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CACV 147/2010

**IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF APPEAL**

CIVIL APPEAL NO. 147 OF 2010  
(ON APPEAL FROM HCCL 16 OF 2006)

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BETWEEN

WANG RUIYUN Plaintiff

and

GEM GLOBAL YIELD FUND LIMITED Defendant

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Before : Hon Tang VP, Cheung JA and Fok JJA in Court

Date of Hearing : 25 October 2011

Date of Decision : 25 October 2011

Date of Reasons for Decision : 27 October 2011

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**REASONS FOR DECISION**

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Hon Cheung JA (giving reasons for decision of the Court) :

1. The defendant applied for leave to appeal to the Court of Final Appeal against our judgment of 20 June 2011. We

refused the application with costs to the plaintiff. We now give our reasons.

**Section 22(1)(a)**

2. The defendant first contended that it is entitled to appeal as of right under section 22(1)(a) of the *Court of Final Appeal Ordinance* (Cap. 484). This is misconceived. Under the first limb of section 22(1)(a), the sum which amounts to or is of the value of \$1 million must be a liquidated sum (*Cheng Lai Kwan v. Nan Fung Textiles Ltd* (1997-98) 1 HKCFAR 207). In the present case the amount sought by the plaintiff was not a liquidated sum. It was an unliquidated sum which required assessment by the Court. This remains the case even if the amount had been quantified : *Bill Chao Keh Lung v. Don Xia* (2004) 7 HKCFAR 260.

3. The defendant sought to rely what Ribeiro P.J. said in *China Field Ltd v. Appeal Tribunal (Buildings) (No. 1)* (2009) 12 HKCFAR 68 :

‘ 24. Consistently with the strict approach adopted in relation to the first limb of s.22(1)(a), it is only proper to ascribe a value which qualifies for leave as of right to the candidate claim or question if (i) on the evidence, such value is clearly quantifiable as a value of \$1 million or more; and (ii) the court is satisfied that the Court’s order made upon disposing of the proposed appeal would take effect by immediately conferring or imposing on the relevant parties a financial benefit or detriment in the quantified amount. It is not enough that one is able plausibly to say that such a financial impact is a likely eventual result of the appeal.’

4. This does not assist the defendant because Ribeiro PJ was addressing the second limb of section 22(1)(a) which is not

engaged in the present case. The present case is a breach of contract claim and is not a claim which involves some claim or question to or respecting property or some civil right.

**Section 22(1)(b)**

5. The only other basis for the defendant to obtain leave is under section 22(1)(b).

6. It has been said that section 22(1)(b) provides a discretion to grant leave which the Court of Final Appeal may exercise if it can be said as a matter of the utmost probability, or even of virtual certainty, that the damages ultimately awarded will be in excess of the threshold amount. But as pointed out in *Bill Chao Keh Lung*, this is, however, subject always to the grant of leave being justified by the apparent merits of the appeal.

7. The defendant contended that this Court erred on the question of available market and it is unsatisfactory to have conflicting decisions in Hong Kong and overseas jurisdictions on this point. In our view the great general public importance point is not engaged because we did not propound any conflicting principle which may require the resolution by the Court of Final Appeal. The real dispute is on the application of the established principles to the facts of the case.

8. Section 22(1)(b) is also not engaged as to the meaning of Order 18 Rule 12(1)(c).

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**‘Or otherwise’ ground**

9. We do not see that there are exceptional circumstances or injustice in this case which would engage the ‘or otherwise’ ground.

**Conclusion**

10. Accordingly the application is dismissed with costs to the plaintiff.

(Robert Tang)  
Vice-President

(Peter Cheung)  
Justice of Appeal

(Joseph Fok)  
Justice of Appeal

Mr. Ronny Tong SC and Mr Jeevan Hingorani, instructed by Messrs Alvan Liu & Partners, for the Plaintiff

Mr. Simon Westbrook SC and Mr Jose Maurellet, instructed by Messrs. Gall, for the Defendant