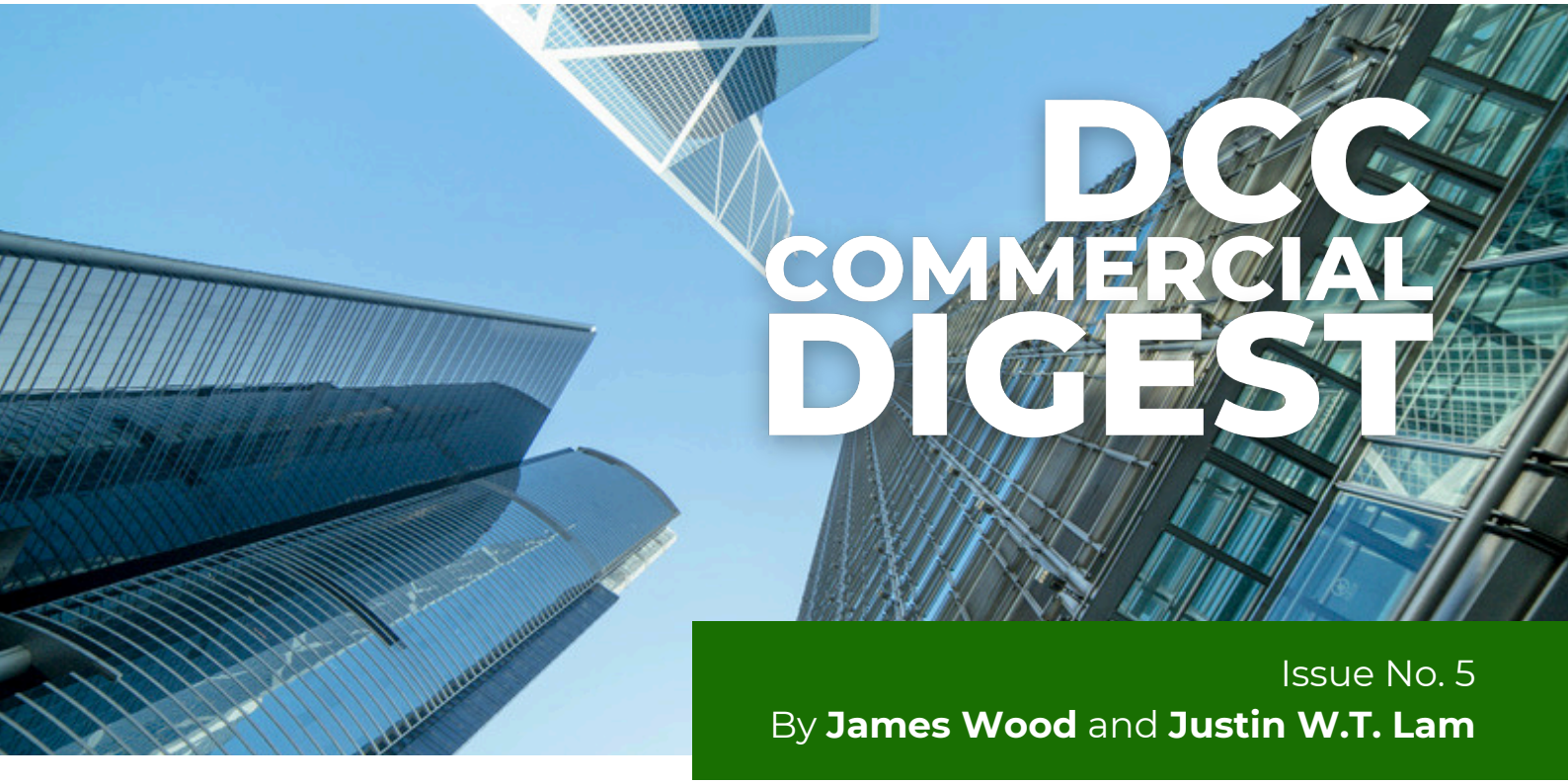
MAY 2025



DCC COMMERCIAL DIGEST

Issue No. 5

By **James Wood** and **Justin W.T. Lam**

TABLE OF CONTENTS

Unlawful means conspiracy & breach of fiduciary duties 1

China Shanshui Cement Group Ltd & Ors v Zhang Caikui & Ors [2025] HKCFI 1868

Registration and Enforcement of Mainland Judgments in Hong Kong pursuant to the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap 597) ("MJREO") 2

Huzhou Shenghua Financial Services Company Ltd v Hang Pin Living Technology Company Ltd [2025] HKCA 434

Defining an order for payment of a sum of money under the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap 597): 3

China Minsheng Trust Co., Ltd v Fu Kwan [2025] HKCA 462

Non-joinder of an equitable assignee in proceedings concerning the subject of assignment 4

Jadespring Ltd v Rise Top Asset Management Ltd and Another [2025] HKCFI 2310

Authors

James Wood

Barrister at Denis Chang's Chambers
Call: 2019 (HK)

James is a seasoned advocate with over 25 years' experience. He is particularly recognised for his expertise in restructuring and insolvency cases, and commercial fraud and financial disputes, including disputes involving asset tracing and recovery.

