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HCCW 584/2002

**IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
COMPANIES (WINDING-UP) NO. 584 OF 2002**

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IN THE MATTER of Luen Cheong Tai  
International Holdings Limited

and

IN THE MATTER of the Companies  
Ordinance (Cap. 32)

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Before: Hon Kwan J in Chambers

Date of Hearing: 27 September 2002

Date of Decision: 27 September 2002

Date of Handing Down of Reasons for Decision: 4 October 2002

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**REASONS FOR DECISION**

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1. I have before me an *ex parte* application on notice by the provisional liquidators of Luen Cheong Tai International Holdings Limited (“the Company”) made under sections 221(1) and (3) of the Companies Ordinance, Cap. 32. The provisional liquidators seek an order that Mr Lo Yung Chun do grant to the provisional liquidators immediate and unfettered access to the premises at No. 70A Ki Lun Tsuen, Sheung Shui,

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New Territories (“the Sheung Shui premises”) for the purpose of the provisional liquidators removing therefrom any assets, books and records of the Company and its subsidiaries. I also have before me an application by two directors of the Company, Mr Chan Man Chuen and Mr Vong Pak Cheong, against the provisional liquidators. The application was made by a summons dated 26 September 2002 which has not been filed at the time of the hearing. The directors seek an order against the provisional liquidators in relation to the documents and materials removed by the provisional liquidators on 5 to 9 September 2002 from Suite Nos. 2109-2111, 21st floor, CMG Asia Tower, The Gateway, No. 15 Canton Road, Tsimshatsui, Kowloon (“the Gateway Office”). The provisional liquidators are required to provide the solicitors for the directors with a list of the documents and materials they removed from the Gateway Office within three days and to forthwith deliver any documents or materials which do not belong to the Company or its subsidiaries to the directors.

2. The background to the above applications may be given as follows.

3. On 5 September 2002, I made an order appointing the provisional liquidators on the application of a creditor of the Company. By paragraphs 1 and 2 of the order, the provisional liquidators are empowered to secure, take possession of and copy all books, records, documents of the Company or such subsidiaries, associated companies, joint-ventures or other entities in which the Company holds an interest. By paragraph 16 of the order, the provisional liquidators are empowered to effect entry, if necessary by force, to any premises of the Company or any site office where the provisional liquidators have reason to believe that there are assets, property, books and records of the Company.

4. On 5 September 2002, the provisional liquidators and their solicitors attended the Gateway Office, which was the principal place of business of the Company in Hong Kong, to take possession of the books and records. By then, almost all of the documents belonging to the Company and its subsidiaries had been removed. There were left in the Gateway Office only about 5 to 6 carton boxes of documents. These were removed by the provisional liquidators and they form the subject matter of the directors' present application. The provisional liquidators were told by the employees of the Company that the Company had moved its office to 9 floor, Nos. 52 to 58 Jaffe Road, Wanchai, Hong Kong ("the Wanchai Office").

5. In the morning of 6 September 2002, the provisional liquidators met the directors at the Wanchai Office and questioned the directors as to the whereabouts of the books and records of the Company. They were told by Mr Vong that they would be provided with access to the books and records in the afternoon.

6. In the afternoon of that day, Mr Vong arranged to meet the provisional liquidators at the Sheung Shui premises, where the books and records are stored. Despite repeated demands by the provisional liquidators, Mr Vong prevented the provisional liquidators from removing the books and records from the Sheung Shui premises. Mr Vong informed the provisional liquidators that he would have no objection to the provisional liquidators arranging for security guards to be stationed outside the Sheung Shui premises to prevent removal by any one of the books and records. He said he would need to seek legal advice regarding the removal of the books and records by the provisional liquidators.

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7. On 7 September 2002, the provisional liquidators made demands to the directors verbally and in writing for delivery up of the books and records. They received a letter from the solicitors for the directors, Messrs Alvan Liu & Partners, the same day asking for a copy of the court order dated 5 September 2002. This was faxed to the directors' solicitors.

