In The Supreme Court of Bermuda

CIVIL JURSDICTION
COMMERCIAL COURT
2010: No 424

BETWEEN:

NG PUI LUNG

Plaintiff

-v-

1. CY FOUNDATION GROUP LIMITED

1st Defendant

2. LUCK CONTINENT LIMITED

2nd Defendant

REASONS FOR DECISION

(In Chambers)

Date of Decision: April 7, 2011
Date of Reasons: April 13, 2011

Mr. Cameron Hill, Sedgwick Chudleigh, for the 1st Defendant
Mr. Victor Lyon Q.C., Attride-Stirling & Woloniecki,
for the 2nd Defendant

Background

1. When the present proceedings were commenced by the Plaintiff, an independent director of CY Foundation Group Limited ("the Company"), the Company appeared to be under the control of responsible management seeking to remedy a comparatively minor delinquency with the convening of the 2010 AGM. The 2nd Defendant ("Luck Continent"), seemingly somewhat histrionically, contended from the outset that the

opposing faction in the ongoing takeover battle was acting in bad faith in delaying the meeting because it feared that Luck Continent would vote them out of power.

2. At the directions stage, I declined to grant leave to cross-examine on the affidavits because it seemed to me impossible and unnecessary to resolve the truth about the allegations that, *inter alia*, had resulted in the arrest in or about August, 2010 in Hong Kong of Mr. Cheng and Ms. Yung, prominent members of the Board. This arrest was apparently the result of a complaint made by Luck Continent (which was interested in ousting the "Cheng faction" so that the "Poh faction" could assume control of the Company); and was hardly a neutral complainant. Shortly before I delivered Judgment on the respective applications under section 76 of the Companies Act 1981 with respect to the Company's 2010 AGM, it was brought to my attention that the two individuals previously arrested had now been criminally charged. I did not consider it necessary to take this development into account in light of both the scope of my March 1, 2011 Judgment and the presumption of innocence.

3. Accordingly, on March 1, 2011, I rejected the Company's case that the 2010 AGM should be postponed pending an independent review of the audited accounts without any finding that the Company's conduct was tainted with bad faith. I ordered that:

> "*3. The 1st Defendant shall forthwith give notice of the 2010 Annual General Meeting in accordance with its Bye-Laws to be held on a date not more than 30 days from the date of this Order, for the purpose of transacting the following items of business:*
>
> *a. to nominate, appoint and vote on the directors to fill the vacancies arising from the retirement by rotation of part of the directors of the Company pursuant to Bye-laws 87 and 88 of the company's Bye-laws;*
>
> *b. to receive and consider the audited financial accounts of the Company for the year ended 31st March 2010 together with the reports of the directors and auditors;*
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> *c. to appoint the Company's auditor and to fix its remuneration pursuant to Bye-Laws 154 and 156;"*

4. The reasons for this Order were summarised in the Judgment as follows:

> "*40. The Court has jurisdiction under section 76(1) to give directions for the convening of the AGM because it is impracticable to convene the meeting within the time specified by section 71(1) of the Act and the Bye-laws. However, the only appropriate way in which the Court's discretion can be exercised is to give directions for the convening of the AGM "as soon as practicable" with a view to giving effect to the directors' duties under section 72(1). This is because of the importance the statutory scheme attaches to enabling the shareholders to elect directors at the AGM, albeit that the*

Company's internal constitution means that not all the directors' seats are "up for grabs"[1].

5. The March 1 Order directed that the 2010 AGM be held no later than March 31, 2011 because of the statutory and corporate constitutional importance of the shareholders' right to elect fresh directors on an annual basis. Luck Continent applied by Summons dated March 8, 2011 for an ancillary order authorising it to convene the AGM if the Company failed to do so. On March 9, 2011, I declined to accede to this application on the grounds that it was premature. I heard argument in this regard on March 8, 2011, together with an application by the Plaintiff for a stay of the March 1, 2011 Order pending appeal, which application I also refused.

