

**IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
CIVIL ACTION NO. 4463 OF 2008**

BETWEEN

CHIONG STANLEY Plaintiff

and

LAM YIP HING 1st Defendant

LUI KIT CHUN 2nd Defendant

Before: H H Judge Chow in Chambers (Open to the public)

Date of Hearing: 7 July 2009

Date of Decision: 7 July 2009

DECISION

1. The Plaintiff argues that the question turns on the mode of execution, not on authorisation in respect of the execution of the Bushell assignment (“the assignment”). The Plaintiff no longer argues that Tam or Tan lacked authorisation, but the point is the Plaintiff has not demonstrated what the mode of due execution should be. Of course, it would be a perfect

A answer if, on the face of the assignment, it was written due execution by an
B “A” director and a “B” director, but there is no such requirement. As I
C indicated in paragraph 11 of my decision handed down on 29 May 2009, in
D that paragraph, I said that clause 3(b) of the minutes imposes no
E requirement that the assignment must show expressly on its face that the
F Bushell assignment was signed by one “A” director and by one
G “B” director. That must be correct.

2. Now, if and when there is no requirement that on the
assignment it must be expressly shown that it was signed by one
“A” director and one “B” director, then what is the problem with the mode
of execution? There cannot be any problem because in fact the assignment
was signed by two directors “duly authorised” by the board of directors. It
must mean that it was signed by an “A” director and by a “B” director, and
so it must mean that the mode of execution was complied with. So this
submission cannot stand.

3. The Plaintiff argues that the Defendant’s solicitor did not
properly or satisfactorily answer the requisition made by the Plaintiff. The
Plaintiff’s requisition was set out in paragraph 3 of the decision. At
paragraph 2, it reads:

“We note that the (Bushell) assignment was executed by Tam Kraven
Kin-man and Tan Lim-heng on behalf of (Bushell). We also note that by
a board resolution dated 14 October 2004, the said Tam Kraven Kin-man
was not an authorised person in execution of any document. Please let us
have the documentary evidence to prove due execution of the Bushel
assignment.”

4. I must comment that this requisition was based on the wrong footing that Tam Kraven Kin-man was not an authorised person in the execution of any document. That must be wrong.

5. Now, the Defendant’s solicitor provides the answer to the requisition as set out in paragraph 3 of my decision:

“The Bushell assignment has been duly executed by the two directors, Section 20 of the Conveyancing and Property shall apply. We are of the view that due execution of the said assignment by the Vendor, Bushell Limited, was presumed under section 23 of the Conveyancing and Property Ordinance.”

6. The point is: was the Defendant’s former solicitor providing a factual answer to the requisition? It says that the assignment was duly executed by the two directors. Now, paragraph 6 of the decision sets out the execution page of the assignment. It reads:

“Sealed with the common seal of the vendor and signed by Tam Kraven Kin-man and Tan Lim-heng, directors who is/are duly authorised by the board of directors of the vendor and whose signatures is/are verified by:-”

7. Now, on the face of it, there was due execution of the assignment because it was expressly stated here the directors are duly authorised by the board of the vendor to execute the assignment, and the board of directors must have been aware of the board of meeting. When they say that the directors who signed the assignment were duly authorised by the board of directors, it must mean that one of them is an A director and the other one is a B director. So there cannot be any question that the assignment was duly executed by the two directors. Now, that provides a

A factual answer, a correct one to the requisition. So I cannot see anything
B wrong about the answer to the requisition.

C 8. So, in conclusion, the application for leave to appeal has no
D merits. So I dismiss this application.

E (Discussion re costs)

F 9. Costs of this application be to the Defendant, to be taxed if not
G agreed, with certificate for counsel.

H
I
J (Chow)
District Court Judge

K Mr Jason Wong, instructed by Messrs Chan, Wong & Lam, for the Plaintiff
L Mr Jonathan Chang, instructed by Alvan Liu & Partners, for both
M Defendants