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Lee Siu Him primarily practices general civil law as both sole counsel and led junior. His expertise includes commercial disputes, banking, land, employment, trust, intellectual property, and probate.

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Case 1

The Court of First Instance explains the meaning of "judgment which…is given pursuant to…a choice of Mainland court agreement" under the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance, Cap 645

邓绵 *(Deng Mian)* v 潘荣 *(Pan Rong)* [2025] HKCFI 3905

Date of Judgment: 1 September 2025
Coram: H Au-Yeung J

Background

In this case, the applicant brought proceedings against the respondent for failure to repay a principal of RMB 2.4 million purportedly due under a finance management agreement and a loan agreement.

The finance management agreement contains a jurisdiction clause to the effect that "any party may commence legal proceedings at the People's Court located at the place where the applicant's residence is situated" in respect of any dispute.

The loan agreement contains a similar clause to the effect that "any party may commence legal proceedings at the People's Court located at the place where the parties' correspondence and residential addresses are situated."

The applicant commenced proceedings in 福建省廈門市思明區人民法院 ("Fujian court"), which held that the applicant's residence was in Shanghai and transferred the case to 上海市楊浦區人民法院 ("Shanghai first instance court") based on the jurisdiction clause in the loan agreement.

The Shanghai first instance court held that the loan agreement was void but the respondent was in breach of the finance management agreement. 上海金融法院 (Shanghai Financial Court) dismissed his appeal ("Shanghai appellate judgment").

The applicant then applied to register the Shanghai appellate judgment under the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance, Cap 645.

Master's decision

Master Hui refused the application on the basis that e Shanghai appellate judgment was a "judgment which…is given pursuant to…a choice of Mainland court agreement" under s.5(1)(j)(i) of the Ordinance.

The Court of First Instance's decision

H Au-Yeung J dismissed the applicant's appeal.

He held that the answer to the question of whether the Shanghai appellate judgment was a "judgment which... is given pursuant to...a choice of Mainland court agreement" can be seen from the Fujian judgment which transferred the case to the Shanghai court.

Since that Fujian court's judgment to transfer to the Shanghai first instance court was apparently made pursuant to the jurisdiction clause in the loan agreement, it follows that the two subsequent Shanghai court judgments of respectively the Shanghai first instance court and Shanghai Financial Court were given pursuant to the same jurisdiction clause.

The Court further held that this conclusion is not affected by the fact that the judgment of the Shanghai first instance court held that the loan agreement was void because it is a matter of fact that the matter was transferred by reason of the loan agreement jurisdiction clause.

Key takeaway

In considering application for registration of Mainland judgment under Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance, Cap 645, it is important to look at not only the judgment sought to be registered but also any preceding judgments from which that judgment was derived. The fact that those preceding judgments are "excluded judgment" and hence unregistrable may affect the registrability of the subsequent judgment.

Case 2

The Court of First Instance affirms default judgment to be regular since a party's last known address does not have to be derived from a document filed in court but may be from whatever source the other party may have

Hannaford Finance Limited v Fong Ka Tak Francis [2025] HKCFI 3872

Date of Judgment: 2 September 2025
Coram: Cheng J

Background

In the course of defending an action for repayment of loan, the Defendant (D) sent to the Plaintiff's (P) solicitors a Notice to Act in Person with an address. D failed to comply with an unless order, leading to a default judgment entered against him which was served on that address.

The Court of First Instance's decision

On an appeal against Master Bonnie Cheng's refusal to set aside the default judgment, D's counsel argued that the default judgment was irregular on the basis that the address was not his "usual or last known address" as the Notice to Act in Person was not filed in court; and in any event D had no knowledge of the default judgment.

Cheng J rejected the arguments and re-affirmed that a party's last known address does not have to be derived from a document filed in court but may be from whatever source the other party may have. Further, even if D did not know of the summons for the default judgment, the judgment would still have been regular.

Key takeaways

Legal representatives of applicants for default judgment should be careful to identify "usual or last known address" of defendant from whatever source including papers not filed in court.

Case 3

Court of Appeal holds that a party seeking amendment can disavow reliance on the "relation-back rule" so that the other party would not be prejudiced by being deprived of a limitation defence

BGA Holdings Limited and Ors v Chu Kong (朱江) and Ors [2025] HKCA 807

Date of Judgment: 3 September 2025
Coram: Cheung and Barma JJA

Background

The plaintiffs first commenced the action against 9 defendants for misappropriation of assets based on events that happened on 31 May 2016. On 5 December 2023 (more than 6 years later), Ps issued a joinder summons against the 12th defendant for proposed claims of dishonest assistance and unlawful means conspiracy but disavowed reliance on the "relation back rule" by inviting the Court to order joinder on the basis that the new claim only relates back to the date of joinder summons or order for joinder as opposed to date of the Writ.

