claim, and page 91 of the trial bundle paragraph 16 of the plaintiff's witness statement). When the plaintiff was asked under cross-examination why he presented the cheques in early August 2015 when the agreement for repayment was later in August, the plaintiff simply replied that because the cheques were post-dated 1 August 2015. When the 1st defendant put to the plaintiff that the entries of the dates on Cheque D and Cheque E was not the 1st defendant's own handwriting, the plaintiff changed his story. He said the 1st defendant was busy on his phone making an overseas call when he handed over the 2 cheques. He claimed that he had noticed that the dates were missing and raised this with the 1st defendant, who simply asked him to write down the date of 1 August 2015 on both cheques, which he did. At this point, the court asked that the original Cheque D and Cheque E be produced. It was noted by the court that the date entry on Cheque D was made in blue ink whilst the remaining writing was in black ink. For Cheque E, both the date and the payee entries were made in blue ink whilst the remaining writing was in black ink. Further, the payee name Hardev Singh was written all in capital letters in Cheque E which was clearly in a different style and handwriting from the same name written on Cheque D. When these were pointed out to the plaintiff, he then admitted that he also wrote his own name on Cheque E. He changed his story again and claimed that, in addition, he also told the 1st defendant that there is no name and the 1st defendant told him to write down his name. The plaintiff also repeatedly claimed that the 1st defendant had then taken a copy of the cheques. No such copies were produced by the 1st defendant and the court would find it unlikely that the 1st defendant was so busy on the phone that he could not fill in the cheques properly but yet find time to take a copy of the cheques after they were filled in by the plaintiff. As to why the cheques were split in such odd figures (HK\$77,301 and HK\$58,000, totalling HK\$135,301) when, as he alleged, the 2nd, 3rd and 4th Loans were HK\$50,000, HK\$45,500 and HK\$40,000 respectively (totalling HK\$135,500), the plaintiff simply claimed that the 1st defendant said he made a mistake and those were the last two cheques he had in hand. He claimed that the 1st defendant also promised to pay the balance of HK\$199 in cash but he never did. It would also be inherently unlikely that the 1st defendant found time to discuss all this with the plaintiff and was yet, in the same time, so busy on the phone that he needed to ask the plaintiff to fill in the cheques. In addition, if the 1st defendant intended to repay the 2nd, 3rd and 4th Loans on the same day, there was no need to split the repayment into 2 cheques, especially in such odd figures which, of course, would give an impression that these were sales payments rather than repayment for loans. Further, the plaintiff has been unable to reconcile as to whether there were agreements for each loan to be repaid in 3 to 4 weeks time. If there was, one would expect the 1st defendant to issue 3 cheques, one HK\$50,000 to repay the 2nd Loan, HK\$45,500 to repay the 3rd Loan and HK\$40,000 to repay the 4th Loan, and all post-dated 3 to 4 weeks from the date of cash advancement. If these were the last two cheques that the 1st defendant have on him, in view of the date that the

