

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION NO 597 OF 2021**

BETWEEN

李明實，方壘 AND 史洪源
(SUING ON BEHALF OF THEMSELVES AND
THE OTHER EMPLOYEES EMPLOYED BY
OR BY THE GROUP OF COMPANIES UNDER
和利時科技集團有限公司 (TRANSLATED AND
KNOWN AS HOLLYSYS GROUP COMPANY
LIMITED))

1st Plaintiffs

DR. CHANGLI WANG (王常力博士)

2nd Plaintiff

PLUS VIEW INVESTMENTS LIMITED

3rd Plaintiff

and

ACE LEAD PROFITS LIMITED

1st Defendant

SHAO BAIQING (邵柏慶)

2nd Defendant

Before: Hon K Yeung J in Chambers

Dates of Written Submissions, Reply
and Statement of Objections by
the 1st and 2nd Defendants:

18 November 2022,
12 December 2022 and
16 December 2022

Dates of Statement of Costs,
Written Response and Reply on Costs by
the 1st to 3rd Plaintiffs:

2 December 2022,
5 December 2022 and
22 December 2022

Date of Decision on Leave to Appeal and
Summary Assessment of Costs:

20 January 2023

DECISION ON
LEAVE TO APPEAL
AND
SUMMARY ASSESSMENT OF COSTS

A. *Introduction*

1. For reasons set out in my Decision handed down on 4 November 2022¹ (the “**Decision**”), I dismissed Ds’ Summons for an order that the action be stayed.

2. I adopt the definitions and terminology as set out and used in the Decision.

3. Arising from the Decision, 2 matters are now before this court:

- (a) Ds’ application for leave to appeal against the Decision, and
- (b) Summary assessment of costs of pursuant to §100 of the Decision.

B. *The application for leave to appeal*

4. I deal with Ds’ application for leave to appeal first.

5. By Summons of 18 November 2022 with their draft Notice of Appeal attached (the “**NOA Summons**”), and supported by the written submissions of the same date of Mr Victor Dawes SC leading Mr John Chan (“**Ds’ NOA Submissions**”), Ds seek leave to appeal against the Decision.

¹ [2022] HKCFI 3342.

6. Pursuant to this Court’s directions given with the view of dealing with the application on the papers, Mr Kenny Lin, with Mr Jason Kung and Mr Ronald Ngan on 5 December 2022 filed their written response in opposition (“**Ps’ NOA Response**”).

7. On 12 December 2022, Ds filed their reply (“**Ds’ NOA Reply**”).

8. There is no dispute between the parties that, whether under section 20(9) of the Arbitration Ordinance (Cap 609) or section 14AA of the High Court Ordinance (Cap 4), the same thresholds of “reasonable prospect of success” or “other reason in the interests of justice” are applicable.

9. I have considered the above written submissions. I have also considered all the authorities cited in support and opposition. I dismiss the application. Below are the reasons.

C.1. Ground 1A

10. Grounds 1A, 1B and 1C are under the umbrella Ground 1 that this Court erred in law in refusing to stay the Trust Shares Claim under section 20 of the Arbitration Ordinance.

11. Ground 1A, as summarized by Mr Dawes in Ds’ NOA Submissions, complains that this Court failed to consider whether the DoT Claims should be stayed in favour of arbitration, that this Court has made no finding as to whether the DoT Claims are a dispute or difference between the parties or is an issue that will have to be resolved by these proceedings, and that had this Court considered the issue, I would have

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come to the conclusion that the DoT Claims, which have been pleaded and relied on by Ps in their SoC, are a dispute and or difference between the parties or an issue that will have to be resolved by these court proceedings, are covered by the Arbitration Agreement, and would have stayed the DoTs Claims in favour of arbitration under section 20 of the Arbitration Ordinance.

12. I have in the Decision considered the substance of the controversy as it appears from the circumstances and evidence. Amongst other matters, I reach the view and accepted Mr Lin's submissions that the Trust Shares Chaim relates to the Overarching Trust which is different from the DoT Trusts (§§60 and 62 of the Decision). I note that the 25/8/2009 Meeting and the Articles predated the execution of any DoT. I noted (at §71) that whilst the terms of the Articles have been extensively pleaded, none of the terms of the DoTs have been pleaded and relied upon.

