

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE**

ACTION NO 1332 OF 2018

BETWEEN

YOE HAN YAUW (尤漢耀) Plaintiff

and

YOE HAN HIAN (尤漢賢) 1st Defendant

YOE HAN LENG, MARSHALL (尤漢令) 2nd Defendant

YOE HAN LAN (尤美蘭) 3rd Defendant

Before: Madam Recorder Rachel Lam SC in Chambers

Date of Supplemental Witness Statement of D1 and D2: 16 March 2022

Date of Plaintiff's Further Submissions: 22 March 2022

Date of Defendant's Reply Submissions: 24 March 2022

Date of Plaintiff's Final Reply Submissions: 25 March 2022

Date of Decision: 5 May 2022

DECISION

1. This matter first came before me on 3 March 2022 by way of an appeal against a Master's decision. The Defendants had sought leave from Master D To to file and serve supplemental witness statements of

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B the 1st and 2nd Defendants, and such application had been refused by the
C learned Master’s decision on 16 December 2021 (“the Master’s
D Decision”).

E 2. At this hearing, the Plaintiff was represented by Counsel Mr
F Ronald Ngan and the Defendants were represented by Counsel Mr Anson
G Wong Yu Yat.

H 3. The procedural history, insofar as it relates to the appeal, is
I as follows.

J 4. The action was commenced in June 2018. It concerns a
K dispute as to a partnership in which the parties to the action, all of whom
L are siblings, were said to be involved.

M 5. The Plaintiff took out an application for summary judgment
N on 26 November 2018. By a consent order on 20 August 2019, summary
O judgment was entered in respect of certain aspects of the claim.

P 6. Since then, it has been common ground between the parties
Q that the only outstanding issue in the action concerns whether certain land
R in the PRC in Shenzhen and the buildings thereon (“PRC Land”) were the
S assets of the partnership trading under the name of Long Kong Enterprise
T Co. Hong Kong (“Long Kong”), or whether they were held by Long
U Kong on trust (“the Remaining Issue”).

V 7. In the latter part of 2019, the Defendants – at the time
represented by another firm of solicitors, Messrs. Chak and Associates

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B (“C&A”) – indicated that they were going to take out a joinder
C application to join their mother to the action. This application was made
D in November 2019 after several orders had been made (including on an
E unless basis) against the Defendants in relation to the same. In May 2020,
the same application was withdrawn.

F 8. A case management summons was eventually refixed to
G October 2020, wherein the order was made by Master Dick Ho that
H parties should exchange all witness statements within 42 days of filing
and service of the Lists of Documents.

I 9. The original deadline for filing and exchange of witness
J statements (17 March 2021) came and went, but the Defendants had not
K filed the same.

L 10. On 20 April 2021, Messrs. Chan & Chan (the Defendants’
M current solicitors) filed a notice of change of solicitors for the
N Defendants. They informed the Plaintiff’s solicitors shortly thereafter that
O time was required for the transfer of the client file from C&A and
requested an extension of time for filing and exchange of witness
statements.

P 11. The parties endeavoured to agree a new timetable, but to no
Q avail. Eventually, on 11 May 2021, an unless order was made against the
R Defendants to the effect that unless they filed and exchanged their
S witness statements by 22 June 2021, they would be debarred from so
T doing.
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12. The parties did file and serve witness statements on 22 June 2021. However, insofar as the Defendants were concerned, this essentially took the form of adopting prior affirmations filed in these proceedings in full.

13. From August to October 2021, parties filed amended pleadings, which then were deemed closed on 11 November 2021.

14. In the meantime, a case management hearing took place before Master S H Lee on 28 September 2021, wherein *inter alia* an order was made that unless all interlocutory applications were taken out within 28 days after the close of pleadings, they would be debarred from doing so.

15. On 9 December 2021, the Defendants took out the application to file supplemental witness statements. This was heard before Master D To on 16 December 2021. The grounds relied upon then (and reiterated before this Court) were that (i) leave was needed in order to rectify certain mistakes in their original affirmations (without specifying which mistakes), and (ii) they wished to reply to the Plaintiff's witness statement filed on 22 June 2021 (without identifying which passages). The grounds remained the same in the first hearing before this Court on 3 March 2022.

16. Whilst the transcript of the hearing before the Master was not available, I was informed by Mr Ngan that a key reason why the application had been refused by the Master was because no draft supplemental statements had been provided to the Court at that stage; and

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B the Master was not prepared to grant blanket leave to the Defendants to
C file supplemental statements in circumstances where it was unknown
D whether those statements would actually assist the Court in due course.
E Mr Wong confirmed that that was his understanding of the position
before the Master as well.

