



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO. FSD 97 OF 2022 (DDJ)

BETWEEN:

(1) SZE TO GIN NAM

(2) LO SHUK YEE

Plaintiffs

(1) YUEN PHILP

(2) KWOK LAI YI

(3) AURABEAT TECHNOLOGY INTERNATIONAL

Defendants

Appearances: **Mr Stephen Moverley Smith QC and Mr Paul Goss of Ogier for the Plaintiffs**
Ms Clare Stanley QC and Ms Jessica Williams and Mr Luke Fraser of Harneys for the Defendants

Before: **The Hon. Justice David Doyle**

Heard: **8 June 2022**

**Ex Tempore Judgment
Delivered:** **8 June 2022**

**Draft Transcript of
Ex Tempore Judgment
Circulated:** **9 June 2022**

**Transcript of Ex Tempore
Judgment Approved:** **13 June 2022**



HEADNOTE

Interim injunction to preserve the status quo pending the determination of substantive proceedings.

JUDGMENT

Introduction

1. I would like at the outset to express my thanks to the legal teams involved in these proceedings for their assistance to the court. It has been a real treat over the weekend to go through the hearing bundles and focus on the first class written advocacy in the skeleton arguments filed last Thursday. It took a little longer than the 2 hours pre-hearing reading estimate of the parties. Today I have benefited from the well-focused oral advocacy skills of Clare Stanley QC for the First Defendant and Stephen Moverley Smith QC for the Plaintiffs. I mean it when I say that it has been a real privilege and pleasure to preside over these proceedings in the Cayman Islands today. Such written and oral advocacy skills further enhance this jurisdiction as a leading international finance centre and it is right that I acknowledge them.
2. The parties in the proceedings presently before this court in the Cayman Islands are as follows. The Plaintiffs are Sze To Gin Nam (“Roger”) and his wife Lo Shuk Yee (“Pamela”). The Defendants are Yuen Philip (“Philip”) and his wife Kwok Lai Yi (“Ms Kwok”) and a company incorporated under the laws of the Cayman Islands called Aurabeat Technology International (the “Cayman Company”). The Cayman Company is the holding company of several subsidiaries in Hong Kong including Aurabeat Technology Holdings, Aurabeat Technology Limited, Aurabeat Engineering Limited and Air Lab Global Limited (the “Hong Kong Subsidiaries”). The Cayman Company and the Hong Kong Subsidiaries together are referred to as the “Group”. The business of the Group is the manufacture and sale of air purifiers and related equipment.



3. Roger, Pamela, Philip and Ms Kwok appear to reside in Hong Kong and they have fallen out. Legal proceedings have been brought in the Cayman Islands and Hong Kong in respect of the fallout. Put simply, there are serious grievances between the parties. Roger and Pamela say that their shareholding has been wrongly diluted and they have been wrongly removed as directors of the Cayman Company and Ms Kwok wrongly appointed. Roger and Pamela believe Philip to be untrustworthy and dishonest. Philip believes that Pamela's presence within the Group has become intolerable and that Roger and Pamela have no management skills. Philip further believes that if he is not reinstated as a director of the main Hong Kong subsidiary "this will nullify one of the primary protections for external investors" (paragraph 54 of his skeleton argument).

4. Until March 2022 Roger and Pamela were majority shareholders of the Cayman Company (56.6%) and were directors. Their case is that Philip and/or Ms Kwok have tried improperly to seize control of the Group by (a) invalidly and for improper purposes diluting their collective majority shareholdings and (b) thereafter improperly removing Roger and Pamela as directors and employees of companies within the Group and invalidly appointing Ms Kwok a director of the Cayman Company. Philip's case is that the Cayman Company validly issued shares which allowed the majority of shareholders to vote to remove Roger and Pamela as directors and appoint Ms Kwok as director. A crucial question is whether or not the shareholding of Roger and Pamela has validly and properly been diluted from 56.6% to 48.26%. Relevant to that crucial issue is whether the SAFE Note Resolution dated 16 March 2022 ("Resolution") is authentic which Philip says it is. Roger and Pamela say they never agreed to or signed the Resolution and that their signatures were affixed without their knowledge or consent. I am not able to resolve that issue today. It will have to await determination at trial after discovery, exchange of evidence and the testing of such evidence by way of cross examination. What I can decide today is what should be done in respect of two interlocutory applications that have recently been filed, but before I come to them I should mention the writ that has been filed and the position in Hong Kong.