6. On March 24, 2011, the Company's March 16, 2011 application for its first extension of the deadline fixed by the March 1, 2011 Order was heard. The Company sought this relief on credible and seemingly responsible grounds, namely the need to afford shareholders reasonable notice of the Luck Continent nominees and the need to ensure that the Hong Kong Stock Exchange ("HKEx") did not object to a departure from the usual 10-day notice rule. The Company, over Luck Continent's vigorous objections that this was merely an unjustified attempt to put off the evil day when the Cheng faction would lose control of the Board, obtained an Order on March 24 in the following terms:

> "*1. The time provided for in paragraph 3 of the Order of Mr. Justice Kawaley dated 1st March 2011, for the convening of an Annual General Meeting be extended to not later than 6 April 2011 on condition that the Annual General Meeting proceeds at that time in regards the business of the election of directors provided that no objection is raised by the Hong Kong Stock Exchange.*
>
> *2. Liberty to apply for further directions at short notice.*"

7. The Company's Financial Advisor requested a waiver of the 10-day rule. The HKEx did not raise any objections to the Meeting taking place. On the contrary, it indicated that the relevant Listing Rules did not entitle it to object to or waive compliance with the 10-day rule. It was entirely a matter for the Company's Board to determine whether or not 10-days' notice of the relevant nominations was actually required. The Company at this juncture advised the HKEx that it considered 10-days' notice was required, and applied to this Court for a further extension of time beyond the April 6, 2011 extension for convening the 2010 AGM. In contending that 10 day's notice was required, it relied on matters which it knew or ought to have known prior to the March 24, 2011 hearing.

8. I refused the second extension of time request on April 1, 2011. In so doing, I concluded as follows:

[1] *Ng Pui Lung -v- CY Foundation et al* [2011] SC (Bda) 13 Com (1 March 2011).

> "*18…I have found that the position which has been advanced today has not been advanced in good faith. I have accepted that the representations made to me on March 24, 2011 and to the HKEx immediately thereafter were made in good faith. It is a situation where I was bound to find that something was done in bad faith. What I have found is that the newly advanced reason (for a postponement of the AGM) has been advanced in bad faith.*"[2]

9. This finding again represented a somewhat benign view of the Company's conduct, in circumstances where, for the first time, I strongly suspected that those involved in convening the meeting (a) had no desire to convene it, and (b) were not averse to misleading this Court. Luck Continent applied, after the April 6, 2011 Meeting, to seek relief flowing from the failure of the Chairman of the Meeting to count Luck Continent's votes, ignoring the advice of the Company's Bermudian lawyers (who had now resigned as a result). This application was filed and initially heard on the afternoon of April 6, 2011 (Bermuda time). Mr. Hill for the Company understandably sought an adjournment to take instructions. The Luck Continent application was continued to conclusion on the afternoon of April 7, 2011. However, I granted an interim injunction restraining the Company from acting upon the resolutions purportedly passed at the Meeting until the present application was heard.

10. It was by this juncture clear that the Company had progressed from being merely delinquent, at the beginning of these proceeding, to being a rogue company apparently controlled by persons facing criminal charges who had no compunction about acting in a lawless manner. By the Company's own poll, the crucial resolutions would have been passed by a clear margin in Luck Continent's favour if its votes had been counted, passing control of the Company from the Cheng to the Poh faction. And by the Company's own admission, the decision not to count Luck Continent's votes was (a) inconsistent with its Bermuda lawyers' advice; and (b) not supported by any other legal advice.

11. It was against this background that on April 7, 2011 I ordered the Company to count the votes of Luck Continent and give effect to the resolutions which were lawfully passed by the majority of shareholders voting at the 2010 AGM in accordance with this Court's Orders and the Company's own internal constitution. These are the reasons for this decision.

Factual findings: how Luck Continent's votes came to be rejected

Madam Leung's claim to represent the true beneficial owner of Luck Continent's shareholding in the Company

12. It has been common ground throughout these proceedings that Luck Continent is the registered shareholder of 46.153% of the Company's shares and that Poh Po Lian is the sole director and shareholder of Luck Continent. It was implicit in this Court's orders of

[2] *Ng Pui Lung -v- CY Foundation et al* [2011] SC (Bda) 16 Com (1 April 2011).