F 17. By the time the matter came before me on 3 March 2022
G almost three months later, no such drafts had been prepared, and the
H Plaintiff maintained the objection to the application on such basis
(amongst other submissions relating to lateness and prejudice).

I 18. After hearing the parties' submissions, I indicated to the
J Defendants that my preliminary view was that it was unsatisfactory that
K they had not prepared such drafts, but that as to the Plaintiff's other
L grounds of objection they were not so detrimental as to constitute reasons
M to dismiss the appeal altogether. This was based upon various authorities
N brought to my attention by the Plaintiff which suggest that the better
O practice is that parties ought to apply with draft supplemental statements
P such that the Court and all parties can consider the relevance and
Q admissibility of the contents therein (see *Parsad v Great Wealthy
R Engineering Co Ltd* [2012] 3 HKLRD 705 at §§3 to 7; also *Ho Wai Tung
S v Ho Fung* [2020] 4 HKLRD 508). I had also taken into account the fact
T that the parties were not yet on the brink of trial (no trial date having been
U fixed), but that there had already been substantial delay in the past
V procedural history (as above); and further, that in the grand scheme of
things it would be desirable to allow the parties to lay before the court
relevant facts in support of their respective cases.

19. As a matter of efficient case management, and bearing in mind a case management conference had been fixed for 18 May 2022, I inquired whether the Defendants would be able to provide such witness statements so that the parties could properly consider the true issues between them. Mr Wong confirmed that his clients could do so. Mr Ngan indicated that his client would be amenable to such course as well. It was in those circumstances that the Defendants undertook through counsel that signed witness statements (for which leave had not yet been given) would be provided by 5pm on 16 March 2022, and orders were given *inter alia* that:

- (1) The matter was adjourned to 24 March 2022;
- (2) The Defendants were to file skeleton submissions on 18 March 2022;
- (3) The Plaintiff was to file skeleton submissions on 22 March 2022;
- (4) The Defendants were ordered to pay the costs of and occasioned by the hearing on 3 March 2022, summarily assessed at \$70,000.

The intention was originally that the matter could come back before me on 24 March 2022. However, the fifth wave of Covid intervened and I subsequently ordered a determination of the adjourned matter on the papers.

20. The Defendants have now prepared the signed supplemental witness statements of the 1st and 2nd Defendants. The contents thereof may broadly be summarized as follows:

(1) The 1st Defendant's supplemental statement addresses various allegations by the Plaintiff concerning a set of cash books and a safe that was kept in the PRC, and the handling thereof. The 1st Defendant addresses the case that the funds therein did not belong to Long Kong, but to other entities or parties. The parties' respective allegations in this regard go towards the Remaining Issue.

(2) The 2nd Defendant's supplemental statement addresses:

(a) The history of the parties' family business, the key assertion from the 2nd Defendant being that the family wealth had been accumulated long before the 1970s (earlier than when the Plaintiff suggests), and that therefore the parents had sufficient financial capacity to acquire the PRC Land without utilizing the financial resources from Long Kong.

(b) The nature of the management and operation of Long Kong throughout the years, including the allegation that it was part of the family business and not a standalone business.

(c) The reasoning behind the purchase of the PRC Land, and the source of funds in purchasing the PRC Land (the Defendants' case being that the funds were not

from Long Kong, and Long Kong was only used as a vehicle).

(d) Certain specifics as to the purchase price and payment for the PRC Land.

(e) The alleged falsity of the Plaintiff's evidence as to a proposal to transfer the ownership of the PRC Land to another entity.

21. The Plaintiff has narrowed down the objections to certain aspects and paragraphs of the supplemental statements, which may be summarized as follows:

(1) Certain sentences in the 1st Defendant's supplemental statement are said to be statements of opinion or belief, are repetitive of prior evidence, and/or are unhelpful general denials of the Plaintiff's evidence.

(2) As to the 2nd Defendant's supplemental statement, the Plaintiff:

(a) Objects to the first section on the history of the family business as being irrelevant or not directly relevant to the Remaining Issue.

(b) Objects to the sections on the management and operation of Long Kong, as well as the source of funds for purchase of the PRC Land), as being repetitive and/or simply commentary and therefore inadmissible.

(3) In respect of both supplemental statements, the Plaintiff highlights various discrepancies between the evidence now sought to be put forward and the evidence formerly filed.

(4) In addressing the above objections, the Plaintiff points to various authorities which stand for propositions *inter alia* that:

(a) A witness statement should be confined to material facts and not contain argumentative points or expressions of opinion (*White Book*, §38/2A/6; *Re Linea Trading Company Ltd*, HCCW 350/2004, unreported judgment dated 11 July 2005); and

(b) A witness statement should address real rather than unnecessary issues; and proper conduct of litigation does not mean having rounds of witness statements for point by point rebuttal or arguing the case. A supplemental statement which is of little probative value, simply repetitive, or seeks to anticipate arguments is of little assistance (*Million Decade Limited v Tung Fai (also known as Dong Hui)*, HCA 1660/2013, unreported judgment dated 20 April 2016).

