

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION NO. 1529 OF 2019

BETWEEN

HWANG JOON SANG	1 st Plaintiff
FUTURE CELL PLUS CO., LTD	2 nd Plaintiff
and	
GOLDEN ELECTRONICS INC.	1 st Defendant
WORLDBEST GLOBAL SUPPLIER INC.	2 nd Defendant
HARMONY ELECTRONICS INC.	3 rd Defendant
QUANTUM ELECTRONICS INC.	4 th Defendant
JIN MIAO INTERNATIONAL LIMITED	5 th Defendant
VIVIEN CHUNG YING-YIN	6 th Defendant
MAGIC ELECTRONICS INC.	7 th Defendant
B.C CENTURY TECHNOLOGY LIMITED	8 th Defendant
CHEN NIEN FANG	9 th Defendant
CHEN YI KUEI	10 th Defendant
CHINA DYNAMIC LIMITED	11 th Defendant
CHIU WEI FEN	12 th Defendant
CHOU LIN CHIAO	13 th Defendant
GLORY DYNAMIC LIMITED	14 th Defendant

A				A
B	HSU WEI LUN	15 th Defendant		B
C	HU HONG BIN	16 th Defendant		C
D	IMPERIAL DRAGON LIMITED	17 th Defendant		D
E	LIN CHIH CHENG	18 th Defendant		E
F	LIU MEI TING	19 th Defendant		F
G	MAGIC CRYSTAL LIMITED	20 th Defendant		G
H	NIU HSIU CHEN	21 st Defendant		H
I	SU CHAO MING	22 nd Defendant		I
J	SU KUANG HONG	23 rd Defendant		J
K	SU PEI I	24 th Defendant		K
L	TSAI PAO TSAI	25 th Defendant		L
M	WANG CHAO CHENG	26 th Defendant		M
N	WANG HUI MIN	27 th Defendant		N
O	CHOU PEI FEN	28 th Defendant		O
P	LEE CHENG HSIEN	29 th Defendant		P

Before: Hon Coleman J in Chambers (Open to Public)

Date of Hearing: 15 June 2020

Date of Decision: 15 June 2020

Date of Reasons for Decision: 18 June 2020

Q
R
S
T
U
V

REASONS FOR DECISION

A. *Introduction*

1. This Decision is in relation to the practical means by which a bank, which has been made the subject of a ‘bankers’ books’ or *Norwich Pharmacal* disclosure order, might comply with the aspects of disclosure ordered.

2. At the hearing on 15 June 2020, I made an order requiring various banks to supply documents by way of disclosure to the plaintiffs, and permitting (indeed, encouraging) the banks to do so by use of electronic or digital versions of those documents being uploaded to a data room. These are my Reasons for so doing.

3. In this Decision, I shall refer to the individual numbered plaintiffs and defendants as, for example, “P1” and “D10”. None of the defendants have ever actively participated in the proceedings.

4. The plaintiffs were again represented by Counsel Mr Moses Park (with Mr Billy Mok).

B. *Brief Background*

5. I recently gave a brief description of the nature of the action and its procedural history in my Reasons for Decision dated 9 June 2020 [2020] HKCFI 1084, to which reference can be made.

6. In short, the plaintiffs assert proprietary claims over the funds in bank accounts held by the defendants. The particular relief

A claimed includes declarations as to the defendants holding the funds on
B constructive trust, and as to liability to account and orders for payment of
C sums due on taking of the account.

D 7. Numerous previous Mareva and proprietary injunction
E orders have been made and continued against the various defendants, into
F whose hands the plaintiffs seek to trace the funds over which they make a
G proprietary claim.

H 8. At the hearing on 15 June 2020, I granted leave to re-amend
I the writ to join D29 as a defendant, and I granted an interim injunction
J restraining the various funds over which the proprietary claim is made
K held in the hands of D18 and D29. I also granted leave for service out
L of the jurisdiction on those defendants outside of the jurisdiction, in
M Taiwan.

N 9. Recently, in my Reasons for Decision dated 9 June 2020
O [2020] HKCFI 1084, I permitted a relatively novel mode of ordinary
P service under RHC Order 65 rule 5(1)(d), using a data room to which the
Q person served is given access by being sent a previously Court-approved
R letter providing a link to the data room, and by separate communication
S an access code to the data room.

T 10. The plaintiffs have also obtained multiple disclosure orders
U against various banks for information of the defendants' bank accounts.
V Indeed, it is by use of the information obtained from such disclosure that
the original action against only D1-D6 has been expanded to include (up
to this point) D7-D29.

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V

C. *Means of Providing Disclosure*

11. It is not the purpose of these Reasons for Decision to engage in any analysis of the principles applicable on applications for “bankers’ book” or *Norwich Pharmacal* disclosure orders. Those principles are well settled: see, for example, *Golden Brothers Inc v Medicare Asia Limited* (unreported, HCA 2590/2016, 14 October 2016, Zervos J) at §§23-24, 26 and *A Co v B Co* [2002] 3 HKLRD 111 at §13.

12. At the hearing on 15 June 2020, I was satisfied on the evidence, and by the application of the appropriate principles, that the plaintiffs are entitled to further disclosure orders against the 12 banks identified in the Schedules to the summons.

13. However, as to the precise terms of the order, in particular as to the method by which the banks might provide that disclosure ordered, Mr Park invited me to include a paragraph in each of the Schedules (except one) providing that:

Documents produced by [the bank] may be served by access to data room if considered by [the bank] to be the more economical and environmentally friendly option:

- (1) the Plaintiffs shall create an online data room containing orders made in relation to [the bank] in this action; and
- (2) the Plaintiffs shall send to [the bank] by post a link to the data room, and by separate post and access code to the data room and instructions to access the data room.