March 1 and 24, 2011 that the meeting was to take place to enable Luck Continent to cast its votes. However, on March 31, 2011, prominent Hong Kong Solicitors Deacons wrote to Peter K.S. Chan & Co., Solicitors for Mr. Cheng and Ms. Yung in the minority shareholder oppression proceedings currently pending before Barma J in Hong Kong, to assert the following claim.

13. Deacons had been instructed by Madam Leung, the mother and Intended Administratrix of the late Kenny Nam, on the grounds that the deceased and/or Sino Gain holdings Corporation was the beneficial owner of Luck Continent's shares in the Company. Henry Wai & Co., Solicitors for Luck Continent roundly denied these allegations (April 1, 2011) and countered that (a) Madam Leung had since early 2010 been acting on behalf of the Cheng faction to resolve the battle for control of the Company; (b) the claim was unsupported by any documentation, and (c) prior to Kenny Nam's death in May 2008, he had never asserted a beneficial interest in Mr. Poh's shares despite being in a position to assert such a claim (April 4, 2011). On the same day, Deacons asserted a "*beneficial claim over the shares of Luck Continent and/or the shares of the Company currently registered in the name of Luck Continent*". It also seems that an application was filed for the grant of Letters of Administration to Madam Leung on April 4, 2011. On April 6, 2011, Deacons formally notified the HKEx and registered Madam Leung's interest in the shares of Luck continent and its shareholding in the Company. The Chairman of the Company's Board was given copies of the latter documentation.

14. At first blush, Madam Leung's claim, both in its timing and lack of specificity, had a strong aura of fabrication about it. However, for legal reasons that I will come to, no need to adjudicate the merits of this claim arose.

The decision not to count Luck Continent's vote at the AGM

15. It appears that those handling the recording of votes at the meeting did so with scrupulous fairness and that the only challenge to the results is the failure to count those cast by Luck Continent. How this decision came to be made is explained in the evidence filed in opposition to Luck Continent's April 6, 2011 application. The Meeting was chaired by Executive Director Wu Chuang John when Mr. Cheng failed to appear. The crucial portion of the First Wu Affirmation reads as follows:

> "*10. All the shareholders duly voted at the meeting. But upon objections raised by various shareholders at the meeting that Luck Continent be allowed to participate in voting, I took the decision that Luck Continent's votes should not be counted.*
>
> *11. I made the decision without reference to any advice. Prior to the AGM, I was shown a copy of the advice from the Company's Bermuda lawyer advising that the Company should accept the votes returned by Luck Continent at the AGM, and need not have regard to the letters from Deacons dated 31 March 2011. By the time of the AGM, this advice had been overtaken by events, namely that:*

(a) By letter dated 4 April 2011, Deacons put the Company on notice of their client's claim to the beneficial interest in the shares of Luck Continent; and
(b) By letter dated 6 April 2011, just prior to the AGM, Deacons notified the Company of their client's interest by lodging a Form 1-Individual Substantial Shareholder Notice-with the Stock Exchange Hong Kong."

16. Mr. Hill made it clear in the course of argument that the Company based its case on the legality of the decision not to count Luck Continent's votes not on Bermuda corporate law; but on Hong Kong regulatory law. Mr. Wu in his Affirmation took the view that the Bermuda law advice (from Conyers Dill & Pearman) had been "*overtaken by events*". However, the Company Secretary, Cheung Chin Wa Angus, deposed in his First Affirmation that after the meeting the Company announced that further advice (further to Conyers Dill & Pearman's April 4, 2011 email advice) would be taken about the validity of Luck Continent's vote.

