HCA1732/2002 &
HCA1874/2002

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

ACTION NO.1732 OF 2002

BETWEEN

KING PACIFIC INTERNATIONAL HOLDINGS LIMITED	Plaintiff
and	
CHUN KAM CHIU also known as CHIN KAM CHIU	1st Defendant
CHENG CHAO MING	2nd Defendant
CHEN VEE YONG FREDERICK	3rd Defendant
HE JIANGUO	4th Defendant
LEUNG SUK CHING, ANGELA	5th Defendant
FONG YUK LAN	6th Defendant
ZHANG HONG YAN	7th Defendant
IP MAN TIN DAVID	8th Defendant
LAI WAI CHUNG	9th Defendant
JIANG JIAN JUN	10th Defendant
JIANG JIN TANG	11th Defendant
QIN GUO PEI	12th Defendant
QIN WEI QUAN	13th Defendant
QIN BING QIANG	14th Defendant
ZHANG ZHI XIONG	15th Defendant
CHEN XIAN GUANG	16th Defendant
XIONG WEI	17th Defendant

WANG SHAO HAI	18th Defendant
LIANG WEI QI	19th Defendant
ZHONG DE GUANG	20th Defendant
YANG PING	21st Defendant
MA RONG	22nd Defendant
HE SHAO HUA	23rd Defendant
HUANG XIN TIAN	24th Defendant
KWAN CHUNG PIU	25th Defendant
LO KAM FUK	26th Defendant
LEUNG KA YIP	27th Defendant
LEE KWOK ON	28th Defendant
FRANK YU	29th Defendant
TANG YU LUK	30th Defendant
CHAN CHI WING	31st Defendant
HUNG YU PANG	32nd Defendant
LEUNG SUK LING	33rd Defendant
HAN ZHI MING	34th Defendant
SHI YAN	35th Defendant
LUO WEN XUE	36th Defendant
NIE ZHAN JUN	37th Defendant
XU CUI MEI	38th Defendant
YAN YUE MEI	39th Defendant
HAU CHUNG CHEE	40th Defendant
NG CHOK KEUNG	41st Defendant
CHEUNG SAU WAN	42nd Defendant
POON KA WAI	43rd Defendant

AND

HCA1874/2002

BETWEEN

KING PACIFIC INTERNATIONAL HOLDINGS LIMITED	Plaintiff
and	
CHEUNG YIU WING	1st Defendant
CHEUNG WING KEUNG, SAMUEL	2nd Defendant
CHAN CHUN MING	3rd Defendant
CHAN SEI LEUNG, EDWARD	4th Defendant
CHEUNG WING HONG	5th Defendant
CHEUNG WING SUN, SUNNY	6th Defendant
LO KWAI CHU	7th Defendant
CHANG LI FANG	8th Defendant
HUNG WAI MAN	9th Defendant
YU FUNG CHU	10th Defendant
WONG YUEN CHU	11th Defendant
WAN SEK KIN	12th Defendant
WONG LOK MAN, RAYMOND	13th Defendant
TSE KA LOK	14th Defendant
WONG MUI HING	15th Defendant
LEUNG HIN SEE, CINDY	16th Defendant
LAU KA YIM, MARIA GRAZIA	17th Defendant
WONG CHEUNG LEUNG	18th Defendant
CHEUNG KING LAP	19th Defendant
CHAN BILLIE	20th Defendant
AU SIN KWAN, WINNIE	21st Defendant

(HEARD TOGETHER)

Before : Deputy High Court Judge Poon in Court

Dates of Hearing : 27 and 28 May 2002

Date of Decision : 28 May 2002

Date of Handing Down Reasons for Decision : 10 June 2002

R E A S O N S F O R D E C I S I O N

Applications

1. There were four applications before me.

2. The first one was the plaintiff's application by a summons dated 8 May 2002 brought under Order 29, rule 1, Rules of the High Court ("the Injunction Summons") for interim injunctions until trial or further order :

(1) restraining the 3rd to 43rd defendants from holding out the 10th to 43rd defendants as directors of the plaintiff or representing to others that they have authority to do any act on behalf of the plaintiff;

(2) restraining the 3rd to 4th defendants from holding themselves out or representing to others that they have authority to do any act on behalf of the plaintiff as the managing director and chairman of the plaintiff respectively;

(3) restraining the 3rd to 9th defendants from holding out the 10th to 43rd defendants as directors of the plaintiff or representing to others that they have authority to do any act on behalf of the plaintiff; and

(4) restraining the 3rd to 4th defendants from holding themselves out as being the plaintiff's appointed representative to liaise with the Hong Kong Stock Exchange and the Securities and Futures Commission, and to represent to the same that they have any authority to do any act on behalf of the plaintiff.