13. At §4 of Ds' NOA Reply, it is submitted and asserted that the Decision recognises that Ps do rely on the DoTs in their case, and that this Court quotes from §26 of the SoC. §4 of Ds' NOA Reply does not mention that this Court quotes §26 of the SoC because it was Mr Dawes who has highlighted that paragraph, and this Court is quoting that paragraph in that context. I repeat §§70 and 71 of the Decision.

14. I repeat also §72 of the Decision. I accept Mr Lin's submission at §6 of Ps' NOA Response that though dressed up differently, Ground 1A is a re-run of Ds' earlier submissions which mischaracterize the Trust Shares Claim as being founded on the DoTs.

15. What I have stated in §20 below are also relevant to this Ground.

16. I am of the view that Ground 1A is not reasonably arguable.

C.2. Ground 1B

17. Ground 1B complains, as summarized by Mr Dawes, that insofar as this Court held that the DoT Claims should not be stayed in favour of arbitration because it is not the “focus” of the dispute between the parties, this Court has erred in law in principle.

18. Relevant to this ground Mr Dawes has cited a number of authorities, which include *Sodzawiczny v Ruhan and others* [2018] EWHC 1908 (Comm) at §43, *Republic of Mozambique v Credit Suisse International and others* [2021] EWCA Civ 329 at §65 and *Lombard North Central plc v GATX Corp* [2013] Bus LR 68. It is submitted that the search in respect of section 9(1) of the Arbitration Act 1996 is not for the main issue or issues, or what are the most substantial issues, but for any and all issues which may be the subject matter of an arbitration agreement. Mr Dawes submits that if the court proceedings will involve resolution of any issues that fall within the scope of the Arbitration Agreement, the Court should stay the proceedings **to that extent** (Mr Dawes’ emphasis, at §9 of the Ds’ NOA Submissions) under section 20 of the Arbitration Ordinance. Mr Dawes further submits that at present, there is no direct Hong Kong authority on the applicability of

A the above principles, they being *novel*² issues of law of general
B importance, so that they should be considered by the Court of Appeal.

C 19. None of those authorities now relied upon by Ds were cited
D to me during the hearing. Rather, both in writing³ and orally in the
E course of the hearing, this Court was invited to adopt the approach
F explained by Mimmie Chan J at §25 of *Polytec Overseas Ltd v Grand*
G *Dragon International Holdings Co Ltd* [2017] 3 HKLRD 258 (the
H “**Polytec Approach**”), which this Court has. I repeat §63 of the
I Decision. And it is that Polytec Approach which Ds now say is
erroneous in principle.

J 20. Having adopted the Polytec Approach (§63), and having
K analysed the facts and evidence before this Court, I formed the view as
L stated at §72 of the Decision. Had the *novel* approach been urged upon
M me, I could have stated in clearer terms, as submitted by Mr Lin at §20 of
N Ps’ NOA Response which I agree, that other than the existence and nature
O of the Overarching Trust giving rise to the DoTs, there is really no issue
P arising from the DoTs, and there is no claim made under the DoTs in the
Q action. I repeat also §71 of the Decision.

R 21. What I have stated in §20 above are also relevant to the
S complaint made as part of Ground 1A that this Court has made no finding
T as to whether the DoT Claims are a dispute or difference between the
U parties or is an issue that will have to be resolved by these proceedings.

V 22. I am of the view that Ground 1B is not reasonably arguable.

T ² See §13 of the Ds’ NOA Submissions.

U ³ §20 of Ds’ written submissions of 7 October 2022.

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C.3. *Ground 1C*

23. Ground 1C complains that this Court errs in law and principle in finding that the Overarching Trust claim is the focus of the dispute between P1 and D1.