loans needed to be repaid, one would expect he issued one cheque to repay the 2nd Loan and one for the repayment of the 3rd and 4th Loans combined since their repayment dates would only be a few days apart. Logically, if one were to make a typo like mistake, one would expect to have missed out a figure, say, writing 45,000 instead of 45,500 . However, I could not imagine how one could make a mistake of writing 77,301 instead of, say, 45,500 . On the other hand, if the plaintiff's other version of story is to be believed, that is, that the 1st defendant asked him to write 1 August 2015 on both cheques, then the 1st defendant must have agreed to repay the 2nd, 3rd and 4th Loans in one go on 1 August 2015 (instead of 3 to 4 weeks after each loan). If so, there would simply be no reason to issue two separate cheques, especially if, as the plaintiff alleged, those were the last two cheques he had on hand. Further, if there was such an important agreement (or change in agreement) of repayment terms, there was no reason why the plaintiff did not mention this in his Statement of Claim or Witness Statement. I also cannot see why the 1st defendant could be so busy on the phone that he could only have time to put the name of payee on one cheque and not the other, and not to put the date on both cheques or, for that matter, to correct any mistakes on the cheques (when the plaintiff has pointed it out). The 1st defendant, as an experienced businessman, must know that he could correct mistakes on a cheque by simply initiating his name next to the corrections. As such, I find the plaintiff's evidence not credible. The defendant's case The 1st defendant claimed that there was no loan at all, and all the cheques were for purchase of liquors and beers for the 2nd defendant which were never delivered. The 1st defendant said that the 2nd defendant was new to the business and it needed to pay cash up front before delivery, so all 5 cheques were given to the plaintiff on one go around mid-July. There are indeed sales orders and statement produced in the trial bundle. These appear to show 8 sales orders between 18 June to 3 August 2015 amounting to HK\$34,117 (statement on page 181 of the Trial Bundle which listed the 8 sales orders), and a further sales order dated 11 August amounting to HK\$27,000 (page 183-1 of the Trial Bundle). I note that the cheques produced on pages 134-1 and 134-3 of the trial bundle are for the sums of HK\$27,000 and HK\$34,117 respectively. These are for the exact sums appearing on the statement and the sales order so it must be concluded that these cheques were intended for the payment of these. I note that both cheques are addressed to Royal Wines and not the plaintiff. Further, both cheques were dated 14 August 2015. These were clearly contradictory to the 1st defendant's claim that he needed to pre-pay for deliveries as the sales orders were dated 18 June to 11 August 2015. In contrast, no sales order or statement was produced for the the current claimed sum of HK\$225,301 and the cheques in question were all addressed to the plaintiff rather than Royal Wines. The 1st defendant said that the Cheques A, B and C were dated 17 July 2015, 24 July 2015 and 31 July 2015 for deliveries to be made on those dates. However, the 1st defendant was unable to tell the court what exactly he had ordered. The court also asked the 1st defendant what wine or liquor he had ordered that would come to exactly HK\$30,000. The 1st defendant then started to name many beer and drinks brands he claimed to cost exactly HK\$150 and HK\$300 etc. Such rounded prices are simply not reflected in the 9 sales order produced for the purchases mentioned in paragraph 77 above and, of course, none of these 9 sale orders came to exactly HK\$30,000. But even if the 1st

defendant was telling the truth about the prices, it is inherently unlikely that 3 consecutive orders of liquors and beer would come to exactly HK\$30,000 each time. As for Cheques D and E, the 1st defendant explained that they were for order for alcohol which was not available yet. He was waiting for Royal Wines to source them so both cheques were undated. As to why he did not fill in the name of payee on Cheque E, the 1st defendant explained that he was expecting the plaintiff to pay this directly to the supplier so he left it empty. However, no deliveries were made but the plaintiff had filled in the cheques to make a fraudulent claim against him. Nevertheless, the 1st defendant could not inform the court what unavailable alcohol that he was ordering nor able to produce any order form to document such orders. It was a mystery why the 1st defendant would still be making these orders around mid-July when he allegedly had:

- i) discovered problems with liabilities with Royal Wines ii) injected some HK\$225,000 into the company, iii) discovered that the plaintiff had withdrawn HK\$219,392.60 from the concealed Standard Chartered Bank account, iv) asked for return of his HK\$400,000 deposit, and
 - v) has been locked out from the Royal Wines office by the plaintiff Not only that one would question why the 1st defendant would, under the circumstances, still wish to order liquor and beer from Royal Wines, but even if Royal Wines was the only liquor supplier that the 1st defendant could buy from Hong Kong, no reasonable person would trust the plaintiff with 5 cheques worth HK\$225,301 in advance of delivery without any sales order form or invoice. However, despite these questions, the sales orders and statement (see paragraph 77 above) showed that there were indeed still ongoing dealings between the 2nd defendant and Royal Wines until at least 11 August 2015. Thus, I also find the defendants evidence not credible. The legal principle for dishonoured cheques Section 30 of the Bills of Exchange Ordinance (Cap.19) (the BEO) provided that:-
- (1) Every party whose signature appears on a bill is prima facie deemed to have become a party thereto for value.
 - (2) Every holder of a bill is prima facie deemed to be a holder in due course; but if, in action on a bill, it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted unless and until the holder proves that, subsequently to the alleged fraud or illegality, value has in good faith been given for the bill.

