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By **Valerie Tang**

TABLE OF CONTENTS

Author

"Valerie is quick-witted, articulate in her advocacy and very knowledgeable with a sharp legal intuition. She is definitely a rising star in the legal industry and one to look out for."

Legal 500 Asia-Pacific 2025, Commercial Disputes — Rising Star

Valerie specialises in company and commercial matters with experience in insolvency, shareholder disputes, civil fraud and asset recovery. She has regularly acted as sole advocate for various multinational corporations and high net worth individuals.

Valerie is also well-versed in family law, and has experience in land, probate, personal injuries, criminal and regulatory matters.

Apart from her law practice, Valerie is also a part-time lecturer at the Chinese University and City University of Hong Kong, and she regularly contributes to practitioner publications. Most recently, she was commissioned by LexisNexis to author Issue 107 of Atkin's Court Forms Hong Kong – Companies (Winding-up).

View Valerie's profile

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

Case 1

Relevance of foreign law? Restraining winding-up proceedings in foreign common law jurisdiction

Hyalroute Communication Group Limited v Industrial and Commercial Bank of China (Asia) Limited [2025] HKCFI 2417

Date of Judgment: 1 August 2025
Coram: Mr Recorder William Wong SC

Background

The Plaintiff, a company incorporated in the Cayman Islands, applied for an anti-suit injunction to restrain the Defendant from presenting any winding-up petition against it in the Cayman Islands, on the ground that the dispute arose out of an agreement containing an arbitration clause in favour of HKIAC arbitration.

This application was prompted by the Defendant's service of a Cayman statutory demand on the Plaintiff.

In support of its application, the Plaintiff argues that the proper procedure is to commence arbitration, and the presentation of a winding-up petition in the Cayman Islands would be in breach of the arbitration agreement.

The Defendant, on the other hand, submits that on proper analysis of the arbitration clause, the presentation of a Cayman winding-up petition would not be in breach.

Decision

The Court dismissed the Plaintiff's application.

In considering whether such an anti-suit injunction ought to be granted:

1. The starting point is that pursuit of foreign proceedings in breach of an arbitration agreement would be liable to be restrained by an anti-suit injunction. The burden is therefore on the applying party to show a "high probability of success" that the other party's pursuit of foreign winding up proceedings would breach the arbitration agreement [64]-[65].

2. The Court must then consider the express language of the arbitration clause.

In the present case, the relevant arbitration clause provided that: "[a]ny dispute, controversy or claim arising in any way out of or in connection with [the underlying agreement] … shall be referred to and **finally resolved** by binding arbitration".

While the Court agreed that the arbitration agreement was valid and binding, and that the *dispute* fell within its scope, it held that the Plaintiff had failed to establish that t*he Defendant's intended presentation of Cayman winding-up proceedings itself* amounted to a breach of the arbitration agreement. Specifically:

1. A proceeding which determines a dispute is a proceeding which is capable of giving rise to an estoppel [78]-[81], citing *Guy Lam* (CA)). This includes a winding-up proceeding, notwithstanding that it does not produce a monetary judgment merging with the debt.

2. In expressly incorporating the concept of final resolution of a dispute, the arbitration clause in question necessarily engaged the concepts of *res judicata* and estoppel [82]-[84].

3. To determine the question of *res judicata* or finality in relation to a foreign judgment (here the nature of Cayman winding up proceedings), the Court shall refer to the relevant foreign law [85]-[103].

4. Under Cayman law, a creditor's winding-up petition does not resolve or determine anything about the petition debt or claim. Rather, there is a distinction between determining the threshold question of whether there was a genuine dispute on substantial grounds, and the resolution of the substantive dispute itself. Even if the petition is granted, that is merely the resolution of the threshold question and not the resolution of the dispute in a substantive sense [114]-[125], citing in particular *Sian Participation Corp v Halimeda International* [2024] UKPC 16, and *Re BPGIC Holdings Ltd* FSD 238 of 2023 (Cayman Grand Court)).