The Writ, Statement of Claim and the Defence and Counterclaim

5. By writ of summons dated 14 April 2022 (the “Writ”) the Plaintiffs seek relief against the Defendants, namely orders setting aside the allotment of shares made on or after 9 February 2022, declarations that the Plaintiffs have not been validly removed as directors of the Cayman Company and that Ms Kwok was not validly appointed and that the notice of the general meeting dated 7 April 2022 is null and void, and a declaration that the resolutions purportedly passed at the general meeting on 13 April 2022 are null and void and an order for the rectification of the register of members and register of directors and a declaration that the actions of Philip constitute a breach of fiduciary duties.
6. I have also considered the Statement of Claim dated 17 May 2022 and the Defence and Counterclaim dated 1 June 2022.

Hong Kong Proceedings

7. On 11 April 2022 the Plaintiffs sought urgent ex parte on notice injunctive relief from the High Court of Hong Kong (the “Hong Kong Court”) restraining Philip and Ms Kwok from implementing, inter alia, the Aurabeat Holdings Limited resolution of 6 April 2022. Philip and Ms Kwok gave certain undertakings in respect of some of the Hong Kong Subsidiaries. No undertakings were given by the Plaintiffs.
8. I now turn to a very brief description of the two interlocutory applications presently before the court for determination.

The Injunction Application

9. By ex parte summons dated 14 April 2022 (the “Injunction Application”) Roger and Pamela sought orders that until further Order Philip, Ms Kwok and the Cayman

Company be restrained from implementing resolutions passed at a general meeting of the Cayman Company on 13 April 2022 to remove Roger and Pamela as directors of the Cayman Company and appointing Ms Kwok as a director of the Cayman Company. Further relief is sought to, amongst other matters, preserve Roger's registered shareholding at 48.5% and Pamela's at 8.1% (total 56.6%) as at 9 February 2022.

10. The Injunction Application came on for hearing at relatively short notice on 27 April 2022. I heard submissions and adjourned the matter to see if the parties could agree undertakings. Counsel who then appeared for the Plaintiffs returned to court and stated according to the transcript (which I have studied in detail) "the parties have agreed to provide mutual undertakings to essentially take things back to when they were all on the board, and will provide mutual undertakings not to, amongst other things, convene meetings, allot shares, and otherwise take steps without the consent of the other parties. The attorneys are happy to negotiate the specific terms of the undertakings between themselves, but in substance, everyone will be bound by the same terms." I asked if we would have a draft Order reciting agreed undertakings and counsel then appearing for the Plaintiffs stated: "We will provide you with a draft once it's agreed, probably later this afternoon." I asked if counsel had the wording of the undertakings and counsel replied in the negative. I asked if counsel needed more time to work out the wording and the answer was in the affirmative. It was in those circumstances that I left court in the hope that a draft of an agreed Order reciting agreed undertakings would be provided to the court. Sadly, it was never forthcoming.
11. There is a dispute as to whether there is an enforceable agreement that the undertakings cover not only the Cayman Company but also extend to the Hong Kong Subsidiaries as well. Counsel then appearing for the Plaintiffs says in effect that there was a misunderstanding in respect of her instructions. The Plaintiffs in effect say that their counsel had no authority to agree undertakings in respect of the Hong Kong Subsidiaries. Philip says there was authority (and indeed the Plaintiffs concede ostensible authority) and a binding and enforceable agreement was arrived at on 27 April 2022 (which the Plaintiffs strongly dispute).