3. The Injunction Summons first came before me on 10, 16 and 17 May 2002. After hearing counsel, I granted a mandatory injunction against the defendants ordering delivery up of photocopies of documents relating to, *inter alia*, winding up proceedings against the plaintiff HCCW 164 of 2002 and other urgent outstanding matters requiring the immediate attention of the plaintiff's management, thereby disposing of paragraph 5 of this summons. I also granted an interim injunction against the 3rd to 43rd defendants until the substantive hearing on 27 May 2002.

4. The second application was by the 3rd to 43rd defendants by a summons dated 17 May 2002 for, *inter alia*, dismissal of HCA 1732 of 2002 on the principal ground that these proceedings were commenced without the proper authority of the plaintiff and an injunction against Messrs Simon Siu, Wong, Lam & Chan ("SWLC") restraining them from acting as the plaintiff's solicitors in these and other proceedings ("the Authority Summons").

5. The third application was taken out by the same set of defendants by a summons dated 23 May 2002 for production of the original minutes of the plaintiff's annual general meetings held on 26 September 1997 and 26 November 1999 ("the Inspection Summons").

6. The fourth application was taken out under HCA 1874 of 2002 commenced purportedly in the name of the plaintiff by Messrs Alvan Liu & Partners ("AL") on 17 May 2002. The application was in substance to restrain the 21 directors elected at the plaintiff's special general meeting held on 15 April 2002 ("SGM") from acting or holding themselves out as directors ("the Company's Summons"). I will refer to these directors as the SGM directors.

7. The 2nd to 4th applications were all heard together with the Injunction Summons on 27 and 28 May 2002.

Disposal of applications

8. At the substantive hearing, the plaintiff sought in effect a continuation of the interim injunction already granted, which was opposed. After hearing counsel, I allowed the plaintiff's application for interim relief until trial or further order, subject to the plaintiff's undertaking of damages.

9. As the event transpired, the 2nd to 4th applications became uncontroversial. They were disposed of thus.

10. I adjourned the Authority Summons to a date to be fixed for directions with costs reserved. Senior counsel appearing for both the plaintiff and the 3rd to 43rd defendants agreed that the question of SWLC's authority to sue should not be determined at this stage. Preferably, it should be tried as a preliminary issue later.

11. I adjourned the Inspection Summons *sine die* with liberty to restore with costs reserved. The plaintiff had already produced a certified

copy of the minutes to the defendants. The original is lodged with the Bermuda Company Registry as the plaintiff is incorporated in Bermuda. Pending its arrival here, the parties agreed that there was no need to deal with this application further.

12. I dismissed the Company's Summons. Although the defendants herein had filed evidence to challenge the validity of the SGM and the resolutions to appoint the SGM directors, Mr Smith, SC appearing for the defendants herein and the applicant for this summons did not wish to pursue the application any more. For present purposes, he did not challenge the validity of the SGM or the resolutions. I reserved costs as AL might not have the requisite authority to commence HCA 1874 of 2002 and to take out the summons in the name of the plaintiff. If that is proven to be the case, AL may have to bear costs personally.

13. I had indicated that I would give my reasons in writing for granting relief under the Injunction Summons, which I now do.

Background

14. The plaintiff is a company incorporated in Bermuda. Registered under Part XI of the Companies Ordinance, it is listed on the Hong Kong Stock Exchange. But trading in its shares has been suspended since November 2000. Mr Cheung Yiu Wing ("Mr Cheung") is the beneficial owner of around 13% of the issued share capital of the plaintiff. In November 2000, Mr Cheung brought a derivative action (HCA 10063 of 2000) against the plaintiff and Mr Cheng Chao Ming, the 2nd defendant herein ("Mr Cheng"). Upon his application, Deputy Judge Woolley made an order putting the plaintiff under receivership on 14 February 2001. A

subsequent application to discharge the order was refused on 24 December 2001.

15. In a nutshell, the present proceedings and the Injunction Summons arose out of the attempts by two warring camps of shareholders to seek control of the plaintiff's board.