The Hong Kong regulatory law position

17. Assuming Hong Kong conflict of law rules to be the same as Bermuda's, I found it noteworthy that no evidence was adduced (or sought to be adduced) to the effect that the validity of votes taken by shareholders at the AGM of a Bermudian company fell to be determined by Hong Kong law. In rejecting Mr. Hill's request-in response to this point from the Bench- for more time to seek such expert evidence, I took into account the fact that the Company was first put on notice of the beneficial claim on March 31, 2011, a week before the AGM. As the vote of Luck Continent had been for several months of such great significance to those who controlled the Company, that seemed more than sufficient time to put together at least the bare bones of an arguable Hong Kong law position. What was advanced fell short of even this low threshold.

18. The Company relied on the Second Affidavit of Lee Wa Lun Warren in support of the proposition that under section 336 (5) of the Hong Kong Securities and Futures Ordinance, the Filing of a Form 1 created a presumption that the registered interest was valid. There were four main problems with this argument:

    (1) firstly, the deponent (a non-lawyer) claimed to be competent to give evidence about "*the status of equitable interests in the shares of listed companies and the issues relating to the disclosure of such interests*", but failed to identify any relevant qualifications for undertaking an essentially legal task;
    (2) secondly, the deponent was not independent, being the principal of the financial advisors to the Company, advisors which I found on April 1, 2011 had been involved in advancing bad faith arguments to the HKEx;

(3) the statutory provision relied upon appeared on its face to have precisely the opposite meaning to that contended for by the deponent[3];
(4) no explanation was proffered in evidence or by way of argument as to why these regulatory rules should override the law of the Company's place of incorporation and its internal constitution.

The resolutions recorded and the impact of not counting Luck Continent's vote

19. According to the notice published by the Company itself on April 6, 2011 ("*ANNUAL GENERAL MEETING ON 6 APRIL 2011-POLL RESULTS*"), the total number of shares eligible to vote excluding Luck Continent's 3,216,264,127 shares (46.15%) was 3,752,446, 199. Since the total number of votes cast on each resolution ranged between 1.80 and 1.83 billion shares, it was obvious that Luck Continent's 3.2 billion shares represented a controlling bloc of votes, constituting roughly 64% of votes cast at the AGM.

20. Luck Continent accordingly admittedly had the ability, most crucially, to elect its nominees as directors and block the re-election of the retiring directors.

Legal findings: the validity of the failure to count Luck Continent's votes

The terms of the Ancillary Order

21. Luck Continent applied by Summons dated April 6, 2011 for ancillary relief pursuant to the substantive Order it obtained on March 1, 2011, as modified by paragraph 2 of the March 24, 2011 Order ("the Final Order"), directing that the 2010 AGM should be held no later than April 6, 2011. On April 7, 2011, I ordered that:

> "*(1)The votes cast on behalf of the 2nd Defendant as the registered shareholders of 3,216,264,127 in the 1st Defendant at the AGM of the 1st Defendant held in Hong Kong on April 6th 2010 shall be counted in respect of the matters referred to in the Orders of Kawaley J of March 1st and March 24th 2011, in particular in respect of the election of directors, and in respect of all the resolutions referred to in the 1st Defendant's Notice of Poll Results dated Hong Kong 6th April 2011, notwithstanding the notice given to the Chairman of the said meeting of the allegations of a trust of the said shares set out in a letter dated April 12, 2011 from Deacons to the Chairman of the Board of Directors of the 1st Defendant, attached hereto in Schedule 1 and notwithstanding an announcement at the said meeting by the Chairman of the said Meeting that the said votes were not to be counted;*

[3] Section 336(5) provides as follows: "*A listed corporation is not, by virtue of anything done for the purposes of this section, affected with notice of, or put upon enquiries as to, the rights of any person in relation to any shares or equity derivatives.*"

(2)The results of the votes cast being counted shall be as set out in Schedule 2 hereto;