5. It follows that on a proper construction, the Cayman winding up proceedings would not have the effect of finally resolving the dispute within the meaning of the arbitration agreement. Accordingly, the Defendant would not be in breach.

Takeaways

This is the first time the Hong Kong Court has been asked to consider the question of restraining winding-up proceedings in a similar common law jurisdiction in light of the divergence in approach laid down by *Re Guy Lam* (2023) 26 HKCFAR 119 and *Sian Participation Corp v Halimeda International* [2024] UKPC 16 respectively. As the Court noted at [4], under Hong Kong law, unless there is abuse, winding up proceedings will be stayed in favour of arbitration, whereas English law now requires the demonstration of *bona fide* dispute on substantial grounds before the creditor could proceed with arbitration.

While the outcome of this case seemingly deviates from the approach set down in *Re Guy Lam*, this Decision demonstrates the importance of the proper construction of the relevant arbitration clause. Foreign law (which is different from the governing law of the arbitration agreement) may also well become relevant if the circumstances properly call for the same.

Case 2

Full and frank disclosure in ex *parte* applications

Orion Engineered Carbons Gmbh v Gan Yuqi & Ors [2025] HKCFI 3328

Date of Judgment: 6 August 2025
Coram: Hon Cheng J

Background

These proceedings concern *ex parte* proprietary injunctions and top up Mareva injunctions granted against multiple tiers of recipients in a scheme of fraud (the "Injunctions").

By a letter dated 6 May 2025, the Court became aware of a letter comprising a summons and notarised supporting affirmation from the 36th Defendant, who sought to seek a discharge of the Injunctions.

In sum, the 36th Defendant stated that she had never dealt with the Plaintiff, nor was she involved in the alleged fraudulent activities. Rather, in a lawful over-the-counter ("OTC") cryptocurrency-to-fiat exchange, she had converted and transferred cryptocurrency USDT into Hong Kong dollars, and received Hong Kong dollars into her Bank of China account through a verified OTC merchant. Despite providing full documentation to the Plaintiff's solicitors, the Plaintiff's solicitors demanded payment from the 36th Defendant.

Upon the Court's enquiries, it transpired that there had been much correspondence between the 36th Defendant and the Plaintiff which were not disclosed to the Court, notwithstanding that the Plaintiff had not yet served the 36th Defendant and the matter remained *ex parte*.

Decision

The Court dismissed the Plaintiff's Summons to continue the Injunctions, and discharged the Injunctions made against the 36th Defendant. The Plaintiff was also ordered to pay the 36th Defendant's costs, including postage fees and the costs of having the summons and supporting affidavit notarised.

In restating the principles of a party's duty to give full and frank disclosure, as well as not to mislead the Court, the Court held that such duty was clearly breached by the Plaintiff.

This was so as the 36th Defendant had in fact provided a detailed account of the circumstances in which she came to receive the relevant sum. Such was juxtaposed against the Skeleton Submissions filed for the *ex parte* hearing (which was subsequently relied upon again in a further Return Day), which suggested that the Plaintiff knew nothing of the 36th Defendant's role in the matter and that there was a risk of dissipation given the lack of evidence to support a credible defence on her part.[1]

The following principles were specifically emphasised:

1. The duty to disclose material matters extends to "absolutely anything which the judge should consider".

2. The duty is one which continues after the initial *ex parte* application and includes a duty to inform the Court of new developments. It was for the Court to decide what is material.

3. Matters relevant to the merits of a case should be put before the Court, and potential defences should be identified.

4. Counsel and solicitors are expected to be aware of the duty of disclosure and to make reasonable inquiries to discover matters which should be disclosed.

Takeaways

The Decision is a reminder that counsel and solicitors alike ought to comply with the duty of full and frank disclosure. Failure to comply with the same may result in the discharge of the *ex parte* injunctions as well as adverse costs orders.

[1] Although Counsel informed the Court that he was not aware of the correspondence between the 36th Defendant and the Plaintiff.