Change in the composition of the board

16. Mr Cheung used to be the chairman of the plaintiff until February 2001. Mr Cheng, a beneficial shareholder of the plaintiff of around 11.5% of its issued share capital, had been a director since 1997 until he resigned in September 2001. The 3rd defendant joined the board in February 2000 and was promoted to managing director in September 2000. The 5th to 9th defendants were appointed directors by the then board of directors (consisting of the 3rd and 4th defendants) in 2001 pursuant to Bye-law 102(B).

17. On 3 January 2002, an annual general meeting of the plaintiff was convened ("AGM"). Prior to the AGM, a Mak Chun Po purported to nominate candidates including Mr Cheung as directors. The board at the time considered such nomination to be defective as Mak was not a registered shareholder at the time. (Mr Scott, SC for the plaintiff did not seek to advance any argument to the contrary in this regard for present purposes.) One of the resolutions to be dealt with at the AGM was to re-elect the 5th to 9th defendants as directors. However, at the AGM, the 3rd defendant as chairman of the meeting withdrew the resolution from voting despite objection by some of the shareholders including Mr Cheung, and declared that the 5th to 9th defendants were deemed re-elected under Bye-law 100.

18. Mr Cheung challenged the validity of the re-election of the 5th to 9th defendants. He then requisitioned for a special meeting of the plaintiff to be held on 15 April 2002 for dealing with resolutions, *inter alia*, to increase the maximum number of directors from 20 to 41 and to elect the SGM directors. (The plaintiff had in previous annual general meetings held on 26 September 1997 and 26 November 1999 capped the maximum number of directors at 20.) The SGM took place as scheduled and the said resolutions were passed by a majority vote. Mr Cheung was one of the SGM directors so elected.

19. On 15 April 2002, the 4th defendant as chairman of the board caused notice to be issued in two local newspapers that the board (presumably consisting of the 3rd to 9th defendants) had appointed a total of 34 additional directors (the 10th to 43rd defendants). Their appointment was said to have taken effect on 12 April 2002. From the evidence disclosed by way of the 3rd defendant's affirmation filed on 17 May 2002, their appointment in fact took place on two separate occasions. The first batch of 13 additional directors (the 10th to 22nd defendants) was appointed at the board meeting held on 8 April 2002. The rest (the 23rd to 43rd defendants) were appointed at the board meeting held on the following day. I will call the 10th to 43rd defendants "Additional Directors". The plaintiff disputed their appointment and the minutes of the two board meetings exhibited to the 3rd defendant's affirmation.

20. Thus as at 15 April 2002, there were two camps of directors or purported directors. On the one hand, there were the 21 SGM directors. On the other, there were the 3rd to 9th defendants together with the 34 Additional

Directors. The total number of directors or purported directors stood at a disturbing figure of 62.

21. On 19 April 2002, the SGM directors caused notice to be issued that a board meeting was to be held on 19 April 2002. Notices were given to the 3rd and 4th defendants *qua* directors and the 5th to 10th defendants without prejudice to the challenge to their re-election at the AGM. The 3rd defendant replied that none of the directors presumably including the Additional Directors would attend the meeting. In the event, the board meeting took place as scheduled. The board resolved to appoint Mr Samuel Cheung Wing Keung and Mr Cheung as chairman and managing director of the plaintiff. Mr Samuel Cheung and Mr Edward Chan were appointed as the plaintiff's representatives to liaise with the Hong Kong Stock Exchange and the Securities and Futures Commission. The 3rd defendant was removed as the plaintiff's representative at the same time. The board also resolved to take legal action against the Additional Directors. At another board meeting held on 7 May 2002, the board removed the 3rd and 4th defendants as managing director and chairman respectively.

22. The purported re-election of the 5th to 9th defendants at the AGM, the purported appointment of the Additional Directors and the removal of the 3rd defendant as managing director and representative and the 4th defendant as chairman formed the basis of the Injunction Summons.

Central issues

23. The central issues before me were thus :

(1) Whether the purported re-election of the 5th to 9th defendants at the AGM was valid. This would have a bearing on the purported appointment of the Additional Directors by the board comprising the 3rd to 9th defendants.

(2) Whether the purported appointment of the Additional Directors was valid.

(3) Whether the 3rd defendant had been removed as managing director and representative of the plaintiff.

(4) Whether the 4th defendant had been removed as chairman of the plaintiff.

24. For present purposes, following the *American Cyanamid* principle, I only need to be satisfied if a serious question had been raised. Before turning to the issues, I will first deal with a general point raised by Mr Smith regarding the rule derived from *Foss v. Barbottle* (1843) 2 Hare 461.