The Court of First Instance's decision

DHCJ Pheobe Man refused the joinder summons by applying the convention approach as follows.

Where an amendment to plead an arguably time-barred claim would bring the 'relation back rule' in section 35(1)(b) of the Limitation Ordinance (Cap. 347) into operation, the new claim will be deemed to have been commenced on the same date as the date of the original action, and the amendment could deprive a party of an arguable limitation defence and so prejudice it.

The Court would refuse amendment unless the applicant can show that the respondent does not have a reasonably arguable case on limitation, or that the new claim arises out of the same or substantially the same facts as a cause of action in respect of which relief has already been claimed in the existing action.

The Court of Appeal's decision

Cheung JA (delivering the judgment of the Court) allowed the appeal.

The Court held that the Court has jurisdiction to implement a new approach by ordering the 'relation back rule' not to take effect on granting amendments with limitation issues where there is no danger of a defendant being any worse off as regards limitation as a result of relation back. As a matter of principle it is legitimate to apply this new approach on the basis of the agreement of the parties, an order made by the Court disallowing the "relationback rule" or the undertaking of the party seeking amendment, even in cases where the defendant contends it has a reasonably arguable limitation defence to the entirety to the new cause of action sought to be introduced.

The joinder summons is therefore allowed on the basis that for limitation purposes, the claim against the 12th defendant only relates back to the date of the service of the Joinder Summons on the 12th defendant.

Key takeaways

Where a plaintiff wishes to join a defendant for a proposed claim which may be statute-barred, it might be more time-saving and costs-effective to apply for joinder by disavowing reliance on the "relation-back rule" and leave any issue on limitation to be argued later in that action.

Case 4

The Court of Appeal dismisses an appeal against the Court of First Instance decision refusing to set aside an order for issuance of a concurrent writ and service out of jurisdiction on the basis of material non-disclosure

Haitong International Products & Solutions Ltd v Wang Yafeng (王亚峰) [2025] HKCA 821

Date of Decision: 5 September 2025
Coram: Kwan VP, Au JA and Chow JA

Background

Pursuant to various contractual documents ("Agreement"), the Defendant (**D**) subscribed to 772,201 of 12-month USD Denominated Leveraged Participation Notes linked to the shares in NIO Inc due 2020 ('Notes'), which were issued by the Plaintiff (**P**) pursuant to a Structured Products Programme on a leveraged basis. The total nominal amount of the Notes was US$2,702,704, under which the Plaintiff provided a loan of US$1,660,000 to the Defendant for the subscription.

Later, D was notified that a Collateral Posting Event occurred and that the LTV Liquidation Line was triggered. D was required but failed to transfer the Required Collateral Amount. P then exercised its right under the Agreement to redeem the Notes and liquidated the underlying security, being 772,201 shares in NIO Inc, and issued Writ to claim the outstanding sum against D.

The Agreement provides to the effect that it is governed by Hong Kong law and the Hong Kong courts have non-exclusive jurisdiction ("NEJC").

Despite the NEJC, D commenced Mainland proceedings in December 2021. P commenced Hong Kong proceedings on 27 January 2023, and it only received the relevant documents of the Mainland proceedings from the Beijing Financial Court on 14 February 2023.

On 3 March 2023, P made a jurisdictional challenge in the Mainland proceedings. In Hong Kong, by an affirmation dated 13 March 2023, P made an ex parte application for leave to issue and serve a concurrent writ of summons on the defendant out of the jurisdiction in Mainland. P's affirmation *disclosed* the fact that the jurisdictional challenge in Mainland was pending.

Master's decisions

On 20 March 2023, Master Ho granted leave to issue and serve a concurrent writ of summons on D out of the jurisdiction in Mainland China ("Order"). Subsequently, on 28 April 2023, the Beijing Financial Court dismissed the jurisdictional challenge in Mainland and an appeal was lodged on 29 May 2023.

On 23 June 2023, P applied ex parte for default judgment in Hong Kong but did *not* disclose the fact that its jurisdictional challenge in Mainland had been dismissed by the Beijing Financial Court. On 11 July 2023, P obtained default judgment in Hong Kong.

The Court of First Instance decision

D applied to set aside the Order and the default judgment on the ground that P failed to discharge the continuing duty to make full and frank disclosure by failing to disclose the progress (i.e. dismissal) of the jurisdictional challenge in Mainland. DHCJ Jonathan Wong dismissed the application on the basis that the dismissal of the jurisdictional challenge was not material because the existence of the Mainland proceedings would not have influenced the decision of Master Ho to grant the Order.