The Enforcement Application

12. By summons dated 9 May 2022 (the “Enforcement Application”) Philip sought an order “in accordance with the agreement entered into by counsel” on 27 April 2022 to cover the position of the Hong Kong Subsidiaries and not just the Cayman Company.
13. The Enforcement Application was listed for hearing on 20 May 2022 but it was adjourned to permit evidence to be filed and skeleton arguments to be produced. Further evidence has now been filed (which I have considered) and skeleton arguments have been produced.
14. I should add that Philip says that on 18 May 2022 the Plaintiffs procured that Philip be removed as a director of Aurabeat Technology Limited, stated to be the main Hong Kong subsidiary. It is also stated that on 23 May 2022 Roger announced Philip’s departure to the Group’s employees and customers.

Submissions

15. I have considered all the written and oral submissions put before the court. I do not set them all out in this relatively short ex tempore judgment but have had full regard to them and they form part of the court record.
16. The Plaintiffs invite the court to grant an interim injunction in the form sought in the Injunction Application and to dismiss the Enforcement Application with costs.
17. Philip requests that the court makes an Order along the lines agreed between the parties on 27 April 2022. I note also paragraph 2(4) of his skeleton argument.

Decisions

18. I now turn to my decisions in respect of the two applications presently before the court.

Decision on the Enforcement Application

19. In respect of the Enforcement Application I have noted the respective positions of the parties as to whether an enforceable agreement was arrived at between counsel on 27 April 2022.

20. I have considered the position in light of basic contractual principles and have concluded that no agreement was arrived at in respect of the undertakings. However in my judgment it is wrong to approach the matter solely on the basis of the legal principles governing whether a contract has been arrived at and if it has what relief the court should grant. Context is important (see for example *Navigator Equities Limited v Deripaska* [2020] EWHC 1798 (Comm) at paras 130 and 131 and *Ernst & Young (a firm) v Butte Mining Plc* [1996] 1 WLR 1605 at 1618). These were not normal commercial negotiations leading to a concluded contract. Counsel were endeavouring to assist the court (as officers of the court and with overriding duties to the court) by trying to come to an agreement on undertakings whereby the court would be relieved from ordering an interim injunction. In my judgment the parties cannot be treated as intending to create private contractual relations between them in relation to any undertakings. In any event it was and is plain to me that the parties had not either themselves or through their respective counsel agreed the detailed terms of any undertakings and it would be inappropriate to hold them to what was discussed privately between counsel. Moreover, even if the parties had agreed a draft Order reciting detailed undertakings such Order would still have been subject to the approval of the court and would be subject to any subsequent orders.

21. If there was an enforceable agreement I would have exercised my discretion against specific performance in the particular circumstances of this case.

22. I have however concluded that no enforceable agreement was arrived at on 27 April 2022 and that I should not exercise my discretion in granting the relief requested in the Enforcement Application. I dismiss it but am minded to make no Order as to costs as I believe the statements made by the then counsel for the Plaintiffs caused the misunderstanding and I can see why, in the circumstances, Philip felt it necessary to file the Enforcement Application but he should not have his costs as it has been unsuccessful. Each side should pay their own costs. That is why I am minded to make no Order as to costs – that will have the effect of each side paying their own costs in respect of the Enforcement Application. I am content to hear any short submissions to the contrary in a moment.

Decision on the Injunction Application

23. In respect of the Injunction Application the main issue here in my mind is whether the court should restrict the Order to preserve the status quo in respect of the Cayman Company or should it also extend it to cover the Hong Kong Subsidiaries. I confess that I have not found that an easy issue to resolve. I have however, on balance, decided to limit it to the Cayman Company. In respect of the Hong Kong Subsidiaries there are, insofar as I understand the position based on the limited information put before the court, proceedings on foot in Hong Kong in relation to at least some of the subsidiary companies (Aurabeat Technology Holdings and Aurabeat Technology Limited) and Philip and Ms Kwok have given certain undertakings but Roger and Pamela have not. If Philip wants Roger or Pamela to give undertakings in respect of the Hong Kong Subsidiaries he should approach their Hong Kong lawyers and if need be the Hong Kong Court. If Philip wants Orders from the Hong Kong Court to preserve the status quo on the ground in Hong Kong in respect of the Hong Kong Subsidiaries again he should approach the Hong Kong Court.