Conclusion

This is a tangled web. Whilst I can accept that there is evidence that a sum of money equivalent to the 1st Loan was withdrawn from the plaintiff's own personal account, the 2nd Loan did not match the claimed sum withdrawn so it was questionable. As for the 3rd and 4th Loans, the plaintiff's own evidence showed that he, at the time he was no longer a director for Royal Wines, had taken the money for the 3rd and 4th Loans from Royal Wines without apparent approval from the then directors. Clearly, there are issues both in terms of civil and criminal liabilities

under the circumstances. Further, I cannot see why the plaintiff should reap the benefit of a repayment of a loan of money which was not his. Taking the plaintiff's case to the highest, the proper plaintiff here should be Royal Wines for recovery of the 3rd and 4th Loans. It goes without saying that the presumption of Section 30 of the BEO should not apply for any cheques for the repayment for these alleged (and possibly illegal) loans. On the other hand, the presumption of Section 30 of the BEO must apply to Cheques A, B and C. Whilst, as stated above, the court may find that the plaintiff would unlikely to have personally loaned HK\$225,500 even to a close friend, it would be more likely if it was a loan for the sum of HK\$90,000. As above, I do not accept the 1st defendant's claim that he made 3 orders of liquor and beer costing exactly HK\$30,000 each time. The court has some difficulties dealing with Cheques D and E. As discussed above, the circumstances of how the plaintiff claimed he filled in the particulars of Cheques D and E were highly dubious. On the other hand, the 1st defendant was claiming that the entries were fraudulent and there was a complete failure of consideration, yet he could not produce any evidence of any sales order made. There was no documentary evidence as to what the cheques were made out for. However, what was not in dispute between the parties was that Cheques D and E were given to the plaintiff by the 1st defendant on the same occasion. If they were given for the repayment of loans on the same date (1 August 2015), there was no reason for the 1st defendant to split the repayment into two cheques, especially when the split was very odd: HK\$77,301 and HK\$58,000. On balance, I find that Cheques D and E must have been for arrangement of payments of goods and liquor or of something that both witnesses, for some reasons, did not wish to tell the court. As above, I do not accept the circumstances of the filling up of the particulars of the cheques as alleged by the plaintiff. On balance, I accept that there was a complete failure of consideration as claimed by the 1st defendant but yet the plaintiff has dishonestly filled in the particulars of both cheques. I find that the plaintiff did this in order to claim that he had loaned more money to the 1st defendant than he actually had. After considering all the evidence, I find that there was never a 2nd, 3rd and 4th Loans and therefore the plaintiff has not taken any money (possibly illegally) from the office of Royal Wines. There was only ever just one loan for the sum of HK\$90,000. On the other hand, I also find that the 1st defendant had tried to cover up this loan by untruthfully claiming that Cheques A, B and C were for payment of liquor and beer orders. Some observations The puzzling feature of this case is that both witnesses have clearly been untruthful and were each advancing an illogical version of events. This may raise some suspicions that there was something more that both the plaintiff and the 1st defendant did not wish to reveal to the court. It has not escaped the observation of this court that the total sum of the cheques (HK\$225,301) was almost the same, give or take a few thousand dollars, as the sum withdrawn from Royal Wines alleged concealed Standard Chartered bank account (HK\$219,392.60) which, according to the 1st defendant, was withdrawn without the knowledge of the then directors, Mr. Jain and Mrs. Doke. What is not in dispute is that sometime after the withdrawal of HK\$219,392.60 from the concealed bank account, the 1st defendant gave 5 cheques totally HK\$225,301 to the plaintiff, but, rather surprisingly, neither the plaintiff nor the 1st defendant could produce a shred of documentation regarding what these cheques were for. Of course, this could be pure coincidence, and without further evidence, the court cannot base its decision on anything beyond this. However, the court also observed that at least one (Cheque D)