The Court of Appeal decision

The Court of Appeal affirmed the CFI's reasoning and dismissed D's appeal as follows:

1. In respect of the continuing duty to make full and frank disclosure, the test is not whether, if the matter had been disclosed, the ex parte court would nevertheless have made the order, but whether the matters not disclosed, being relevant, should have been in the scales.

2. In considering a contest as to jurisdiction, the legal burden was on the Plaintiff to demonstrate that Hong Kong was clearly the appropriate forum, and it could do so simply by referring to the NEJC. It was then for D to discharge the heavy burden of showing strong or powerful reasons why the contractual bargain should not be upheld.

3. On the facts, the dismissal of the jurisdictional challenge in the Mainland proceedings was not a material fact which should have been in the scales when deciding whether to make the Order and the duty to make full and frank disclosure was not contravened. Prior to determination of the jurisdictional challenge, the existence of parallel proceedings in Mainland was not a strong or powerful reason why the contractual bargain represented by the NEJC should not be upheld. The dismissal of the jurisdictional challenge makes no difference to this situation as either way there is no strong or compelling reason not to enforce the NEJC.

4. In light of the NEJC, it is not appropriate to embark upon a standard Spiliada balancing exercise.

Case 5

The Court of First Instance emphasises the importance of pleading in dismissing a claim for breach of fiduciary duties in the context of a statutory derivative action

Sea Dragon Food Limited v Tung Chung Wah and Ors [2025] HKCFI 4187

Date of Judgment: 10 September 2025
Coram: DHCJ MC Law SC

Background

The Plaintiff (P) was a company incorporated in Hong Kong running a business of food manufacturing. Yuen and the 1st Defendant (D1) were its equal shareholders and only directors and D1's son (D2) were P's ex-employee. Yuen obtained leave to bring this statutory derivative action by P against Ds for breach of fiduciary duties allegedly owed by D1 and D2 to P on the basis of the following conduct: (1) setting up another company (D3) to compete with P; (2) misappropriating trade secrets of P; (3) soliciting 4 employees to leave P; and (4) soliciting customers of P to place order with D3.

Judgment

In dismissing P's claim, the Court makes the following significant findings on pleading.

1. It was not open to P to argue for the first time in closing that D1 owed P, and was in breach of, a fiduciary duty to inform P of activities that would damage its interests. It is incumbent upon P to plead specifically that a duty was owed to disclose any actual or threatened activity of the others to set up a competing business. It is insufficient to plead simply that there was a duty to promote its best interests.

2. It was not open to P to argue that D1 owed a sub-duty to disclose to P his own misconduct on the basis of the pleaded director's duty to act in good faith in the best interest of P.

3. It was never P's pleaded case that D1 owed P any implied duty of good faith and fidelity qua employee of P.

4. It was not open to P to plead that D1 was involved in setting up D3 only in the Amended Reply since it is well-established that facts pertinent to the cause of action should be pleaded in the Statement of Claim rather than Reply.

5. As against D2, an employment relationship per se or an employee's title alone does not attach fiduciary duties. In order to assert otherwise, it is incumbent upon P to plead and identify all the relevant material facts, such as the material terms of the employment contract; the particular duties undertaken by the employee; his seniority, managerial responsibility, decision-making autonomy and independence; etc. It is only after pleading those material facts that the Court can then consider if D2 as an employee has placed himself in a position where he must act solely in the interests of his employer P.

6. Other claims for breach of fiduciary duties against D2 were not open to P as it failed to plead implied duties of good faith and fidelity qua employee and also a duty not to solicit P's customers.

Case 6

Non-disclosure of contractual terms governing liability of subcontractors found to be material, leading to setting aside of service out orders

Ozner Water International Holding (in liq.) & Anor v. Ernst & Young (A Firm) and ors [2025] HKCFI 4203

Date of Judgment: 15 September 2025
Coram: Queeny Au-Yeung J

Background

In the underlying proceedings, the plaintiffs sued its ex-auditors (EYHK) and their subcontractor (EYHM) for failing to exercise reasonable skill and care. The plaintiffs had obtained leave to extend the validity of the writs and to serve the writs out of the jurisdiction on EYHM (**"**Leave Orders**"**). However, EYHM sought to set aside the Leave Orders on the basis of material non-disclosure, namely, the existence of material clauses in the engagement letters signed between the plaintiffs and EYHK, which governed EYHM's liability as a subcontractor.

Findings

The Court found that the undisclosed clauses had a combined effect to eradicate EYHM's liability and impose liability on EYHK solely for the services to be rendered to the plaintiffs. Hence, their existence constitutes defences which may destroy the plaintiffs' claim and prevent the existence of any serious issue to be tried against EYHM.