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8. On 9 September 2002, the solicitors for the provisional liquidators wrote to the directors' solicitors giving them an ultimatum that unless an immediate confirmation was received that the directors would fully co-operate with the provisional liquidators and produce to them all the books and records at once, the provisional liquidators would apply for urgent relief from the court and hold the directors personally responsible for the provisional liquidators' costs in this regard. A response was received from the directors' solicitors that day stating, inter alia, that the Company's books and records are not in good order and in view of the "massive volume of documents", the directors would need some time to sort out the documents so that a list of the documents could be prepared as a record of the documents to be delivered up to the provisional liquidators. Further, as the directors would have to prepare a statement of affairs, they would like to make photocopies of the relevant documents before the documents were to be delivered up to the provisional liquidators.

9. In view of that response from the solicitors for the directors, the provisional liquidators made an *ex parte* application to me on 9 September 2002. I made an order that Mr Chan and Mr Vong do produce to the provisional liquidators immediately all books, records, accounts, documents and other papers (including computer records) of the Company in their possession, custody or power. I also provided in the order that Mr

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Chan and Mr Vong would have liberty to apply to the court to discharge the order on giving 24 hours' notice in writing to the provisional liquidators or the solicitors for the provisional liquidators.

10. On 10 and 13 September 2002, part of the books and records were delivered to the provisional liquidators under cover of a letter dated 10 September 2002. These books and records must have come from a source other than the Sheung Shui premises, because the provisional liquidators have posted security guards to keep the premises under watch since 6 September 2002. I have received no explanation from the directors where these documents had been stored.

11. On 10 September 2002, the directors' solicitors sent a letter to the provisional liquidators' solicitors stating that the Sheung Shui premises are not owned or controlled by the Company and that the Company would have to make appropriate arrangement for delivery up of the documents. Further correspondence was exchanged on 10, 12 and 13 September 2002 and the provisional liquidators had meetings with the directors on 11 and 12 September 2002. The directors insisted that they should prepare a list of documents before they would deliver up the documents to the provisional liquidators. It would appear that nothing was done in that regard because the directors did not enter the Sheung Shui premises ever since the premises were under the watch of the security guards.

12. On 13 September 2002, the provisional liquidators sought an urgent appointment for an *ex parte* application. I gave directions that the application was to be made *ex parte* on notice and that it was to be heard on 16 September 2002.

13. The directors appeared by counsel at the hearing on 16 September 2002. As mutual undertakings to the court were given by the provisional liquidators and the directors, I did not make an order sought by the provisional liquidators that they should have power to effect entry, if necessary by force, to the Sheung Shui premises for the purpose of removing the books and records into their possession. The directors gave an undertaking through counsel to provide joint access to the Sheung Shui premises within 48 hours to enable the provisional liquidators to collect and remove to their offices the books and records referred to in paragraphs 1 and 2 of my order dated 5 September 2002. The provisional liquidators gave an undertaking through counsel that upon being granted access to the Sheung Shui premises in terms of the directors' undertaking, they would do the following:

- (1) remove the documents to the offices of the provisional liquidators;
- (2) list or index the documents within seven days of the removal and to provide the directors' solicitors with a copy of the same;
- (3) within three days of provision of the list or index,
  - (i) deliver any documents or materials which belong to Luen Cheong Tai Construction Company Limited (in liquidation) to the order of the Official Receiver; and
  - (ii) deliver any documents or materials which do not fall within the order of 5 September 2002 (save for those identified in paragraph (3)(i) above) to the order of Mr Lo Yung Chun, identified by the directors as the person who had given them access to the Sheung Shui premises.

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14. To date, the directors have failed to comply with their undertaking to provide joint access to the Sheung Shui premises.