The rule in Foss v. Harbottle

25. Mr Smith submitted that the present dispute was in essence an internal dispute between shareholders. As such, it should not be brought in the name of the plaintiff. Further, the dispute concerned irregularity in appointing directors. It should be resolved not by litigation but by a general meeting. And pending the resolution of the dispute in a general meeting, the Additional Directors should not be restrained from acting as directors.

26. The rule in *Foss v. Harbottle* in summary is this. The proper plaintiff in an action in respect of a wrong alleged to be done to a company or association of persons is *prima facie* the company or the association of persons itself. Where the alleged wrong is a transaction which might be made binding on the company or association and on all its members by a simple majority of the members, no individual member of the company is allowed to maintain an action in respect of that matter for the simple reason that, if a mere majority of members of the company or association is in favour of what has been done, then *cadit questio* : *Edwards v. Halliwell* [1950] 2 All ER 1064.

27. As noted, it is not seriously in dispute that the present proceedings arose out of the attempts by two warring camps of shareholders to gain control of the plaintiff. But the present action is taken out in the name of the plaintiff and not in the name of any shareholder. The plaintiff obviously has a legitimate interest in stopping any person wrongfully claiming or holding out another to be a director. Accordingly, I do not think the rule in *Foss v. Harbottle* is of any assistance to the defendants.

28. It is true that the court will be reluctant to interfere with the internal affairs of a company if the irregularity complained of can be set right at the moment : *Browne v. La Trinidad* (1887) 37 Ch D 1. But in my view, the present dispute is more than a complaint of irregularity. The allegations against the main protagonists in each camp are grave indeed. If proved, they may well be guilty of serious and blatant breach of fiduciary duty towards the plaintiff. In any event, there is no evidence to suggest that any general meeting is forthcoming in the near future or that there is

prospect that the present dispute can be resolved at that meeting, if held at all.

29. Accordingly, with respect, I do not agree with Mr Smith's submission in this regard. I will now come to consider the issues in turn.

Purported re-election of the 5th to 9th defendants

30. As noted above, the 5th to 9th defendants were all appointed by the board pursuant to Bye-law 102(B) whereby they "shall hold office only until the next following annual general meeting of the Company and shall then be eligible fore re-election at the meeting".

31. Bye-law 99(A) provided that at each general meeting all directors for the time being shall retire from office. Bye-law 100 further provided :

> "If at any general meeting at which an election of Directors ought to take place, the places of the retiring Directors are not filled, the retiring Directors or such of them as have not had their places filled shall be deemed to have been re-elected and shall, if willing, continue in office until the next annual general meeting and so on from year to year until their places are filled, unless :
>
> (i) it shall be determined at such meeting to reduce the number of Directors; or
>
> (ii) it is expressly resolved at such meeting not to fill up such vacated offices; or
>
> (iii) in any such case the resolution for re-election of a Director is put to the meeting and lost; or
>
> (iv) such Director has given notice in writing to the Company that he is not willing to be re-elected."

32. The question is whether the 5th to 9th defendants were retiring directors within the meaning of the above Bye-laws such that they could benefit under the redeeming provision under Bye-law 100.

33. Mr Scott, SC, appearing for the plaintiff, submitted that they ceased to hold office at the beginning of the AGM. In support, he relied on *Eyre v. Milton Proprietary Limited* [1936] 1 CH 245, CA. There, article 90 of the company in question was substantially similar to Bye-law 102(B). The question that fell to be determined was whether two persons appointed under article 90 ought to be counted towards the total number of directors due for retirement by rotation at the company's ordinary general meeting. The English Court of Appeal held that the directors due for retirement at the ordinary general meeting did not include the two persons appointed under article 90. Lord Wright MR said at p.253 :

> "…it is clear that under article 90 that the two additional directors will not be in office. They are to hold office 'only until the next following ordinary general meeting of the company', so that at the moment when the next following ordinary general meeting of the company begins they are no longer in office, whereas the other five directors, whether retiring or not, are to act as directors throughout the meeting."

Mr Scott thus submitted that the 5th to 9th defendants were not retiring directors under Bye-law 99A and could not be deemed to have been re-elected under Bye-law 100, which clearly referred to directors retiring by rotation and not the 5th to 9th defendants.

34. Mr Scott further submitted that the proper mechanism for their re-appointment is by resolution for their re-election at the AGM. Though it was an item on the agenda for the meeting, the 3rd defendant had wrongfully withdrawn the motion for their re-election from the meeting without the

unanimous consent of the meeting : Shaw & Smith, *The Law of Meetings*, 5th edn at p.76, *Shackleton, The Law and Practice of Meetings*, 9th edn at pp.65-66. The purported appointment of the 5th to 9th defendants was thus in the circumstances invalid. They are no longer validly holding office as directors after the AGM.