Before joining the Bar, James was a financial services and disputes lawyer with Freshfields, Goldman Sachs, O'Melveny & Myers, and most recently a Solicitor Advocate and Partner at Lipman Karas (Karas So in association with Mischon de Reya).

His cases are usually substantial in value and cross-border in nature, involving legal proceedings in forums around the world. He has been recommended in Chambers & Partners & Legal 500. He is qualified to practice Hong Kong, English and BVI law.

View James's profile

Justin W.T. Lam

Barrister at Denis Chang's Chambers
Call: 2024 (HK)

Justin was called to the Bar in 2024 after his completion of pupillage with Mr. Earl Deng, Mr. Thomas WK Wong, Mr. Martin Wong and Mr. Tony Li SC.

Before commencing pupillage, Justin completed his LLM at the London School of Economics and Political Science, focusing on corporate and commercial law.

Justin is fluent in English, Cantonese and Mandarin. He is developing a broad practice and accepts instructions in all areas.

View Justin's profile

Case 1

Unlawful means conspiracy & breach of fiduciary duties

China Shanshui Cement Group Ltd & Ors v Zhang Caikui & Ors [2025] HKCFI 1868

Date of Decision: 12 May 2025
Coram: Coleman J

This case, in which **Mr Simon Wong** of Denis Chang's Chambers successfully represented the 7th Defendant, was part of the long running battle for control of one of the largest HKEX listed Chinese cement companies. The main Plaintiff was China Shanshui Cement Group Limited ("Shanshui"), a Cayman incorporated company under the control of a newly constituted board of directors. Shanshui's action was against various former directors who were on the old board prior to 1 December 2015, as well as against two substantial shareholders in Shanshui, namely China National Building Materials Company Limited and ACC.

The high-profile litigation spanned almost a decade, and the trial lasted nearly 40 days during the spring and summer of 2021. The learned Judge had the Herculean task of sifting through 110,000 pages of documentary evidence, the transcript of the oral evidence at the trial, and written opening and closing submissions filed by the parties running to over 1,000 pages. The final product was a 236-page / 710 paragraph Judgment.

At the outset of the Judgment, the Judge described the claim like when a chef makes a dish using a few *possibly* good ingredients, but when he mixes them with many clearly bad ingredients and then seriously overcooks the whole thing, even the taste of the possibly good ingredients will likely be lost. Continuing with the culinary analogy, the Judge concluded that most of the claim had more holes than a sieve and despite the best belated efforts of the Plaintiff's Senior Counsel to patch it up, the claim was never going to hold water.

The key issues in dispute were:

1. Whether the Defendants unlawfully conspired to assist the 1st Defendant (who was formerly the Chairman and founder of the Shanshui group) in prolonging control of Shanshui and acquiring control of Shanshui by unlawful means, with the intent to and resulting in, damage to Shanshui; and
2. Whether certain directors breached their fiduciary duties to Shanshui.

Unlawful means conspiracy - the Court's findings

To establish an unlawful means of conspiracy, the Plaintiffs had to prove (1) a combination or agreement between two or more persons; (2) an intention to injure the Plaintiffs; (3) the use of unlawful means; and (4) resulting loss or damage.

The alleged conspiracy was the former directors purported coordinated use of corporate procedures and litigation to entrench their control. The unlawful means were said to include breaches of fiduciary duty. The Judge concluded that the pleadings lacked specificity and clarity, and there was virtually no evidence – and none of any weight – of an agreement or intention to injure. The Plaintiffs conflated breach of duty with conspiracy without clearly identifying any specific unlawful act that all Defendants agreed to commit.

The learned Judge also did not see any evidence that Shanshui's listing status was jeopardized by the Defendants' conduct or that Shanshui faced criminal or civil proceedings due to the alleged conspiracy. Without proof of damage, the conspiracy claim could not succeed. The Judge succinctly concluded that there was "*no damage, no tort*".

Breach of fiduciary duty by alleged shareholder-affiliated directors - the Court's findings

As regards the claims for breach of directors' duties, the Plaintiffs' case was that the shareholder-affiliated directors were agents for their respective shareholders on Shanshui's board. However, the evidence did not make good this assertion, and the Court could not conclude that the shareholder-affiliated directors of Shanshui breached their fiduciary duties, acted dishonestly, or acted without regard to Shanshui's best interests.