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15. On 18 September 2002, the directors' solicitors wrote to the provisional liquidators' solicitors stating that the Sheung Shui premises are vacant and according to their instructions, the only person who has a key to the premises is Mr Lo Yung Chun. It was further stated that after the hearing on 16 September 2002, Mr Vong had telephoned Mr Lo and learned that Mr Lo was in China to deal with some estate matters of his deceased father and he would stay there until after the Mid-Autumn Festival. On 19 September 2002, the solicitors for the directors wrote to the solicitors for the provisional liquidators stating that Mr Vong has explained to Mr Lo the undertaking given by the directors to the court on 16 September 2002 and that Mr Lo was very upset about the arrangement because the belongings of his family stored inside the Sheung Shui premises "are being affected by the court order".

16. A letter typed in Chinese dated 20 September 2002 was sent by Mr Lo to the High Court and the provisional liquidators by post from Hong Kong and by fax from a fax number in Hong Kong. The envelope of the letter gave the Sheung Shui premises as the return address to which a reply should be sent. As stated earlier, the premises have been left vacant and it is clearly not the address at which Mr Lo can be reached effectively. In his letter, Mr Lo stated that he was given to understand by Mr Vong that the High Court has made an order allowing the provisional liquidators to enter the Sheung Shui premises and remove all the documents and belongings, regardless of to whom they belong, including the personal belongings of Mr Lo or his relatives, and that the provisional liquidators would be permitted to retain these documents and belongings for ten days before they

would be returned. Mr Lo objected to this and asked the court to discharge such an order.

17. Mr Lo's letter was written the day *before* the Mid-Autumn Festival, and as I have mentioned, his letter was posted and faxed *from* Hong Kong.

18. On 24 September 2002, I caused to be sent a letter in Chinese to Mr Lo stating that if it is his intention to make any application to the court and he is not represented by a solicitor, he must provide his usual residential or working address and a telephone number so that the court staff may contact him effectively. He was also informed that if he has any application to make to the court, he should contact the court clerk for an appointment and attend court personally or by a solicitor at the appointed time for the hearing. Further, Mr Lo was asked to contact the directors' solicitors as soon as possible for the solicitors to explain to him in clear terms the undertaking that was given by the directors to the court on 16 September 2002, as his understanding in this respect is incorrect. The letter of the court was sent to the Sheung Shui premises and faxed to the fax number at which Mr Lo's letter was transmitted. It was copied to the provisional liquidators' solicitors and the directors' solicitors. The provisional liquidators' solicitors had also written to Mr Lo on 23 September 2002 asking him to re-consider his position and to allow them to enter the Sheung Shui premises to remove the documents, so as to avoid another application by the provisional liquidators to the court to gain entry to those premises.

19. On 25 September 2002, the provisional liquidators' solicitors sought an urgent appointment to gain entry to the Sheung Shui premises. I

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gave directions that the application should be made *ex parte* on notice and fixed the hearing date to 27 September 2002. The solicitors for the provisional liquidators sent a copy of the *ex parte* summons with their supporting affirmation to Mr Lo at the Sheung Shui premises and faxed these documents to the fax number at which Mr Lo transmitted his letter. The documents were also served on the directors' solicitors. Mr Lo has not attended the hearing. The directors attended by their solicitors.

20. I am satisfied from the account given in the letter of the directors' solicitors to the liquidators' solicitors dated 25 September 2002 that Mr Lo has been made aware of the contents of the letter of the court to him dated 24 September 2002. It was also confirmed to me by the directors' solicitors that they have communicated to Mr Lo the contents of the letter of the court when Mr Lo telephoned and spoke to Mr Alvan Liu of the directors' solicitors on 25 September 2002. I was also told that Mr Liu had, pursuant to the letter of the court, explained to Mr Lo the terms of the undertaking given by the directors on 16 September 2002. Mr Lo had also told Mr Liu on 25 September 2002 that he would be seeking legal advice. I understand from the directors' solicitors that on 26 September 2002 they have requested Mr Vong to provide them with the telephone number and address of Mr Lo but Mr Vong did not provide this information to his solicitors.