22. The above objections are addressed in the Plaintiff's written submissions dated 22 March 2022 and 25 March 2022, both of which I have considered.

23. By submissions dated 24 March 2022, the Defendants disagree with the above, and essentially invite the Court to view the objected parts or sentences in context. The points are essentially that:

- (1) The select sentences or paragraphs objected to by the Plaintiff are concluding remarks or connective points which draw together the factual matters relied upon to assert the Defendant's understanding or position.
- (2) Insofar as there are repetitive aspects in certain paragraphs, this is done in order to place the evidence in context and enhance readability.

24. Having considered the contents of the supplemental statements, and the parties' respective submissions, I have decided to allow the Defendants' appeal:

- (1) I would not have allowed the appeal had the supplemental statements not been provided (see paragraphs 17 to 19 above).
- (2) However, having had the opportunity to consider the contents of the supplemental statements, I take the view that the matters addressed are relevant and admissible, and would assist the Court in the determination of the issues to be ventilated at trial. Viewed broadly, the supplemental statements do address the Remaining Issue, whether directly or in a more indirect manner, and are thus relevant.

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(3) Those specific sentences or paragraphs which the Plaintiff has raised objection to are, seen within the overall structure of the statements, of assistance insofar as they give context and draw together various aspects of evidence. In the particular circumstances of this case, I do not see the utility or benefit of engaging in too fine a sieving process to filter out select sentences or paragraphs, when such passages are, on balance, of assistance.

(4) Insofar as the Plaintiff points to select inconsistencies with evidence previously filed, that is not a point that can be addressed at this juncture. This is better addressed at trial.

25. In the circumstances, the appeal is allowed. I will make the following orders:

- (1) Leave is granted to the 1st to 3rd Defendants to file and serve the supplemental witness statements of the 1st and 2nd Defendants dated 16 March 2022 within 3 days of the order to be made herein; and
- (2) Leave is granted to the Plaintiff to file and serve any supplemental witness statement(s) in reply, if so advised, within 28 days thereafter.

26. I note that in the original summons dated 9 December 2021 (the subject of the Master's decision on 16 December 2021), an additional order had been sought in relation to disclosure of documents. I do not make any such order as:

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- (1) The parties had not indicated what their stance was in relation to that paragraph.
- (2) The parties have a continuing obligation of disclosure. It is incumbent upon the parties to disclose relevant documents in any event.
- (3) There is an upcoming case management conference (on 18 May 2022). The parties should take stock and address any further interlocutory steps that need to be taken prior to that.

27. As to costs, I make an *order nisi* that the Plaintiff shall have the costs of the appeal up to and including 2 March 2022, and there shall be no order as to costs in relation to the costs incurred in the appeal following 3 March 2022. In coming to this determination, I have taken into account the entire procedural history of the matter leading up to the present paper disposal, and would highlight the following specific matters:

- (1) The Defendants had borne the costs of the hearing itself on 3 March 2022, as summarily assessed on 3 March 2022. The reasoning behind this is set out in paragraphs 17 to 19 above.
- (2) Directions had been given that the Defendants should, following the provision of the witness statements, file skeleton submissions addressing the relevance and admissibility of the same. I bear in mind that it is incumbent on the Defendants, as applicant, to demonstrate these matters when seeking leave to file and serve the relevant supplemental statements. However, they did not do so. It

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was only after the Plaintiff filed what were originally meant to be their responsive submissions (on 22 March 2022) that the Defendants then filed their first set of submissions on the relevance and admissibility on 24 March 2022.

(3) I had indicated to both sides at the 3 March 2022 hearing that following the provision of the witness statements, parties should endeavour to come to a practical and reasonable view as to whether the contents were agreeable. It does not seem that such steps had taken place, with the Defendants being altogether reticent in failing to explain what their stance was, and the Plaintiff subsequently taking too fine a point in many of their apparent objections.

(4) In those circumstances, I consider that the costs of the paper disposal following 3 March 2022 should effectively be borne by the respective parties themselves.

28. The aforesaid costs are to be assessed by way of gross sum assessment in writing. The Plaintiff shall lodge and serve a statement of costs within 14 days of this decision, and the Defendants shall provide comments thereon within 14 days thereafter.

29. I thank counsel for their assistance.

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(Rachel Lam SC)
Recorder of the High Court

Mr. Ronald Ngan, instructed by Alvan Liu & Partners, for the Plaintiff
Mr Anson Wong Yu Yat, instructed by Chan & Chan, for the 1st to 3rd
Defendants