As explained by the learned Judge, "*the action was commenced in the most cavalier of fashions, with undue haste, without performing anything approaching a fair and proper analysis*".

The court appointed receivers in control of the Plaintiffs and who signed the pleadings were also the subject of trenchant criticism, with the learned Judge remarking, inter alia, at [139] – "*There is good reason to ask how* [the receivers] – *both officers of the Court – could ever have thought it appropriate to sign statements verifying the truth of the pleadings and the content of their witness statements. There were a number of matters contained in the witness statements where it is difficult to understand how they could possibly have been either believed to be true facts or even expressed as honest opinion.*" Unsurprisingly, the Judge held that the receivers did not act impartially in accordance with their duties.

Whilst China Shanshui does not establish any groundbreaking legal principles, it nonetheless serves as a salutary reminder of the importance of sound pleadings and the need for cogent and compelling evidence if a plaintiff intends to found its case on the torts of conspiracy and dishonesty. Otherwise, the case will leak like a sieve and never hold water.

Case 2

Registration and Enforcement of Mainland Judgments in Hong Kong pursuant to the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap 597) ("MJREO")

Huzhou Shenghua Financial Services Company Ltd v Hang Pin Living Technology Company Ltd [2025] HKCA 434

Date of Decision: 12 May 2025
Coram: Hon Chu VP, Cheung and G Lam JJA

This case concerned whether a judgment issued by a court in Mainland China could be registered – and thereby enforced – in Hong Kong pursuant to the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) ("MJREO").

The Plaintiff entered into a written loan agreement with a Mr Feng and Ms Lu, and the Defendant, Hangzhou Fengchen Technology Co Ltd ("HZFC"), and another company acted as guarantors. The sum of the loan was RMB 38 million for the period from 6 June to 24 August 2017. The Defendant is a company incorporated in Bermuda with its shares listed on the HKEX. The loan agreement was signed on the Defendant's behalf by the then chairman of its board of directors, Mr Gao Zhiyin ("Mr Gao").

The Intermediate People's Court of Huzhou City, Zhejiang Province ("IPC"), held that Mr Gao did not have authority to sign the guarantee and accordingly that it was invalid. However, the IPC found that both the plaintiff on the one hand and HZFC and the Defendant on the other hand were at fault, and held that the latter should bear responsibility to compensate the former in respect of half of the amount the debtors could not repay ("IPC Judgment"). Specifically, the IPC Judgment ordered that the Defendant and HZFC "*bear compensation responsibility in respect of 50% of the part of the liabilities of the debtors Lu in paragraph 1 that they are unable to repay, and be entitled to recover from Feng and Lu*".

Enforcement proceedings were then begun by the Plaintiff in the IPC against the debtors, HZFC and the Defendant for the enforcement of the IPC Judgment. As of 24 March 2021, certain assets of Mr Feng and Ms Lu having a value of RMB 2,115,208.55 had been seized, as recorded in the decision of the IPC in the enforcement proceedings ("Enforcement Decision"). The Defendant appealed the IPC Judgment to the Higher People's Court of Zhejiang Province ("HPC"). The HPC upheld the findings of the IPC in all respects relevant to the Defendant and made an order that the appeal be dismissed and the original judgment be maintained.

In dismissing the appeal, the Court of Appeal held that the IPC Judgment was neither a judgment that "orders the payment of a sum of money" against the Defendant, within the meaning of the MJREO nor "final and conclusive" as between the parties.

As regards the issue of whether the IPC Judgment was for the payment of a sum of money, there was no real dispute that at least the housing provident funds of Mr Feng and a car belonging to Ms Lu were the debtors' assets which were amenable to execution but had not yet been enforced against them as at the hearing before the CFI judge (and even at the date of the appeal). Their values were uncertain and unquantified. It followed in the Court of Appeal's view that the Defendant's liability under the IPC Judgment was also uncertain and unquantified, and that the sum of money requirement under the MJREO was not satisfied. On this ground alone, the appeal stood to be dismissed.

As regards the issue of whether the IPC Judgment was "final and conclusive", the Court of Appeal was also not satisfied that the IPC Judgment met this test and that in circumstances where the IPC Judgment was appealed to HPC in the Mainland, the registrable judgment would be the second instance judgment, i.e. it was the HPC appellate judgment that was final and conclusive and to be registered. In summary, it did not follow that the IPC Judgment was final and conclusive *as between the plaintiff and the defendant*.

Although the new enforcement regime was not applicable in the present case, the Court noted that similar requirements apply under the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (Cap 645), which replaces the MJREO in respect of judgments given on or after 29 January 2024. Cap. 645 gives effect to a more recent and comprehensive arrangement for the reciprocal recognition and enforcement of judgments between the Mainland and Hong Kong.