35. Mr Smith submitted that on a proper interpretation of the Bye-laws, the 5th to 9th defendants were retiring directors, that in the absence of any valid nomination for any other directors, their places were not filled up; that accordingly, they were duly deemed re-elected under Bye-law 100.

36. Having considered the submissions carefully, I am of the view that the plaintiff has clearly demonstrated a serious question to be tried on (1) whether the 5th to 9th defendants were retiring directors within the meaning of the Bye-laws; (2) whether the 3rd defendant was entitled to withdraw the resolution to re-elect the 5th to 9th defendants from voting in the absence of consent of the meeting and consequently; and (3) whether the purported re-election of the 5th to 9th defendants under Bye-law 100 was valid.

Purported re-election of the Additional Directors

37. I next consider the purported re-election of the Additional Directors. Mr Scott first submitted that the purported appointment was in breach of the restriction on the maximum number of directors (being 20) under the Company's By-laws and Board Resolutions passed by the Company in September 1997 and November 1999. Mr Smith contended that even if there was such a restriction, the appointment of the 10th to 22nd defendants on 8 April 2002 did not exceed the cap. Mr Scott then

argued that even if the appointment of the 10th to 22nd defendants on 8 April 2002 was not in breach of the restriction on numbers of directors, the resolutions for the 34 persons' appointment were invalid as the proposals for their appointment were seconded by the 5th defendant who was not a director of the Company at the time the appointments were proposed and who could not validly second the said proposals. In reply, Mr Smith submitted that it is not a prerequisite that a resolution need to be seconded. For present purposes, I am prepared to accept that that is a correct proposition. This brings me to the real crux of Mr Scott's complaint.

38. Mr Scott challenged the authenticity of the minutes for the meeting on 8 and 9 April 2002. He submitted that they were forgery and it would be so pleaded in the plaintiff's pleadings. He pointed to following salient features of the minutes :

(a) Reference to "principal place of business" instead of the usual meeting locations used by the previous directors;

(b) Reference to "Non Executive Directors" made despite there being no intention to appoint any non-executive directors on 8 April 2002;

(c) No reference to the identity of the "few largest shareholders";

(d) Only directors present were the 3rd, 6th and 8th defendants. The rest "attended" by phone. No apparent reason was given. And why did the same directors attend by phone on both dates?

(e) Seconding of proposal by phone attendee, namely, the 5th defendant instead of someone present at both meetings on 8 and 9 April;

(f) The 5th defendant has made an affirmation in these proceedings but did not even mention the resolution adopted the board meetings on 8 and 9 April 2002.

39. Mr Scott submitted that from the myriad discrepancies and anomalies apparent on the face of these documents they could not be taken, even at the interlocutory stage, as acceptable evidence of the events they purport to record. He further submitted that the court's suspicions should be alerted particularly in the light of the revelation that the plaintiff had at previous AGMs (26 September 1997 and 26 November 1999) capped the maximum number of directors at 20, a matter which the defendants said they were unaware of until reading Mr Cheung's affirmation. It was just too much of a co-incidence that the purported minute of 8 April appointed exactly the number of new directors (13) sufficient to satisfy this limit when this faction of the board said that they were unaware of the limit at the time. He therefore contended that there is a serious case to be investigated that the resolutions purportedly evidence by the 8 and 9 April board minutes are recent forgeries designed to mislead the court into accepting that some at least or all the flood of 10th to 43rd defendants were validly appointed.

40. In reply, Mr Smith submitted that the 3rd defendant has deposed on oath as to what happened and it was corroborated by the 6th defendant who said in her affirmation that she was the one who took contemporaneous minutes at the two board meetings.

41. Although it is an interlocutory matter, I am entitled to consider the affidavit evidence against all the surrounding circumstances when assessing how much weight is to be attached to it. After considering the

evidence in the round carefully, I am satisfied that there is a serious question to be tried on (1) the validity of the appointment of the Additional Directors; (2) whether they were purportedly appointed in one slate; (3) whether there were in fact two separate appointments on 8 and 9 April 2002 as alleged; and (4) whether the relevant board minutes were forgery.