The Court also rejected the plaintiffs' submission that the claim against EYHM was purely tortious and not contractual. The plaintiffs in previous *ex parte* applications had referred to EYHK and EYHM collectively, and referred to EYHM's breaches as breaches of contract at various junctures. Further, even assuming that the claim was in tort only, the existence of the clauses was still material as contractual delineation of duty is relevant to whether EYHM assumed any tortious responsibility in parallel to the underlying engagement letters.

In its judgment, the Court stated that there "could not have been a more material non-disclosure". The Leave Orders were therefore set aside and not regranted. However, as the non-disclosure was not deliberate an indemnity costs order was not made.

Case 7

Imminent danger of loss or dissipation of assets not a prerequisite for interlocutory appointment of receiver, receivership ordered over the assets of China Evergrande Group's former chairman

China Evergrande Group (in liq.) v. Hui Ka Yan and ors [2025] HKCFI 4327

Date of Judgment: 16 September 2025
Coram: H. Au-Yeung J

Background

China Evergrande Group (**"Group"**) was ordered to be wound up in early 2024, and liquidators were appointed. A Mareva injunction was granted against the former Chairman of the Group (Hui), freezing his assets worldwide up to the sum of US$7.7 billion. Hui subsequently failed to comply with an order requiring him to disclose all his assets worldwide of an individual value of HK$50,000 or more. The Group hence applied for, *inter alia*, that the liquidators of the Group be appointed as the joint and several receivers and managers over the entire assets and undertaking of Hui.

The issue for the Court was the meaning of "just or convenient" under s.21L(1) of the High Court Ordinance.

Counsel for the Group submitted that the Court should follow the *American Cynamid* approach as repeatedly adopted by Hong Kong courts, and balance between (i) whether there is a serious question to be tried; (ii) the alleged risk of dissipation of the sets; (iii) the current protective regime and its efficacy; (iv) the risk of damage to the company if the appointment is made, and whether it can be adequately compensated by a cross-undertaking in damages; and (v) whether there is a less drastic remedy.

On the other hand, Counsel for Hui argued that the correct test is for the Court to be satisfied that the appointment is necessary and that there is an imminent danger of loss or dissipation of assets, relying on authorities from the Hong Kong Court of Appeal and the Singapore Court of Appeal, which appeared to suggest that the Court will not appoint receivers unless there is an imminent danger of loss or dissipation.

Findings

The Court rejected the submissions by Hui's Counsel and found that the authorities cannot be interpreted in isolation and out of context. The *American Cynamid* principles applicable to interlocutory injunctions remain applicable to interlocutory applications for appointment of receiver.

In the instant case, the Court found that there was clearly a serious issue to be tried. Since Hui failed to make any disclosure of his assets, the Court also found a real risk of dissipation and that the current protective regime was ineffective. Also, the risk of damage to Hui can be adequately compensated by the Group's cross-undertaking in damages. Applying the principles, the Court made the receivership order as sought by the liquidators.

Case 8

Difference in standard of proof in the context of issue estoppel

Yuen Tsz Chun Frank and Chan Hai Yan, the Joint and Several Liquidators of RZ3262019 Ltd (in liq.) v Zhou Ying Investment Group Ltd and ors [2025] HKCFI 4350

Date of Judgment: 19 September 2025
Coram: DHCJ Gary CC Lam

Background

The plaintiff liquidators brought an unfair preference claim against the defendants in respect of two letters of guarantee issued by the subsidiary of the company in liquidation (the 3rd defendant) to the 1st defendant and a Mainland judgment sum paid by the 3rd defendant to the 1st defendant (collectively, **"**Dispositions**"**).

In response, the 1st, 2nd, 4th and 5th defendants applied for striking out of the unfair preference claim, relying on *inter alia* the ground that by an earlier decision of the Mainland court, the Mainland court had already determined the issue of whether the defendants had acted in concert to procure unfair preference in favour of themselves by the Dispositions.

Findings

In respect of the ground of issue estoppel, the Court found that in identifying the relevant issue that is said to have been decided earlier, the standard of proof was a relevant factor. There may be situation where the difference in the standard of proof is so much as to make the issue a different issue. In addition, the question of on whom the burden of proof lies should also be a consideration to take into account when assessing the situation holistically.

The Mainland judgment relied on by the defendants concerned a claim of malicious conspiracy. After considering the conflicting expert evidence on PRC law from both parties, the Court was unable to come to a definitive view on the question of whether the standard of proof applied by the PRC court was the same as the standard of proof to be applied in the instant case. As a result, the Court found that the issues in the instant case and that in the Mainland judgment were not plainly and obviously identical for the purpose of issue estoppel.

Despite being able to satisfy the other conditions to establish an issue estoppel (i.e. final decision by a court of competent jurisdiction and the parties of the two proceedings being the same or are privies), the defendants were unable to prove that the issues were plainly and obviously the same. The striking out application was dismissed.

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