24. I note that at paragraph 21 of Philip’s skeleton argument it is stated that on 18 May 2022 the Plaintiffs procured that Philip be removed as a director of Aurabeat Technology Limited, described as “the main Hong Kong subsidiary”. Philip also complains that on 23 May 2022 Roger announced Philip’s departure to the Group’s employees and customers. In short if Philip thinks, on advice, that he has been wrongfully removed as a director of one of the Hong Kong Subsidiaries he should seek relief from the Hong Kong Court. I do not think it appropriate, just or convenient for this court to make such Orders in the circumstances of the case presently before me.
25. I appreciate the argument that relevant parties are before the court and I would not be making orders directly against the Hong Kong Subsidiaries. There are however legal proceedings in Hong Kong involving some of the Hong Kong Subsidiaries and I am conscious of comity concerns (see for example In the Matter of *GTI Holdings Limited* (FSD unreported 15 March 2022 paragraphs 68 – 78). On balance I think it best for Philip to engage with the Hong Kong Court in respect of his concerns over his position with the Hong Kong Subsidiaries.
26. Sitting here in the Grand Court of the Cayman Islands, I confine myself to the Cayman Company and the proceedings before this court.
27. There are plainly serious issues to be tried in respect of the proceedings before this court including issues surrounding the removal of Roger and Pamela as directors, the appointment of Ms Kwok, the dilution of the shareholdings and the authenticity or otherwise of the Resolution. Philip himself realises that until it is determined whether the Resolution is genuine or not “both parties have a seriously arguable case and that it makes sense for this Court to protect the status quo” (paragraph 7 of his second affidavit).



Status Quo

28. I have considered what “the status quo” means in the context of this case. Counsel for the Plaintiffs has referred to the approach adopted by Kawaley J in *Olalekan Akinyanmi v Lekoil Limited* (FSD unreported 14 April 2022) in effect defining the status quo as the state of affairs immediately prior to the issue of the application but Mr Moverley Smith QC says that the better view is that the status quo means the state of affairs before the most significant recent change of circumstances (see Ungoed-Thomas J in *Texaco Ltd v Mulberry Filling Station* [1972] 1 W.L.R. 814 at 831, Lord Diplock in *Garden Cottage Foods Ltd v Milk Marketing Board* [1984] AC 130 and Hodge J in *ESL Fuels Ltd v Fletcher* [2013] EWHC 3726 (Ch). On the case presently before the court I determine the status quo as the circumstances which prevailed before the dilution of the shareholding of the Plaintiffs, when they were directors of the Cayman Company and when Ms Kwok was not.

Balance of Convenience

29. The balance of convenience drives me to the conclusion that I should make an order that is just, appropriate and convenient to preserve the status quo in respect of the Cayman Company pending the determination of the proceedings begun by the Writ in this jurisdiction. I have taken the course which seems likely to cause the least irreparable prejudice to the parties in respect of the Cayman Company (Lord Diplock in *American Cyanamid v Ethicon Ltd* [1975] AC 396 and more recently Lord Hoffmann in *National Commercial Bank Jamaica Limited v Olint* [2009] UKPC 16).

Orders

30. I grant the Injunction Application and the Orders I make are as specified in the draft Order produced to the court this afternoon with the amendments specified during my exchanges with counsel.