14. Obviously, the idea would be that the plaintiffs would create an online data room for each of the banks, so that only the particular bank would have access to the materials in, or be able to upload materials to, that data room.

A 15. This method of compliance using access to a data room was
B suggested in particular because of the heavy costs, including
C photocopying charges, levied by the various banks in producing
D documents as ordered. As stated, the procedural history of this action
E identifies that the plaintiffs have already obtained multiple disclosure
F orders against various banks. Those orders, necessary for the intended
G tracing exercises, have already imposed a significant financial burden on
H the plaintiffs. For example, one bank quoted a sum of HK\$157,100 for
photocopying charges of 1571 pages of documents, that is at HK\$100 per
page.

I 16. On the face of the plaintiffs' claim – and in circumstances
J where no defendant has yet identified any defence to any part of the claim
K – the plaintiffs appear to have at least a strongly meritorious proprietary
L claim to the funds that have been the subject of various transfer between
M the defendants' bank accounts. Yet, despite the strong claim to being
N defrauded of significant sums, the plaintiffs are required to expend
significant further sums in an attempt to trace and recover what they have
lost.

O 17. Of course, even though the discovery sought must not be
P unduly wide, it is also correct that the plaintiffs are not in a position to
Q make a more narrowly focused application for documents, as they do not
R know precisely the number of documents (or pages) which will be made
S available by any particular bank. No doubt, some of the documents
T produced will be of rather less assistance than those which identify the
U core elements of the transfers which may permit the intended tracing
V exercise. The above example of the bank which produced over
1,500 pages would seem to demonstrate that point.

A 18. Whilst the plaintiffs are willing to give an undertaking – and
B have given the undertaking – to reimburse the banks for their reasonable
C costs of complying with any disclosure ordered by the Court, Mr Park
D submits that the Court should actively approve and adopt a practice and
E procedure which may help reduce costs that can be otherwise saved, so
long as it is possible and fair, just and reasonable to do so.

F 19. In light of the underlying objectives under RHC Order 1A
G rule 1, I agree. Those objectives include increasing the
H cost-effectiveness of any practice and procedure to be followed in relation
I to proceedings before the Court; promoting a sense of reasonable
J proportion and procedural economy in the conduct of proceedings; and
ensuring fairness between the parties.

K 20. In practical terms, the banks being required to provide
L disclosure probably hold the relevant materials in electronic or digital
M form. It would seem to be an unnecessary expenditure of time and cost
N to print out hard copy documents so as to provide them to the plaintiffs.
O That is particularly so where the plaintiffs will likely have to scan those
P documents, and thereby to create their own electronic or digital versions
Q of them, to pass them to (for example) forensic accountants or others
R involved in the tracing exercise. Turning paper documents back into
S electronic documents would also seem to be a further unnecessary
T expenditure of time and costs. The use of paper, at least much more
U paper than is likely to be required for any focused exercise, would also
V seem to be environmentally unattractive.

21. I am conscious that, when the plaintiffs sent blank draft
orders to the banks seeking their stance in relation to the intended
application, those drafts did not include the paragraph relating to the use

A of the data room. I have, therefore, not heard from any individual bank
B (nor from any association that might reasonably be expected to represent
C the interests of banks in general). But, it seems to me that many, if not
D most, banks would prefer to avoid the unnecessary expenditure of both
E time and administrative resources, or would at least prefer to minimise
F such expenditure. After all, I do not think it is part of the profit-making
G of a bank to charge for compliance with orders for disclosure on a basis
H greater than the actual reasonable costs of compliance.

22. In any event, the paragraph I have permitted to be added
I specifically leaves it to the individual bank to consider whether it would
J be more economical and environmentally friendly to adopt the provision
K of disclosure through use of the data room.

23. As Mr Park submits, if this practice is approved and adopted,
L then banks' photocopying charges can be lowered, if not eliminated
M altogether (presumably also lowering administration charges generally).
N That means a saving in costs, time, and paper. It may also permit the
O information to be provided faster, which is a significant benefit in cases
P such as the present case where earlier attempts to trace assets may lead to
Q greater recovery, without further dissipation and greater difficulty in
R tracing and recovery.

24. It will also go some way to ensure that disclosure orders
S obtained against banks in cases such as the present do not become
T impracticable to all but the most well-off victims. Indeed, it is not
U difficult to think of victims who may be deprived of a significant
V proportion of their assets by an alleged fraud, and who would not be left
with significant funds with which to pursue the recovery of the funds
defrauded. Where the purposes of ordering disclosure from the banks

A are (a) to facilitate the provision of information which may lead to the
B location and preservation of assets to which a party makes a proprietary
C claim, and (b) where the order is intended to reap substantial and
D worthwhile benefits for the plaintiff, then the form of the order should
E permit and encourage compliance using a method which actually furthers
those purposes, rather than risks frustrating them.

F 25. Therefore, I have no hesitation in deciding that in an
G appropriate case (such as the present case) the Court should indeed
H actively approve and adopt this procedure. In this case, and balancing
I the interests of the parties, being the plaintiffs and defendants and the
J banks, it seems to me that the order including this method of compliance
is possible and fair, just and reasonable.

K 26. I was also shown, and I approved, a draft letter to be sent to
L the banks in accordance with that leave granted. The draft letter gives
M clear, pictorial instructions as to how to operate the link with the use of
N the access code, so as to gain access to and upload the documents to the
O data room.

Q (Russell Coleman)
R Judge of the Court of First Instance
S High Court

T Mr Moses Park and Mr Billy Mok, instructed by ONC Lawyers, for the
U plaintiffs

V All defendants were not represented and did not appear

