IN THE GRANT COURT OF THE CAYMAN ISLANDS

29-6-09
CJ.

CAUSE NO: 308 OF 2004

BETWEEN	**KTH CAPITAL MANAGEMENT LIMITED**		**PLAINTIFF**
AND	**(1)**	**CHINA ONE FINANCIAL LIMITED**	
	(2)	**KTH INVESTMENT LIMITED**	**DEFENDANTS**

IN CHAMBERS
THE 25TH – 26TH JUNE 2009 AND 29th JUNE 2009

Appearances: Mr. Jeremy Walton of Appleby (with him Miss Hudson) for the plaintiff

Mr. Nick Dunn of Walkers for the Claimant KTH Investment Limited (he also acts for Ironwood Capital Limited)

RULING

1. The primary question before me is whether I should lift the stay imposed on these proceedings by order of Levers J on 8th March 2005.

2. That stay was imposed in deference to proceedings already instituted in Hong Kong between KTHI and KTHCM and others, and in which the subject-matter is directly connected to the subject-matter in this action.

3. More specifically, the subject-matter of this action is an amount of $5,663,698 with interest ("the Sum") paid into Court by China One, the first defendant, on 12 February 2009. The Sum is said to represent unused subscription monies paid to China One by KTHCM on behalf of investors in a debt recovery investment scheme in China called the Huarong Deal.

4. The issue in this action is the identity of the investors to whom the sum is owed.

5. The actions in Hong Kong are related in the following way.

6. The first is called the Account Action. In that action KTHI on behalf of its principal Mr. Luo, seeks an account for monies which are said to have been invested in the Huarong Deal on behalf of KTHI by KTHCM through KTHCM's principals, Mr. Wang Du and his wife Ms Vivian Li.

7. Large sums of money are alleged to have been misappropriated and defrauded. As Mr. Luo claims that these sums were used by Mr. Wang Du and Ms. Li to fund undisclosed investments in the Huarong Deal through China One, he also claims to have been the only investor in China One and so that the unused subscription monies, that is, the Sum, belongs entirely to him.

8. Mr. Wang Du and Ms. Li, through KTHCM, assert that this is not so and that there are some six other investors apart from Mr. Luo in China One.

9. Among those other six, at least two are, however, acknowledged to be entities owned or controlled by Mr. Wang Du and Ms. Li.

10. Thus, even to the extent only of the disputed ownership of the subscription monies which those two entities might claim, there is a clear overlap between this action and the Account Action in Hong Kong.

11. The second action in Hong Kong – referred to as the Recovery Action – is that in which KTHI seeks to recover on behalf of Mr. Luo (and another of his companies called Ironwood) the monies alleged to have been misappropriated. Thus, the Hong Kong Court of Appeal, treating the Account Action as a necessary precursor to the Recovery Action, has ordered that they proceed in that order.

12. It is plain from the foregoing, that this action is linked with the Account Action and the Recovery Action in Hong Kong.

13. Despite concerns raised by KTHCM here that there is undue delay in the progress of the Hong Kong actions, the evidence presented by KTHI in rebuttal is persuasive.

14. The issue of whether Hong Kong is the more appropriate forum for the trial of the issues involved in the Account Action and the Recovery Action insofar as they subsume the issues in this action, was the subject of the order of Levers J on 8th March 2005.

15. To my mind, the circumstances suggested by KTHCM now as justifying revisiting that determination, do not present a clear and compelling argument for a conclusion that the balance of convenience has so clearly swung as to make Cayman the more appropriate forum for the trial of the issues involved in this action over the ownership of the unused subscription monies; inextricably linked as those issues appear to be to the overall questions of misappropriation and fraud which are to be tried in the two Hong Kong Actions.

16. For these reasons it would, to my mind, be inconvenient and bad case management to seek to "pluck out" the issue over the unused subscription monies so as to attempt to try them in this action, separate and apart from the Hong Kong actions. I therefore refuse the application to lift the stay and to try the issue in this action ahead of the trials in Hong Kong.

GRAND COURT CAYMAN ISLANDS

Hon. Anthony Smellie
Chief Justice

June 29 2009