(3)The results of the vote, including the votes cast on behalf of the 2nd Defendants as aforesaid, as set out in (2) herein, shall be published forthwith by the 1st Defendant in compliance with the requirements of Rule 13.39(5) of the Main Board Listing Rules of the Hong Kong Stock exchange and shall be, in all respects, the legal, proper and effective election of directors pursuant to Bye-Laws 87 and 88 as required by the Orders of Kawaley J of March 1st and March 24th 2011 and shall be the legal, proper and effective decision of the AGM on the other resolutions made at the AGM;

(4)The current Board of the 1st Defendant take all steps necessary to permit, and take no steps to impede, directly or indirectly or by any means whatsoever, the directors elected as aforesaid to take up their positions and exercise their powers under the Bye-Laws of the Company…"

22. This relief was ancillary to the Final Order in that it resolved a dispute which arose at the 2010 AGM as to the eligibility of Luck Continent to vote, an eligibility which had not been challenged in the course of the present proceedings up to and including the date of the Final Order. A fundamental basis of the Final Order granted on Luck Continent's cross-application was that the meeting ought to be held as soon as possible to enable it to vote with a view to changing the composition of the Board. As was noted in the conclusions set out at the end of the March 1, 2011 Judgment:

> "*40.The Court has jurisdiction under section 76(1) to give directions for the convening of the AGM because it is impracticable to convene the meeting within the time specified by section 71(1) of the Act and the Bye-laws. However, the only appropriate way in which the Court's discretion can be exercised is to give directions for the convening of the AGM 'as soon as practicable' with a view to giving effect to the directors' duties under section 72(1). This is because of the importance the statutory scheme attaches to enabling the shareholders to elect directors at the AGM, albeit that the Company's internal constitution means that not all the directors' seats are 'up for grabs'* ".

23. On March 24, 2011, on the Company's application, the meeting date was extended from March 31, 2011 to April 6, 2011, "*provided that no objection is raised by the Hong Kong Stock Exchange.*" On April 1, 2011, I refused a further attempt to postpone the convening of the AGM on the grounds that the reasons advanced for the further extension were advanced in bad faith. Implicit in that refusal was the desire of this Court to ensure compliance with the Final Order so that Luck Continent would be able to exercise its statutory right to vote at the overdue 2010 AGM.

The Companies Act 1981 and the relevance of beneficial owners to shareholder voting rights

24. Mr. Victor Lyon QC for Luck Continent submitted that the key statutory provision which demonstrated that Madam Leung's claim legally irrelevant to his client's voting rights was the following subsection in section 65 of the Companies Act 1981:

> "*(7) A company shall not be bound to see to the execution of any trust, whether express, implied or constructive, to which any of its shares are subject and whether or not the company had notice of such trust; and the receipt of the person, firm or corporation in whose name any share stands shall be sufficient discharge to the company for any money paid by the company in respect of such share notwithstanding any trust to which it may be subject.*"

25. This provision was ultimately derived from section 30 of the Companies Act, 1862 (UK). The rule that a company did not have to concern itself with anyone save for the registered shareholder had been settled company law for over 100 years, counsel submitted in reliance upon the judgment of Jessell M.R. in *Pender-v- Lushington* (1877) 6 Ch.D 70. In this case the disallowance of votes cast at a general meeting by a registered shareholder on the grounds that he held some of his shares on trust for third parties was held to be invalid[4]:

> "*Now the argument is, that the words "every member" mean, not a man registered on the list of shareholders, but any person beneficially entitled to shares, because if not carried to that extent I do not understand the argument at all. If it means that a man may hold 1000 shares beneficially, or that a man may disunite his shares, then there is no reason why he should be disqualified because he has one share in his own name or ten shares in his own name. Therefore the argument must go the whole length that any one man entitled beneficially to more than 1000 shares is not entitled to put them in the name of two or more persons as trustees for him, so as to allow those two or more persons to exercise the power of voting under the articles. It must go to that extent. But, taking even the restricted view, and reading the words "every member" to mean only a person whose name is on the register, then it means this, that any man whose name is registered as a holder of shares cannot, if he is the cestui que trust of other shares, give together with his trustee more votes than if all the shares were registered in his own name. Those are the propositions with which I must deal.*
>
> *The first observation which strikes one is that these are votes at general meetings. How are you to ascertain who is to vote? That is pointed out by the articles of*