Removal of the 3rd and 4th defendants

42. I now come to the removal of the 3rd and 4th defendants as managing directors and chairman. As noted, they were removed at the board meetings on 19 April and 7 May 2002. Mr Smith complained that there was a lack of proper notice for the meetings issued to the 10th to 43rd defendants. For present purposes, I do not accept this argument. It is not in dispute that the addresses of these defendants were unknown as they had yet to file their particulars with the company registry. Further, in response to the notice of the meeting to be held on 19 April 2002, the 3rd defendant replied that all directors of his camp would not attend. For present purposes, I accept that the board meetings were proper and the resolutions passed for removing the 3rd and 4th defendants and for their replacement were valid.

Balance of convenience

43. I am therefore satisfied that the plaintiff has raised a serious question to be tried on the main issues. I next consider the balance of convenience. In this connection, the parties have made quite a number of points in the affirmations on matters pertaining to the others' conduct. I do not propose to state more than what is necessary to dispose of the present applications. The serious allegations against the main protagonists in each

camp need to be further investigated at trial. They cannot be determined on affidavit.

44. For present purposes, I only wish to mention the following matters.

45. First, there is no evidence to suggest that the plaintiff as a company or any of the 10th to 43rd defendants would suffer any real prejudice if the 3rd to 43rd defendants are subject to the injunctions sought.

46. Second, the defendants have not identified any acts or deeds that need to be done by them, *qua* directors, as a matter of urgency or at all, that cannot be performed by the present board.

47. Third, there is no evidence to suggest that the present board cannot discharge their duty and function with reasonable care and competence.

48. Fourth, if the defendants are not so restrained, dire consequences may follow :

(1) It is more likely than not that the board will be locked in disagreement, rendering the management and operation of the plaintiff disruptive, if not impossible.

(2) With different people claiming to be representing the plaintiff, no meaningful discussion with the Hong Kong Stock Exchange and the Securities and Futures Commission can ever be conducted.

(3) Confusion had already happened in the winding up proceedings against the plaintiff, HCCW 164 of 2002. SWLC is solicitor for the plaintiff on record. But on 21 May 2002, AL filed a notice of change of solicitors purportedly replacing SWLC as solicitors for the plaintiff on record. At the call-over hearing on 29 May 2002, a partner of AL appeared before the Registrar and claimed that AL represented the plaintiff. It would appear that he also submitted to the effect that the alleged debt that gave rise to the petition was unpaid. The plaintiff now in control of the SGM directors however denies the debt and will certainly oppose the petition. There is evidence before me to show that the plaintiff is quite entitled to at least raise a doubt on the veracity of the alleged debt owed to a company related to the other camp. I do not propose to go into detail the evidence in this respect at this stage. Suffice it to say that the receivers appointed pursuant to the order of Deputy Judge Woolley also harboured doubt on the alleged debt. Mr Smith in this regard submitted that Mr Cheung is entitled to oppose the petition in his capacity as a contributory. That is quite true. But I think the plaintiff in its own rights is also entitled to defend a claim that the majority of the present board now regards as dubious. If the defendants are not so restrained, the plaintiff's position in defending the petition will be jeopardised.

(4) The plaintiff is now technically insolvent. Both camps consider it vital to obtain injection of funds from outside investors. But any attempt to find a suitable investor may well be frustrated if two camps of directors with such bitter differences are allowed to represent the plaintiff at the same time.

49. For the above reasons, I am of the view that the balance tilts strongly in favour of granting the injunctions.

Costs

50. Counsel have already made preliminary submissions. Mr Scott submitted that the defendants should have given proper undertaking. The substantive hearing was unnecessary. He therefore asked for costs. Mr Smith submitted that the usual practice that costs should be the plaintiff's costs in the cause should be followed. I agree. I will therefore make an order *nisi* that the costs of the Injunction Summons including any costs reserved as between the plaintiff and the 3rd to 43rd defendants be the plaintiff's costs in the cause. I will also certify the matter to be fit for two counsel. The order *nisi* will be made absolute 14 days after handing down.

Other directions

51. This case clearly warrants a speedy trial. I will give the parties liberty to apply for directions in that regard if they so desire.

(J. Poon)
Deputy High Court Judge

Mr John Scott, SC, and Ms Janine Cheung, instructed by
Messrs Simon Siu, Wong, Lam & Chan, for the Plaintiff

Messrs Tony Kan & Co., for the 1st Defendant (excused from attendance)

Messrs C.Y. Chan & Co., for the 2nd Defendant (excused from attendance)

Mr Clifford Smith, SC, and Mr Douglas Lam, instructed by
Messrs Alvan Liu & Partners, for the 3rd to 43rd Defendants