Case 3

Apparent bias? Challenging presiding arbitrator under s.25 of Arbitration Ordinance

CNG v G & Ors [2025] HKCFI 3598

Date of Judgment: 13 August 2025
Coram: Hon Mimmie Chan J

Background

After a failed application to challenge the Presiding Arbitrator ("PA") before the Arbitration Panel, the Plaintiff applied under Article 13(3) of the Model Law (given effect by Section 26 of the Arbitration Ordinance) to decide its challenge *de novo*.

Under Article 12 of the Model Law, the only basis for such a challenge is "only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence".

The Plaintiff relied on various grounds, including *inter alia* that the PA had made unbalanced, unfair comments against it and predetermined its claims, and had fallen asleep for significant periods on numerous hearing days.

In opposition, the Defendants contended that at the outset, the Plaintiff was not entitled to rely on any matter which occurred before a certain date as it had waived its right of objection. The PA was also not guilty of any apparent bias.

Decision

The Court dismissed the application with costs.

On the issue of waiver, the Court confirmed that an objection on the basis of bias and the right to an impartial tribunal can be waived by a party [51]. A party is not entitled to stand by until final judgment and only then to challenge the judgment on the ground that there had been apparent bias; by standing by, the party has waived the right to subsequently object.

As to the challenge under Section 25 of the AO (Article 12 of the Model Law) itself, the test for apparent bias is applicable, being whether "an objective fair-minded and informed observer, having considered the relevant facts, would conclude that there was a real possibility that the tribunal was biased".

On the Plaintiff's complaints, the Court held that a fair-minded and informed observer would not have concluded that there was bias:

1. Notwithstanding the Plaintiff's urging of the Court to view all of PA's statements cumulatively to find hostility being displayed, the Court found nothing wrong for a judge or arbitrator to express his views on the case.

2. The PA's sleeping also did not constitute miscarriage of justice. In this regard, the Court ought to carry out an overall assessment by considering a number of factors, including whether the conduct of the Judge can be said to have affected the outcome, and whether the matter regarding the Judge's conduct was raised at trial.

In this case, the arbitration involved numerous hours of hearing, but the complaint merely related to sleeping for intervals lasting 10-15 minutes. The sleeping also took place during a hearing where the Defendants was making submissions on costs entitlement and costs breakdown, which was not a critical or complex part of the case. Importantly, the Plaintiff did not make any complaint regarding the PA's sleeping at the hearing.

Case 4

Duplicative proceedings: abuse of process and *Henderson v Henderson*

DP World Djibouti Fzco v China Merchants Port Holdings Company Limited [2025] HKCFI 3861

Date of Decision: 28 August 2025
Coram: DHCJ MK Liu

Background

The matter essentially concerns two separate sets of proceedings (the "2018 Action" and "2023 Action", the latter being these proceedings), which were based on the same factual background and involved some overlapping parties. In both actions, the claim against the Defendant, CMPH, is for procuring breach of contract. It was claimed by the Plaintiff herein, DPWD (which is also one of the Plaintiffs in the 2018 Action) that it relies on different rights in the relevant contracts in the two different actions.

On the grounds of *inter alia* abuse of process, the Defendant applied to strike out the Writ of Summons and Statement of Claim herein, and hence to dismiss the 2023 Action.

Decision

The Court allowed the Defendant's application, and struck out the Writ and Statement of Claim and dismissed the 2023 Action in its entirety.

The Court agreed with the Defendant that it is an abuse if a plaintiff commences two actions against the same defendant for the same cause of action. In such cases, it is *prima facie* an abuse of process to do so, and the burden is on the plaintiff to show cause as to why the two actions should be maintained in parallel.

While the Plaintiff relies on the case of *Kot See For v Kung Ho Yin & Ors* [2025] HKCFI 483 which provides that there is no presumption against the bringing of successive actions, and there may be reasons for advancing claims separately in a particular case; the Court distinguished the case by noting that it concerned another type of situation, being where the plaintiff had brought two substantially overlapping actions involving different defendants and/or different causes of action.

The Court also confirmed that the principles of *Henderson v Henderson* abuse – that matters which could and should have but were not raised in earlier proceedings should not be allowed to be raised in subsequent proceedings – continue to apply, even where the earlier set of proceedings is still ongoing.