[4] The decision is such a famous one that the portions of the judgment on which Mr. Lyon relied are even reproduced in Wikipedia.

association. First, who are to be summoned to attend the general meetings? You find by Article 48 that notice is to be given to "the members hereinafter mentioned." What does the word "members" mean in that article? The definition clause, like many other definition clauses, is one which defines nothing. It says: "Member means member for the time being of the company," that is, member means member. But then one must remember that the word "member" has a meaning in the Companies Act , and it means primâ facie a registered shareholder or stockholder, and that must be the meaning here, because how else are you to give him notice at all? You can only give him notice by referring to the register which, under Article 2, is "to be kept pursuant to the terms of the Companies Act, 1862." So that a member is a man who is on the register.

[His Lordship then reviewed the several articles of association, which shewed that a member of this company meant a person whose name was on the register of shareholders, and that the title of any member to vote could only be found out by reference to the register. His Lordship then continued:—]

It appears to me that it is plain from reading these articles alone that the articles meant to refer to a registered member, but I think it is made, if possible, plainer—though I doubt whether it could be made plainer when you come to consider that it would not be possible to work the company in any other way, for how else could the company hold meetings or demand a poll, or have the votes taken by the scrutineers? — but if possible it is made plainer by the 19th article, which says: "The executors and administrators of a deceased member shall be the only persons recognised by the company as having any title to his share," and also provides that "the company shall not be affected by notice of any trust." And the 30th section of the Companies Act 1862, says: "No notice of any trust express, implied, or constructive, shall be entered on the register, or be receivable by the Registrar in the case of companies under this Act, and registered in England or Ireland." It comes, therefore, to this, that the register of shareholders, on which there can be no notice of a trust, furnishes the only means of ascertaining whether you have a lawful meeting or a lawful demand for a poll, or of enabling the scrutineers to strike out votes.

The result appears to me to be manifest, that the company has no right whatever to enter into the question of the beneficial ownership of the shares. Any such suggestion is quite inadmissible, and therefore it is clear that the chairman had no right to inquire who was the beneficial owner of the shares, and the votes in question ought to have been admitted as good votes independently of any inquiry as to whether the parties tendering them were or were not, and to what extent, trustees for other persons beneficially entitled to the shares."[5]

26. Mr. Hill did not posit any reason why the rule in *Pender-v- Lushington* (1877) 6 Ch.D 70 should not be regarded as accurately reflecting the position under Bermuda law. I readily

[5] (1877) 6 Ch.D 70 at 77-78.

accepted that this case should be accepted as highly persuasive authority on the terms and effect of section 65(7) of our Companies Act. In a decision which was only reported after the hearing of the present application, the relevant principles were affirmed by the English Supreme Court in *Farstad Supply A/S-v- Enviroco Limited*, The Times Law Reports, April 12, 2011. Ironically, the judgments in this case were handed down on the same day that the Meeting took place. In the *Envirico* case, Lord Collins opined as follows ([2011] UKSC 16):

> "*37. The starting point is that the definition of "member" in what is now section 112 of the 2006 Act (section 22 of the 1985 Act for the purposes of this appeal) reflects a fundamental principle of United Kingdom company law, namely that, except where express provision is made to the contrary, the person on the register of the members is the member to the exclusion of any other person, unless and until the register is rectified: In re Sussex Brick Company [1904] 1 Ch 598 (retrospective rectification of register did not invalidate notices).*
>
> *38. Ever since the Companies Clauses Consolidation Act 1845 and the Companies Act 1862 membership has been determined by entry on the register of members. The companies legislation proceeds on that basis and would be unworkable if that were not so. Among the many provisions relating to members are these:*
>
> *(1) a member will be bound by alterations in the company's articles, subject to specified exceptions (section 25, 2006 Act);*
> *(2) there are elaborate provisions relating to the register of members (sections 113 et seq), including a duty to keep an index of members (section 115) and rights to inspect and require copies (sections 116-121), and documents in hard copy form must be sent to a member at his address as shown in the register of members (schedule 5, Part 2);*
> *(3) a subsidiary cannot be a member of its holding company (section 136); (4) elaborate provision is made for voting by members, by proxies appointed by members, and by joint holders (sections 281 et seq);*
> *(5) the company must send its annual accounts and report to every member (section 423);*
> *(6) unlawful distributions may be recovered from a member who knows or has reasonable grounds for believing that it is unlawfully made (section 847(2)).*
>
> *39. For those and other purposes the legislation makes it clear that the member is the person on the register, and where it is necessary to apply the legislation to persons who are not on the register, special provision is made…*"