24. As part of Ground 1C, Ds contend that “*the same share cannot possibly be held on trust under two different trusts, once any shares are held under a trust under, and in accordance with the terms of, a DOT after a DOT is executed by individual HollySys Employees, the same shares could not continue to be held under the purported Overarching Trust (even if any such trust did exist).*”

25. However, as pointed out by Mr Lin, which I agree, the trust property or rights being held on trust under the Overarching Trust and the DoT Trusts are not the same – being the Trust Shares against the interest generated from the Trust Shares. Similar distinction has been drawn at §6 of Shao/2.

26. I have considered the Articles as a whole. I repeat §67 of the Decision.

27. I agree with Mr Lin that the other grounds put forward in support of Ground 1C (alleged lack of conceptual certainty as to the objects of the Overarching Trust and the meaning of “Eligible Employees”) relate to the merits of the Trust Shares Claim, and do not advance Ds’ proposed appeal.

28. In relation to the limb of the ground that the Overarching Trust claim was raised late, it would have been up to Ds to seek time or an adjournment had they wanted to, but none had been made.

29. In so far as it is suggested that Ps have not sufficiently pleaded the Overarching Trust claim, I repeat §63 of the Decision.

30. In my view, Ground 1C is not reasonably arguable.

C.4. Ground 2

31. Ground 2 complains that this Court has failed to consider D's application to stay the Ace Lead Claim and the Plus View Claim pending arbitration on case management grounds, that the failure or refusal was based on the erroneous refusal to stay the DoT Claims, and that had this Court correctly stayed the Trust Shares Claim, this Court should have exercised its inherent jurisdiction to stay the Ace Lead Claim and Plus View Claim.

32. Ground 2 and Ground 1 are interlinked to Ground 1. For the same reasons as stated above, Ground 2 is not reasonably arguable.

D. Disposition of the application for leave to appeal

33. For the above reasons, I refuse Ds' application for leave to appeal.

E. Application by Ds for extension of time to file Defence

34. By §2 of the NOA Summons, Ds seek extension of time for them to file their Defence.

35. I am prepared to grant Ds an extension until the final disposal of their renewed leave application to the Court of Appeal, or the expiry of the period for Ds to so apply if they ultimately do not make one. I so order.

F. Costs of the NOA Summons

36. I make a costs order *nisi*, to be absolute within 14 days, that Ps shall have the costs of the NOA Summons, to be assessed summarily, which assessment shall not be proceeded with until the final disposal of their renewed leave application to the Court of Appeal, or the expiry of the period for Ds to so apply if they ultimately do not make one.

G. Summary assessment of costs

37. I have considered Ps' Statement of Costs dated 2 December 2022⁴, Ds' Statement of Objections of 16 December 2022, and Ps' Reply of 22 December 2022.

38. Ps have filed their SoC. Their legal representatives should be familiar with the background facts. The application did not involve a lot of papers. The application itself is not the most complicated of its kind. In my view:

- (a) Ps' claim under Item B ("Communications Including Conferences, Telephone Calls and Letters") in the total sum of HK\$145,910 is excessive. Duplication of works have also been involved. I summarily assess the same at HK\$80,000;

⁴ As corrected by the letter of the same dated by Ps' solicitors.

(b) Ps' claim under Item C ("Profession Work") in the total sum of HK\$264,180 despite the involvement of 3 counsel is excessive. Duplication of works have also been involved. I summarily assess the same at HK\$150,000;

(c) In respect of Item D ("Counsel Fees"), I regard the fee for settling Wang/2 in the sum of HK\$40,000 as being reasonable. With respect, Mr Lin's brief in the sum of HK\$500,000 is excessive. I summarily assess the same at HK\$350,000. I otherwise regard the fees of Mr Ngan (at HK\$75,000) as being reasonable.

39. Having considered the matters, and adopting a broad-brush approach, I summarily assess Ps' costs at HK\$698,000.

(Keith Yeung)

Judge of the Court of First Instance
High Court

Written Submissions and Reply by Mr Victor Dawes SC leading
Mr John CK Chan instructed by Gall, for 1st and 2nd Defendants

Written Response by Mr Kenny Lin, Mr Jason Kung and Mr Ronald Ngan,
instructed by Alvan Liu & Partners, for the 1st to 3rd Plaintiffs