Lastly, it was noted that there was no satisfactory reason to maintain both the 2018 and 2023 Action. Although the Plaintiff *inter alia* claimed that there was delay in the 2018 Action caused by the Defendant, the Court took the view that allowing the 2023 Action to proceed would not resolve the issue. Even if there were differences in relation to certain claims (i.e. the 2006 CA Claim in the 2023 Action), this offends the *Henderson v Henderson* principles, and there was no reason why the claim could not added back to the 2018 Action by way of amendment.

Featured Article

Court dismissed unfair prejudice petition in the Lao Xue Yuan shareholder dispute

JS Success Ltd v Cheung Theobald Aylwin & Ors [2025] HKCFI 3837

Date of Decision: 25 August 2025
Coram: Hon Linda Chan J

Authored by ***Chris Wong***

The case of *JS Success Ltd v Cheung Theobald Aylwin & Ors* [2025] HKCFI 3837 concerns a shareholder dispute which arose from the joint venture of a Shanghainese restaurant operated under the brand of Lao Xue Yuan ("老雪園"). The Petitioner sought a buy-out order pursuant to s.724 of the Companies Ordinance (Cap. 622), alleging the operation and the eventual closure of the restaurant constituted unfair prejudice on the part of the majority shareholders. The petition was ultimately dismissed by Linda Chan J after a 6-day trial.

Chris Wong, instructed by Messrs. Oldham, Li & Nei, represented the 1st to 4th Respondents.

Core Complaints

At trial, the Petitioner relied on the following complaints in alleging that the Respondents have conducted the affairs of the company in an unfairly prejudicial manner: -

1. Exclusion from management;
2. Failure to renew tenancy agreement;

3. Breach of fiduciary duties in setting up competing ventures;
4. Breach of non-competition obligation in shareholders' agreement; and
5. Misappropriation of company funds,

(The claims on quasi-partnership and transfer of shares in breach of pre-emption clause were abandoned at the beginning of the trial.)

One major dispute at trial was whether the majority shareholders acted in breach of the common understanding or expectation between the parties (particularly in relation to the issues of exclusion and non-renewal of tenancy). While the exercise of shareholders' legal right may be subject to equitable constraint if there is such understanding or promise that would be unfair to allow a member to ignore, the starting point is to look at the company's articles and shareholders' agreement. With the Petitioner abandoning the quasi-partnership claim, the Court rejected to expand the scope of obligations on the Respondents beyond the express terms of bargain as agreed between the parties.

The Court would also pay heed to the *modus operandi* of the company in determining whether the conduct complained constituted unfair prejudice. For instance, on the alleged misappropriation of funds, the Court found that some of the transactions concerned were agreed by the parties at the outset or made in accordance with established arrangements. There is no basis to impugn such transactions simply because the Petitioner took a different view on the matter after the parties' relationship turned sour.

Takeaways

This decision reaffirms that a mere breakdown in shareholders' relationship itself, however acrimonious, does not necessarily justify judicial intervention. Unfair prejudice relief is available only where the company's affairs have been conducted in a manner that is both unfair and prejudicial to the interests of shareholder. The Court would carefully scrutinise the contractual bargain between the parties and assess their conduct against the background and commercial reality in the circumstances.

Author *of the featured article*

Chris Wong

Barrister of Denis Chang's Chambers

Prior to joining Chambers in 2024, Chris served as a Judicial Assistant at the Hong Kong Court of Final Appeal, where he assisted the judges with substantive appeals, leave applications, and other works of the Court generally. Chris was called to the Bar in 2023, upon his completion of pupillage with Mr. Tony Li SC, Mr. Eric Leung, Mr. Robin D'Souza and Mr. Simon Wong.

During his legal studies, Chris competed in the Willem C. Vis International Commercial Arbitration Moot, where he received honourable mentions both as an oralist and for the written memorandums.

Chris is developing a broad civil and criminal practice. He is fluent in English, Cantonese, and Mandarin. He accepts instructions in all areas of work. **View Chris's profile**

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