if not 2 (Cheques D and E) were made out as if for sales payment. If one allows one's imagination to fly in a somewhat sinister direction and ask the question, Can one make a conjecture that these cheques were purposely made out to give an impression that they were for sales payment but there were none? If so, what was the purpose for doing so? It would then not be hard to conjure up a scenario where the plaintiff and the 1st defendant were involved in an asset draining scheme to siphon off all the cash assets of Royal Wines by making it look like liquor sales between Royal Wine and the 1st defendant or his company without the knowledge of the then directors (and intended purchasers), Mr. Jain and Mrs. Doke. Thus, the cheques were only intended to be props to create an impression of sales, thus the receiver of this money would now look like he has received this as proceeds of sale. One can only speculate that, somehow, the scheme did not quite work out (perhaps a fall-out after the cash was withdrawn?) but whatever happened, the cheques were presented but were dishonoured. Perhaps the plaintiff then realised that he could claim against these dishonoured cheques. The plaintiff needed to explain how he came across these cheques so he drummed up a loan repayment situation. This scenario might serve to explain why the plaintiff's and the 1st defendant's versions of events were not entirely credible: the inherent improbability of the size of the loan and the lack of documentation of such a large loan (because they were not loans); why the Cheques D and E were lacking in particulars but were made out in rather odd sums (because the scheme was to create an impression that they were for sales payment, perhaps after the parties realised that the rounded-up figures of the Cheques A, B and C might arouse suspicion); why the 1st defendant failed to explain what liquors he had specifically ordered or produce documentary evidence showing such alleged orders (because there were no actual sales orders); and why the 1st defendant would appear to still wish to deal with Royal Wines after the alleged discovery of all the problems, and why, under the circumstances, the 1st defendant appeared so trusting in releasing the cheques (because that was the scheme before the parties fell out with each other). Perhaps one can also speculate that the 1st defendant's (unsupported) claim of injection of HK\$225,000 (coincidentally again a similar figure to the alleged loans, the total payment in the cheques and the cash asset of Royal Wines withdrawn from the bank) into Royal Wines was his drummed-up attempt to reclaim the withdrawn sum. The other mystery of this case is why a self-proclaimed experienced businessman like the 1st defendant would enter into such an apparent fiasco in the purchase of Royal Wines on behalf of his business partners. Further, one would question why a businessman like the 1st defendant, who claimed to own one of the biggest vineyards in Mumbai and whose liquor import business had a turn-over of around HK\$1M a month, now claimed that he had no money to instruct a lawyer and had to act in person. It might well be that 1st defendant was not as experienced or sophisticated as he claimed, and had advised his business partners to walk into a really bad deal. In this scenario, he might have thought of this scheme after he discovered the concealed Standard Chartered bank. Alternatively, if one allows one's imagination to fly even higher, one might imagine that there was a bigger and much more sinister plot where the perpetrators had all along planned to persuade an unsuspecting and somewhat unsophisticated investor (perhaps Mr. Jain?) to acquire a company whilst the perpetrators would secretly drain the company of all its assets, leaving the investors with nothing but, indeed, the goodwill of the company. This scenario might explain further:- why the plaintiff gave evidence in court that the

purchase money (including the deposit of HK\$400,000) was from Mr. Jain and not from the 1st defendant (because it was true); why the drafting of the Written Resolution appeared so ambiguous (it was intended because if the investor ever found out about the asset draining scheme, the perpetrators could point towards the terms which only stated that the purchase was for the goodwill and not the assets of Royal Wines); and why this Standard Chartered account of Royal Wines was not mentioned in the Written Resolution signed by, amongst others, Mr. Jain and Mrs. Doke which purported to document the terms of acquisition of Royal Wines. Nevertheless, these scenarios and observations must only remain pure speculations as there is no evidence either way before the court. Thus, no weight is being placed on such in the court's decision. Order Accordingly, I will give the following order: Judgment be entered for the sum of HK\$90,000 against the 1st defendant plus interest to be calculated from the date of presentation of each Cheques A, B and C pursuant to section 57 of the BEO. As for costs, as I found that both the plaintiff and the 1st defendant were untruthful witnesses (see paragraphs 105 and 106 above), it would only be just and fair to make an order nisi for no order as to cost. (Harold Leong) District Judge Mr Wou Wing Ka Carl, instructed by Yu Sum Yau Mak & Lawyers, for the plaintiff The 1st defendant appeared in person The 2nd defendant, represented by Mr Doke Jitendra, appeared in person

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