Case 3

Defining an order for payment of a sum of money under the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap 597)

China Minsheng Trust Co., Ltd v Fu Kwan [2025] HKCA 462

Date of Judgment: 21 May 2025
Coram: Chu VP, Au and G Lam JJA

The Court of Appeal found that rulings in relation to enforcement proceedings did not meet the requirements under the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap 597) ("MJREO") because they did not constitute judgments ordering the payment of a sum of money. Instead, the rulings were held to be administrative steps in the enforcement process, merely describing the state of indebtedness without being coercive orders.

The case involves four appeals brought by China Minsheng Trust Co., Ltd ("Minsheng") against orders made by DHCJ H Au-Yeung on 29 February 2024. The facts of the case are as follows: Minsheng lent substantial sums of money to Xinhualian Holdings Co Ltd ("Borrower") under four loan agreements, with Mr Fu Kwan ("Fu") providing guarantees for these loans. The agreements included provisions for direct enforcement without litigation, as per Article 238 of the Civil Procedure Law of the PRC. When the Borrower and Fu defaulted, Minsheng sought enforcement through the Beijing courts, which involved obtaining notarial certificates and execution certificates from the Beijing Chang'an Notary Public Office.

The Beijing Court issued rulings terminating the enforcement procedures, which Minsheng sought to register in Hong Kong as judgments. However, the Hong Kong Court of First Instance set aside the registration, finding that the rulings did not satisfy the MJREO requirements. Specifically, the Court held that the rulings did not order the payment of a sum of money, as they merely described the state of indebtedness and did not constitute an executory or coercive order.

On appeal, Minsheng argued that the rulings should be considered orders for payment, as they provided the basis for future enforcement. However, the Court of Appeal dismissed the appeals, agreeing with the Court of First Instance that the rulings were not judgments ordering payment and that the registration was correctly set aside. The Court of Appeal also addressed the "No Chosen Court Ground" and the "Not Summoned to Appear Ground," ultimately rejecting these arguments as well.

Case 4

Non-joinder of an equitable assignee in proceedings concerning the subject of assignment

Jadespring Ltd v Rise Top Asset Management Ltd and Another [2025] HKCFI 2310

Date of Judgment: 30 May 2025
Coram: Tam J

In this case, Tam J rejected the Defendants' argument for mandatory joinder of the equitable assignee and held that the non-joinder did not render the proceedings a nullity. However, the Court noted the absence of any authoritative local decisions and remarked that these legal issues "may be better argued and resolved in another case or at another venue of court in the future".

The Plaintiff is the registered owner and landlord of two premises. The 1st Defendant was a tenant of the premises, whereas the 2nd was the guarantor. The Plaintiff claims against the Defendants for rent arrears and damages for breach of tenancy agreements. The Plaintiff applied for summary judgment for the rent arrears, which was granted by Master M. Lam, but execution was stayed pending the resolution of the remaining claims and a counterclaim by the 1st Defendant. The Plaintiff appealed the stay order, arguing that the Defendants' counterclaim was unarguable and unsupported by evidence. During the appeal, the Defendants abandoned their counterclaim and instead argued that the Plaintiff lacked locus standi to sue due to a rental assignment agreement with Dah Sing Bank Limited ("the Bank"). This agreement allegedly transferred all rights to rental income to the Bank, thereby raising questions about the Plaintiff's capacity to bring an action for rent arrears.

The Court found that the locus standi issue was not properly raised in the Defendants' initial pleadings and was only introduced at the appellate stage, which was deemed unfair to the Plaintiff.

The Court further examined the rental assignment agreement, which included a clause allowing the Plaintiff to institute proceedings to protect its interests and those of the Bank. The Court interpreted this clause as authorising the Plaintiff to sue for rent arrears and rejected the Defendants' argument that prior written consent from the Bank was required.

Additionally, the Court addressed the Defendants' contention that the rental assignment created an equitable assignment, requiring the Bank to be joined as a party to the proceedings. The Court found that the non-joinder of the Bank did not render the proceedings a nullity, as the Plaintiff could amend its pleadings to clarify its representative capacity as trustee and/or agent for the Bank.

Any enquiry please contact our PD team at: pd@dcc.law

Denis Chang's Chambers

Main:
9th Floor, One Lippo Centre,
89 Queensway, Admiralty, Hong Kong
Tel : +852 2810 7222

Annex:
Room 4301, One Lippo Centre,
89 Queensway, Admiralty, Hong Kong
Tel : +852 2525 1228

www.dcc.law

Follow us on LinkedIn

Subscribe to our Email