21. I am satisfied I have jurisdiction under section 221 of Cap. 32 to order Mr Lo to give access of the Sheung Shui premises to the provisional liquidators for the purpose of removing therefrom the books and records of the Company and its subsidiaries. I am also satisfied that Mr Lo has been made sufficiently aware of the actual terms of the undertaking given by the directors to the court on 16 September 2002, as

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the undertaking has been explained to him by Mr Liu on 25 September 2002. Further, I am satisfied that Mr Lo has been made sufficiently aware of his right to apply to court if he thinks it necessary to safeguard his rights and interest in the Sheung Shui premises, what he should do to make such an application, and the need to provide an address and telephone number at which he could be contacted readily. Mr Lo has chosen not to take any of these measures. Mr Vong, who is aware of the contact details of Mr Lo, has chosen not to provide such information to his solicitors so that Mr Lo may be effectively contacted and served with any order that the court may make regarding access to the Sheung Shui premises.

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22. It has been more than three weeks since the appointment of the provisional liquidators and their attempts to obtain possession of the books and records of the Company have been thwarted. I do not regard the reasons given by the directors for removing the books and records to the Sheung Shui premises and their insistence on compiling a list of documents and making photocopies (I understand there are no facilities for photocopying in the Sheung Shui premises) as valid reasons for not co-operating with the provisional liquidators in the delivery up of the books and records. In the circumstances, I think it is justified to make the order sought by the provisional liquidators and to allow them to effect entry to the Sheung Shui premises, if necessary by force, for the purpose of taking the books and records into their possession. I have made an order in these terms regarding the application by the provisional liquidators:

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- (1) Upon the undertaking of the provisional liquidators
    - (a) to reinstate the locks at the Sheung Shui premises; and
    - (b) to abide by the undertaking given by them to the court on 16 September 2002 as recorded in the court order regarding

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any documents or materials collected by them under this order (save that the documents or materials which do not fall within the order of 5 September 2002 are to be delivered to the order of Mr Chan and Mr Vong instead of Mr Lo),

Mr Lo Yung Chun do grant to the provisional liquidators immediate and unfettered access to the Sheung Shui premises for the purpose of the provisional liquidators removing therefrom any assets, books and records as referred to in paragraphs 1 and 2 of the order dated 5 September 2002;

- (2) prior to granting access to the Sheung Shui premises in accordance with paragraph (1), Mr Lo shall not
  - (a) remove the books and records from the Sheung Shui premises;
  - (b) give up possession, custody or control of the books and records to any person other than the provisional liquidators; or
  - (c) alter, copy or destroy the books and records;
- (3) should the provisional liquidators, for any reason, not gain access to the Sheung Shui premises in accordance with paragraph (1) above within 24 hours from the time of the order, the provisional liquidators shall have power to effect entry, if necessary by force, to the premises for the purpose of taking the books and records into their possession.

23. I have also ordered that the costs of and incidental to this application be paid jointly and severally by the directors, Mr Chan and Mr

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Vong, as I take the view that they have not provided valid reasons for failing to deliver up the books and records when they were first demanded by the provisional liquidators, nor have they given effective assistance to the provisional liquidators to obtain the books and records after 16 September 2002.

24. As for the application of the directors regarding the documents and materials removed by the provisional liquidators earlier from the Gateway Office, I was informed by the solicitors for the provisional liquidators that they have provided a list of the documents and materials removed to the directors’ solicitors just prior to the hearing. As the provisional liquidators’ solicitors are willing to give an undertaking along similar lines as in paragraph (3) of their undertaking to the court on 16 September 2002, that documents would be delivered to the order of the directors if they do not fall within the order dated 5 September 2002, I do not think it necessary to make an order for delivery up of documents as sought by the directors. In the exercise of my discretion, I make no order as to costs on the directors’ application.

(S Kwan)  
Judge of the Court of First Instance  
High Court

Mr Campbell Korff, of Messrs Clifford Chance, for the provisional liquidators.

Mr Joseph Fan, of Messrs Alvan Liu & Partners, for Mr Chan Man Chuen and Mr Vong Pak Cheong.

Mr Lo Yung Chun, absent.