27. The other key provision in our own legislative scheme is section of the Companies Act 1981, which provides as follows:

> "***Definition of member***

19 (1) The subscribers to the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members but in the case of a company limited by shares, or other company having a share capital, only if shares have been allotted to them.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

(3) In this section "register of members" includes any branch register kept under section 65."

Relevant Bye-law provisions

28. Mr. Lyon also referred to the Bye-laws in the course of argument. It was readily apparent that these mirrored the statutory position in terms of rendering irrelevant any beneficial interests in shares. Bye-law 1 defines "*Member*" as meaning "*a duly registered holder from time to time of the shares in the capital of the Company*".

29. Bye-law 14 is even more explicit than section 65(7) in stating:

> "*Except as required by law, no person shall be recognised by the Company as holding any share upon any trust and the Company shall not be bound by or required in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any fractional part of a share or (except only as otherwise provided by these Bye-laws or by law) any other rights in respect of any share except an absolute right to the entirety thereof in the registered shareholder.*" [emphasis added]

30. Although the substance of Bye-law 14 is the same as section 65(7) of the Act, the language used in the Bye-law (highlighted in the above extract) appears to give added emphasis to the fact that the rights of the registered shareholder alone shall be recognised, save as may be required (a) by law, or (b) the Bye-laws.

31. It was not submitted on behalf of the Company that any provision of Bermuda law or the Bye-laws authorised a departure from the principle enshrined in Bye-law 14. Indeed, the core rule governing eligibility to vote at the AGM appears to be contained in Bye-law 76, which provides as follows:

> "*No member shall, unless the Board otherwise determines, be entitled to attend and vote and to be reckoned in a quorum at any General Meeting unless he is duly registered and all calls or other sums presently payable by him in respect of shares in the Company have been paid.*"

Summary: Luck Continent was qualified to vote

32. It was effectively conceded that, having regard to the relevant provisions of the Companies Act and the Bye-laws, Luck Continent was qualified to vote. The suggestion that these fundamental provisions of Bermuda company law and the Company's internal constitution could be overridden by the filing of notice of a beneficial interest under the Hong Kong Securities and Futures Ordinance was wholly unarguable. Mr. Hill, who represented the Company very ably in difficult circumstances, lent these hopeless submissions a degree of respectability which they did not deserve.

Conclusion

33. For the above reasons I made the Ancillary Order on April 7, 2011 directing that the results of the 2010 AGM should be modified so as to give effect to the invalidly disregarded majority vote of Luck Continent.

34. Not only was it plain and obvious that Luck Continent's votes had not been counted in flagrant breach of fundamental principles the Company's domiciliary law and its internal constitution. The refusal to count Luck Continent's controlling bloc of votes with respect to the election of directors constituted a deliberate frustration of the terms of the Final Order in this action.

35. The facts of the present case also required this Court to take into account: (a) the large number of Bermuda companies which are listed on the Hong Kong Stock Exchange, (b) the interests of public shareholders of the Company, and (c) the need to protect Bermuda's reputation as an international financial centre. In all the circumstances I determined that firm and prompt action had to be taken by this Court to restore legality and order to a Company the management of which had increasingly through the course of these proceedings brought its own credibility into dispute.

Dated this 13th day of April, 2011 _____
KAWALEY J