31. The following Orders were made:

Injunction Order

1. *Until further order of the Court the First Defendant, the Second Defendant and Aurabeat Technology International (the Third Defendant, being the "Company") (collectively the "Defendants") be restrained from:*
 - (a) *implementing, carrying into effect, and/or otherwise acting on the resolutions passed at the general meeting of the Company convened at 9 am (Hong Kong time) on 13 April 2022 and/or any other resolutions prior to or after 13 April 2022 to:*
 - (i) *remove Sze To Gin Nam ("**First Plaintiff**") and Lo Shuk Yee ("**Second Plaintiff**" and collectively referred to as the "**Plaintiffs**") as directors of the Company;*
 - (ii) *appoint the Second Defendant as a director of the Company;*
 - (b) *asserting and/or acting on any purported resignation or removal of the Plaintiffs as directors of the Company;*
 - (c) *claiming or representing to any third parties that the Plaintiffs have resigned and/or been removed as directors of the Company and/or the Second Defendant was appointed as a director of the Company;*
 - (d) *asserting and/or acting on any purported dilution and/or diminution of:*
 - (i) *the First Plaintiff's registered shareholding of 48.5% (as represented by 5,144,971 shares) in the Company as at 9 February 2022; and*
 - (ii) *the Second Plaintiff's registered shareholding of 8.1% (as represented by 857,495 shares) in the Company as at 9 February 2022;*

- (e) *asserting and/or acting on, and/or otherwise exercising any rights attaching to any and all purported further allotment of shares by the Company from on or about 9 February 2022 onwards;*
 - (f) *allotting, issuing or dealing with any additional shares in the Company.*
2. *Until further order of the Court, the Second Defendant be restrained from:*
- (a) *acting or holding herself out as a director of the Company;*
 - (b) *exercising or purporting to exercise any power conferred on the directors of the Company under its Memorandum and Articles of Association; and*
 - (c) *participating and/or intermeddling in the business or the management or affairs of the Company.*
3. *Nothing in this Order prevents or inhibits the Defendants collectively and each of them individually from making such averments, claims and applications in Cause Number FSD 97 of 2022 (DDJ) and in Action Number HCA 336/2022 in the High Court of the Hong Kong Special Administrative Region Court of First Instance in relation to the matters set out in paragraph 1 and 2 of this Order as they may be advised.*
4. *The First Defendant's application for leave to appeal is adjourned with liberty to restore provided that if the First Defendant wishes to pursue that application the following directions must be complied with:*
- 4.1 *The First Defendant must file and serve a summons seeking such relief before 4.30pm on 15 June 2022 (which summons may seek leave to appeal this Order as well as leave to appeal the Order determining the First Defendant's summons dated 9 May 2022); and*
 - 4.2 *The First Defendant must file and serve a skeleton argument, no longer than five pages in length, within 14 days of filing of his summons for leave to appeal;*



- 4.3 *The Plaintiffs, if they oppose such leave, must file and serve a skeleton argument no longer than five pages in length, within 14 days following receipt of the First Defendant's skeleton argument;*
- 4.4 *The Court may determine the summons without a hearing, and on the basis of the papers filed by the parties aforesaid.*
5. *The costs of the Injunction Application are reserved.*

Enforcement Application Order

1. *The Enforcement Application is dismissed.*
2. *There be no order as to costs of the Enforcement Application.*
3. *By 4pm on 22 June 2022 the parties are to file either joint draft directions or separate skeleton arguments, no longer than five pages in length, recording proposed directions for the determination of the claims and counterclaims in these proceedings.*
4. *The First Defendant's application for leave to appeal is adjourned with liberty to restore provided that if the First Defendant wishes to pursue that application the following directions must be complied with:*
 - 4.1 *The First Defendant must file and serve a summons seeking such relief before 4.30pm on 15 June 2022; and*
 - 4.2 *The First Defendant must file and serve a skeleton argument, no longer than five pages in length, within 14 days of filing of his summons for leave to appeal;*
 - 4.3 *The Plaintiffs, if they oppose such leave, must file and serve a skeleton argument no longer than five pages in length, within 14 days following receipt of the First Defendant's skeleton argument;*

4.4 *The Court may determine the summons without a hearing, and on the basis of the papers filed by the parties aforesaid.*

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT