

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION NO 1339 OF 2014

BETWEEN

KOO MING KOWN Plaintiff

and

THE BAPTIST CONVENTION OF HONG KONG operating as PUI CHING
PRIMARY SCHOOL AND PUI CHING
ACADEMY 1st Defendant

YOUNG KWOK HUNG CLEMENT 2nd Defendant

Before: DHCJ Seagroatt in Chambers (Open to the public)
Date of Hearing: 9 November 2017 at 9.58 am
Present: Mr Johnny Mok SC and Ms Amanda W M Li, instructed
by Lily Fenn & Partners, for the plaintiff
Mr Bosco Cheng, instructed by Lui & Law, for the
1st and 2nd defendants

PROCEEDINGS

MR MOK: Good morning, my Lord.

COURT: Good morning, Mr Mok. Where this habit of good morning comes from, I don't know, because you are not here personally, it's the institution.

MR MOK: Yes, my Lord.

COURT: You don't say good morning to an institution where I come from.

MR MOK: It's a bit inappropriate.

COURT: But never mind, you follow a habit that has been adopted for a long time.

MR MOK: Yes.

A COURT: In fact, I am not going to trouble you at the moment. A
B I am just going to ask Mr Cheng one or two things. B

Mr Cheng.

C MR CHENG: Yes. C

D COURT: First of all, the affirmation has not been filed. D

E MR CHENG: On time. Has not been filed on time by E
2 November. E

F COURT: Well, it has not been filed, as far as I can see, I F
G have looked through the file, the affirmation wasn't F
G sworn until, what was it, yesterday? G

H MR CHENG: Yesterday, yes. H

I COURT: Yesterday. I

MR CHENG: Yes. I

J COURT: And has it been filed at court? Because it's J
K certainly not on the court bundle. J

L MR CHENG: Yes, it had been filed. L

M COURT: What time was it filed yesterday? M

N MR CHENG: Around 2 something yesterday afternoon. My Lord, N
O may I have some time? Because I need to ask my... O

P COURT: Yes. If it has been filed, it obviously hasn't come P
Q up. But it was filed late, obviously. Q

R MR CHENG: Yes, yes. R

S COURT: And the exhibits, because I worked through from the S
T bundle, I wasn't able to work through from the court T
U file. U

V MR CHENG: And I am terribly sorry, my Lord, for... V

COURT: Well, just -- it's the speaking note. Paragraph 3.

MR CHENG: Yes.

COURT: D1 -- 1st defendant fails to comply with the order, S
T because it takes more time to complete the full picture, T
U etc. U

Well, having looked at the bank statement and the school V
is an institution that has been continuing for some V
time. It would have had its bank statements as a matter

A of course, and it would have kept them, because the A
B accounts would have been prepared on the strength of the B
C bank statements, to some extent.

C MR CHENG: Yes.

D COURT: And that's why I cannot understand, and it's probably D
E a matter that concerns the plaintiff, depending on what E
F their attitude is now, but I can't understand why it F
G took so long. Why there was such reluctance, because G
H for example, just dealing with the large sum of money H
I paid in in January of this year. Let me just get my I
J bundle, which I flagged up. 12 January appears to have J
K gone out of the account. Now, that account could have K
L been provided easily. And so could the account for L
M 14 December 07, when the 20 million went in. I don't M
N understand why it took more time than originally N
O anticipated.

H MR CHENG: My Lord...

I COURT: Because it's that that's forced the plaintiffs to I
J come to court to get the order. And I made the order, J
K and at the end, yesterday, it's complied with.

K MR CHENG: Yes.

L COURT: More or less, subject to what Mr Mok wants to say. L

M MR CHENG: Yes.

N COURT: It's still a problem. But what you say is the N
O 20 million went into the school account.

O MR CHENG: Yes.

P COURT: On 14 December, and -- let me just -- not sure where P
Q I bothered...

Q MR CHENG: My Lord -- my Lord...

R COURT: ...whether I picked out...

S MR CHENG: May I explain the flow of the 20 million to you? S

T COURT: Sorry?

U MR CHENG: May I explain the whereabouts in the flow of the U
V 20 million to you?

COURT: Well, the trouble is, none of these pages are V
numbered, so you may have to -- let me just see if I can
find, because the affidavit doesn't help very much.

A MR CHENG: Yes. May I trouble your Lordship to look at the
B 5th affidavit of Chan Shi-mong Hopkins(?)?

C COURT: Just a moment. Yes, I've got the 5th affidavit. I
D mean, they're both sworn on the same day.

E MR CHENG: Yes.

F COURT: Yesterday.

G MR CHENG: Yes.

H COURT: Now, just -- we've got the payment, paragraph 10,
I we've got the payment of the 14 million, and I was
J looking for 20 million being repaid to the plaintiff.

K MR CHENG: Yes.

L COURT: On or about item 56 of the accounts.

M MR CHENG: Yes. Well, that is the account attached to the
N 4th affidavit.

O COURT: What a convoluted way of preparing things, there we
P are. 20 September, payment out. Yes, well, the account
Q shows that -- now show that 20 million went into the
R school account.

S MR CHENG: Yes.

T COURT: Primary account. And the 20 million has been paid
U out.

V MR CHENG: Yes.

COURT: And the reason, as I understand it, for the request
to see the Convention account was to ascertain whether
or not the money had been transferred from the
Convention account, and whether or not having been
transferred, it was transferred back at any stage. They
want to know where the money went.

MR CHENG: Yes.

COURT: And you say, "Well, that's it. We've come very late
to the table, disclosing the accounts, but that's the
position.

MR CHENG: My Lord, we say more than this. I accept that the
bundles should have been organised in a much better way.

COURT: Well, never mind about the bundles at the moment.

MR CHENG: Yes.

A COURT: It's the content.

B MR CHENG: Yes. The content. Now, the 20 million gift was
C paid by the plaintiff by cheque to the school.

D COURT: Yes.

E MR CHENG: In 2007. And then the cheque was deposited in the
F school account.

G COURT: Yes.

H MR CHENG: And then the money had been in the school
I accounts since then. At some point of time, the gift
J was -- the 20 million was transferred to another account
K for time deposit. And then...

L COURT: Yes. On -- but in the name, as I understand it, of
M the school.

N MR CHENG: yes, all along it's under the name of the school.

O COURT: Yes, but what we want to know -- all the plaintiff
P wanted to know, was what was happening to that money,
Q and the picture would be demonstrated or made clear by
R disclosure of all the accounts. I don't understand why
S there was reluctance.

T MR CHENG: My Lord. Well, two reasons. First of all,
U because the bank account of the school -- various bank
V accounts had already showed that all along the
W 20 million had never been transferred to any other
X accounts not under the name of the school. So we know
Y the whereabouts of the 20 million, and we know the flow
Z of that 20 million.

AA And then the second reason is this. Given that we
AB already have bank accounts showing the whereabouts of
AC the 20 million...

AD COURT: Whereabouts of the...

AE MR CHENG: 20 million.

AF COURT: 20 million.

AG MR CHENG: And given that there are more than 50 accounts
AH under the name of the Convention which, as evidence by
AI those bank account statements of the school, which has
AJ never been -- the 20 million has never been into other
AK accounts, it's not necessary, and indeed, it may cause
AL disruption to the Convention.

A COURT: How can it cause disruption to the Convention?
B Straightforward situation. Where did this money go?
C Did it go out of that account to any other account?
D Answer, no. Here are all the accounts. The money was
E subsequently paid in September last year, back to the
F plaintiff, and the other amount of money paid into court
G also came out of the same account into which the
H 20 million went.

I MR CHENG: Yes.

J COURT: The plaintiff say "let's have the full picture for
K the accounts. Let's see if the money did go into the
L Convention at some stage, and perhaps stayed there."

M MR CHENG: But my Lord, because we have the bank statement
N of the school, and it showed all along that the money
O has been there. It had never been transferred to the
P Convention, and it's...

Q COURT: Well, it makes it clear now, but you're saying it's
R been the position all along and on the disclosure by the
S defendants?

T MR CHENG: That's all along the position.

U COURT: Well, not as I understood the position.

V MR MOK: My Lord, can I...

COURT: Just ask Mr Mok on that particular point.

MR MOK: My Lord, I am sorry to say this, but having arrived
so late, we have worked very hard to try to understand
the position. And as a result, we have come to the
preliminary conclusion that the evidence is false, that
is presented before your Lordship. And what my learned
friend said to you, and I made a note of this, that the
account shows that the 20 million never was transferred
to any account not belonging to the school, or saying
that it shows that the account all along were in this
school's account is incorrect. That can easily be
demonstrated by looking at two statements, and my Lord,
first of all...

COURT: Two bank statements.

MR MOK: Two bank statements.

COURT: Right. Now, mine are marked up, because the bundle
isn't paginated, but I have marked up the beginning of
the school's bank statement, and also the end. So you
better...

A MR MOK: My Lord, the only reference we can have is --
B interlaced between the various statements, are the
C numbers A something.

C COURT: That's right.

D MR MOK: So I am looking at this one, which is A30.

E COURT: Just a moment. I got A33, you work backwards. 32,
F 31. By chance, it had fallen open at that.

G MR MOK: My Lord, the only...

H COURT: Right, let me just get the first -- let me just get
I the first sheet. That's A29.

J MR MOK: The only relevant entry in A32.

K COURT: Yes, I got A30. Yes.

L MR MOK: A30 is the date of 22 September 2010, the last item
M on this page.

N COURT: Yes.

O MR MOK: You see, at that stage, September 2010, there were,
P indeed, 10 million then, or 10 million-odd.

Q COURT: Yes.

R MR MOK: Yes. And those came from three sums, which you saw
S deposited on the -- in the -- in August. Three
T 5 million-odd sums.

U COURT: Yes.

V MR MOK: After the withdrawal of 6.5 on 26 August, so there
was a balance.

COURT: Those are the time deposit repayments.

MR MOK: Yes.

COURT: With the interest.

MR MOK: And then, if you then looked at A32, same account.

COURT: Just a moment. Yes.

MR MOK: First page, so at the first entry, you do see in
August -- October 2010, the sum was still there.

COURT: What sum was still there?

A MR MOK: 10-odd million. A

B COURT: 10 million, yes. B

C MR MOK: The balance. But this balance was actually C
withdrawn in 2011, and you will see that, dated 29 March
2011.

D COURT: Just a moment. D

E MR MOK: So that would be a few pages after that, 1, 2, 3... E

F COURT: 29 November, I've got. 2011, yes, a moment. F

G MR MOK: I think it's the sixth page. So this sum... G

H COURT: Just a moment. 22 November? H

I MR MOK: 29 March 2011. I

J COURT: March. Just a moment. J

K MR MOK: So you will see that... K

L COURT: 10 million withdrawn, yes? L

M MR MOK: Yes, 10 million. M

N COURT: Yes. N

O MR MOK: So thereafter, you will see all the balance went O
well below the 10 million.

P COURT: Yes. P

Q MR MOK: All the way down to the last page. Q

R COURT: Yes. R

S MR MOK: So this 10 million, which went out of this account S
never returned to this account. But where did it go?

T COURT: All right, never mind about that. Whether it's going T
through the account, and we've got this tedious exercise
to reach...

U MR MOK: Yes. The end point, your Lordship will see, at the U
last page of this tab, A32, it's 25 October 2017.

V COURT: Just a moment. 25 October 2017. V

MR MOK: Yes. T

COURT: Yes. U

A
B
C
MR MOK: So my learned friend is wrong to say that the money
which we purportedly had, or had been paid into this
account, never left this account until the repayment.
That is not true.

D
E
COURT: Just trying to - I'm looking at the last page, the
last but one -- yes, it is. Effectively the last page
of an account.

F
MR MOK: Yes.

G
H
COURT: Which is -- must be out of position, I think. No,
it's a different book.

I
MR MOK: If your Lordship were to look...

J
K
COURT: Well, show me where -- I am not so sure this isn't a
fruitless exercise. To do that, you may have to go
through each and every item of the account down the
years. Show me where you say the 20 million, as
20 million, went out of the -- that account.

L
MR MOK: Right.

M
COURT: Show me where it says that in the account.

N
MR MOK: The 20 million which was repaid to us or
purportedly repaid to us, came from a different account.

O
COURT: Yes.

P
MR MOK: Your Lordship would see at A34, at the penultimate
tab, your Lordship sees 20 September.

Q
COURT: Yes.

R
MR MOK: That was the -- that was the repayment.

S
COURT: 20 September 19 -- 2016.

T
MR MOK: 2016.

U
COURT: Yes.

V
MR MOK: So this came from a completely different account.

COURT: But all under the primary school.

MR MOK: Yes. All under the primary school. But the point
that I am making, the primary school had continued
influx of donations from other people.

COURT: Yes.

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MR MOK: Yes. But the question is, did the 10 million, which already -- originally went out in 2011, did that sum went to the Convention for their own other purposes? We didn't know that. So what may have happened is that they withdraw the 10 million, use it elsewhere, we don't know what, because there is no account to show what the 10 million has been used for, or where or when. And then they used the money from other sources, like other donors to repay to us. It is only my learned friend's say so that the 10 million, which had been withdrawn in 2011 had been used for the school's purposes.

COURT: These are running accounts. There may be four or five -- they're running accounts. So money is changing between this school's accounts from time to time.

MR MOK: Yes.

COURT: It would be an academic exercise to decide whether or not a 10 million transfer here or something of that nature went back to the Convention that was used for other purposes.

The crucial matter is that the 20 million went in at the time of the gift into the school account, and we've seen the school account is pretty healthy all the way through, and the money may have gotten mixed up in the course of the account, but that doesn't mean that there is any -- or the slightest suggestion or basis for the slightest suggestion that the 20 million are to be going in, went back to the Convention. If you'd shown me that within a short period of time, that there is 20 million going back to the Convention, that would have been another matter. But this is a running account over a period of - where are we - 2007 through to, let's say, 2016.

MR MOK: Yes, and...

COURT: Well.

MR MOK: The way that I have shown to your Lordship is that although it was a running account, there was a very distinct sum which was withdrawn on 29 March 2011, to an unknown destination, which in no way has been explained, and our concern is this. Very simply, that the Convention is running different things. And our concern is of the Pui Ching Primary School, that it should not be -- its funding, which is -- for the school, should not be appropriated for the purposes of repayment to us, when the money actually was never used for the school's purposes to start with.

A My learned friend says that all the funds from our A
B source had been used for the school's purposes. We do B
C not accept that, because there is, on the face of it, my C
D learned friend is wrong to say that the 20 million had
E all along remained in these accounts, because the
F account shows that they had not remained in the account.

D So that is the problem. Your Lordship will recall that
E I drew your Lordship's attention to A32.

E COURT: Yes. E

F MR MOK: And the amount which came out as early on, five F
G years before the repayment in 2011, the whole of the G
H 10 million had gone. And it had gone to the Convention H
I and used for their own purposes. Why should the I
J parents, the students and the other donors be footing J
K the bill to make the repayment to us when they K
L themselves had appropriated that money for other L
M purposes?

I COURT: Does the school have its own trustees? I

J MR MOK: They are also the trustees, supposedly. So they are J
K really using their own position, mixing the accounts, K
L and purportedly to have given a full and frank account, L
M when they have not. They have simply, as your Lordship M
N can see in the last item which your Lordship will see N
O about the 14 million which was the payment into court, O
P on account for their interest. P

M COURT: Yes. M

N MR MOK: All they did was that just prior to the repayment N
O or the payment into court, they deposited some sum of O
P 8.5 million there. So it, again, doesn't show that the P
Q money in fact came from these accounts that they have Q
R disclosed. Your Lordship can see, item 15 was the R
S deposit of 8.5 million, just before -- the day before S
T the repayment. T

Q And we can also show that the other 10 million, which Q
R purportedly had gone interpret another account, have not R
S stayed there. So my Lord, this is tab 33. S

R COURT: Well, it is -- it's not just 8.5 million, if one is R
S looking at that. There is 3.5 million in January, there S
T is 5 million in January as well. T

T MR MOK: Correct. T

U COURT: And so there is 538, and then there is 8, and then U
V there is another 8. V

A MR MOK: Yes. A

B COURT: So that's three 8s, about 24 million. B

C MR MOK: Yes. And what I am attempting to show to your C
D Lordship is how wrong my learned friend is in saying D
E that all the sums had remained in these accounts, which E
F is being shown to the court, at tab 33, my Lord, is the F
G other 10 million, so I have already accounted for the G
H first 10 million which had gone out in 2011. H

I The second 10 million went to another account of Hang I
J Seng Bank, A33, and all your Lordship needs to see are J
K two pages. The first page was dated 30 September 2010. K
L

G COURT: Yes. G

H MR MOK: So that balance of 85-odd million, supposedly H
I included two deposits, totally 10 million, supposedly I
J from the 20 million we had paid in. But if your J
K Lordship were to flip through these pages, that balance K
L of 85 million kept being reduced, so... L

J COURT: But Mr Mok, in order to do such an exercise, you've J
K got to go through these bank accounts, every withdrawal, K
L every deposit, in order to see how the money is going. L
M At the moment, and this picture can't change unless you M
N want to conduct some further litigation on behalf of the N
O primary school, if that is feasible, but at the moment, O
P the money goes in to that account, that is the gift, it P
Q is repaid out of that account, and the -- whatever that Q
R sum is, 14 million, 284, is also paid out of that R
S account. S

N Now, such an exercise is going to be huge. To go back N
O to 2007, in order to see precisely what payments were O
P made in, sources, what payments were made out, reasons, P
Q sources, what money went into the Convention, why and Q
R wherefore, and the decisions that were made. That is R
S just not feasible. S

Q Nor do I think that it's justified. On the picture Q
R you've got, which was your concern, was the money that R
S was the gift paid into the school accounts that it was S
T when the 20 million was repaid, it came out of the T
U school account, the school having had the 20 million. U
V How it was dealt with, it would open up a huge area of V
financial decisions on the part of the Convention and
the school. And the same applies, as far as the
14 million.

U Now, it may be that the plaintiff, as the potential U
V donor, is a bit worried about the way the finances of V
the Primary School are being conducted, but that's not

A my concern in the context of this particular litigation. A
B Now, if you want to raise it when you make an B
C application for the payment out of the 14 million, by C
D all means do so. How far you will get with whoever it D
E is who entertains that particular action, I don't know. E
F But I am certainly not prepared to allow further F
G explanation which is an unreasonable extension of almost G
H satellite litigation. H

E As far as I can see, your conscience should be clear, or E
F the plaintiff's conscience should be clear. That's F
G where the money went. He's been repaid out of the funds G
H that received his gift, and the whatever it is, the H
I interest of 14 million has come from the same account. I
J I couldn't possibly -- I am not saying that Mr Cheng is J
K spot on right with his comment, but it's a reasonable K
L conclusion, and I think that your argument is rather L
M speculative, in order to see that it has any substance, M
N it's going to require an enormous amount of work, and I N
O don't think that's justified. O

I MR MOK: My Lord, I hear your Lordship's point. Actually, I
J the only point that I would wish to make is that the J
K only area of concern relating to the exercise arising K
L from what I had submitted to your Lordship, is the one L
M single question. Did any of that money ever get M
N transferred to the Convention's other accounts, other N
O than the school's accounts? It's only one single O
P question. P

M COURT: Well, it may, it may not. It may, and there may be M
N justification in a full investigation and explanation N
O for it. O

N MR MOK: Yes. N

O COURT: But to do that, you've got to go through seven years' O
P accounts, tracing all the moneys and the reason for the P
Q moneys, and I can't see that that could be justified Q
R under the umbrella of this litigation. R

Q MR MOK: I see your Lordship's point, and the -- if I can Q
R just digress to a slightly different point, my Lord, the R
S other important point of this application is this. S
T Assuming that the 14 million did come from the school's T
U account. Our submission is that it should not have come U
V from that account, and it should be borne by the V
Convention itself.

T The reason is this. The order and the judgment given by T
U your Lordship by consent was based on the course of U
V action of misrepresentation by the Convention. And the V
school itself had done nothing wrong. It's the

A Convention that induced the plaintiff into making that
B gift.

C Now, insofar as they had been wrong, as a result of
D which the plaintiff was deprived of the use of that
E money, and this is what the interest payment is for, to
F compensate him for being deprived of the use of that
G money, that deprivation should be compensated for by the
H wrongdoer, and not by the school, because the school, as
I your Lordship knows, is for the benefit of the students
J and from time to time, the school fee had to increase,
K if their financial burden had increased, and we've
L already filed evidence, and your Lordship has seen from
M the video, that they're already saying, because of the
N interest, the school will suffer additional financial
O burden.

H And we say, because my client is really this, not out of
I his own personal gain, but really for the good --
J wellbeing of the school. And...

I COURT: I take your point, because it must be the case that
J the tortfeasor is the 1st defendant.

J MR MOK: Yes.

K COURT: And/or an individual. I am not sure what's the
L position with the 2nd and 3rd defendants was in relation
M to the Convention. I don't need to go down that road.
N But the Convention is the 1st defendant, and it is the
O tortfeasor, and so anything that flows as a result of
P that tort is the liability of the Convention.

N MR MOK: Yes.

O COURT: On the face of it, here, in the accounts of the
P school, you have the moneys in the school, the moneys or
Q the funds in the school being used to pay the
R Convention's liabilities. Now, that seems to me a good,
S strong prima facie point. How that is to be dealt with,
T to my mind, cannot come under the umbrella of this
U litigation. It may be that those concerned with the
V school can say, "Wait a minute, you're using -- if this
is the situation, you are using the school account to
pay off the Convention's liability, when that school
account, the funds in that school account comes from a
variety of sources, donations, fees, whatever, and the
school's financial position should not suffer by being
used in order to discharge the liability of the 1st
defendant.

U MR MOK: Yes.

A COURT: Now, that's as far as I can go. Maybe a matter, not
B suggesting it should be, but it may be a matter you will
C want to ventilate when you make the application for the
D payment out. I don't know. But at this stage, all I
E can say openly is it calls for some explanation as to
F why that account was used to discharge that liability,
G and if I recollect correctly, the liabilities have not
H yet been finalised, had they? Organised.

I MR MOK: No, it's only a payment into court.

J COURT: That's right.

K MR MOK: So it's a security rather than a payment.

L COURT: As a security.

M MR MOK: Yes.

N COURT: So there is no decision as to the final liabilities,
O which leaves that matter to be considered. Now, there
P may be other persons concerned on behalf of the primary
Q school, who may be, I am not saying this is the case,
R but maybe, who is saying, well, why on Earth with
S primary school funds, which have a number of different
T sources, being used to discharge a liability on the part
U of the Convention for its own misfeasance tort,
V whatever. But I am not going to extend the ambit of
this litigation to deal with that.

MR MOK: Yes. My Lord, unfortunately, the school is also
under the control of the Convention, so you can see the
conflict situation, that no one - and you don't need to
expect a student or a parent coming to challenge this.
It's highly unlikely. So they are both running the
school and also running the Convention, the same group
of people, so it's very difficult to have any satellite
relief coming out from the school, and that's the reason
why we have before your Lordship the summons for a
direction that the liability to pay the relevant sum
should be the personal liability of the convention.
That's all we are seeking. Basically, it's a
clarification of your Lordship's order.

COURT: Well, it's a liability of the 1st defendant.

MR MOK: All right.

COURT: And that's as far as I can go.

MR MOK: Yes.

COURT: Now, I would anticipate that there are some
institutions or concerned individuals, who will have, as

A part of their general remit, if not legal remit, some A
moral remit to make sure the funds of a school in these B
circumstances are not used in such a fashion. In saying B
that, I am not making a finding that they have been
C used. But on the face of it, in the bank statement, the C
1st defendant's liability has been mete out of the
D account of the primary school. Now, that may need quite D
a lot of explanation. Is it done on a temporary basis,
E that -- so that it will be repaid into the school funds? E
I don't know. But that seems to be the concern or
possible concern of other litigation, rather than
extension under the umbrella of this.

F MR MOK: So for present purposes, my Lord, I would be simply F
asking your Lordship to clarify what your Lordship had
G just said, namely that the liability is the liability of G
the 1st defendant as opposed to the school itself, in
H which event, then it would be up to 1st defendant, then, H
to decide how to discharge that liability. And if they
I did it in a way which is contrary to what the court I
expects them to do, then maybe certain consequences may
follow.

J COURT: The trouble is the wording of the 1st defendant, the J
Baptist Convention of Hong Kong operating as Pui Ching
K Primary School and Pui Ching Academy. K

L MR MOK: Yes. L

M COURT: The wording of that, whether it's equivalent to M
"trading as".

N MR MOK: Yes. N

O COURT: I am not at all sure, because we haven't had to apply O
our mind to that. But there is no doubt that the
P defendant, the 1st defendant, is the Baptist Convention
of Hong Kong.

Q MR MOK: Yes. Q

R COURT: Whatever it operates, how many little satellites, for R
want of a better description, it has, within its
S control, may well be a matter for examination. There S
may be -- I mean I don't know, there's just two, isn't
T there, the academy and the primary school. But T
that's -- if it's to be pursued, and I can understand,
U on the face of it, why anyone would want to get behind U
it and see how it comes that that account has been used,
since the school is not, on the face of it, a
T tortfeasor, merely, as it were, I wouldn't say an agent, T
but an adjunct, for which funds are claimed on a
U charitable basis, then this was one, but a substantial U
one.

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I think that it would probably better if it was put in
the hands of either a voluntary body or a school
council, or -- I don't know whether they've governors.
If the Convention is controlling it, whether it allows
governors. I don't know how they operate. But that's
where it should go for consideration. Not this.

D
MR MOK: All right.

E
COURT: But I mean, it's self-evident. The judgment is
against the 1st defendant.

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MR MOK: So perhaps we can certainly rely on what falls from
your Lordship's comments, even though it doesn't
translate into a formal direction. Perhaps that would
be sufficient to put the 1st defendant on notice of
those matters, and perhaps this can be then followed up
by our correspondence, as to what should be the
appropriate weight.

I
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COURT: Yes, I think it's in the hands of other people.
There may be some legal recourse, I don't know. But
because I don't know the full structure, and I don't
know what other institutions or individuals are keeping
an eye on what's going on in the funding and accounts.
I daresay the accounts are -- I daresay they are filed
somewhere, aren't they? I don't know. How is the
Convention registered? As a business, I suppose.

M
MR MOK: It's registered as a charity, I believe.

M
MR CHENG: Charitable

N
COURT: It's -- well, then.

O
MR MOK: No, no, no. The 1st defendant is a company limited
by guarantee.

P
COURT: Well, that's what...

Q
MR MOK: The school itself is unincorporated, as I
understand, so there is no legal body which is actually
called the school.

R
COURT: No, and not registered as a charity.

S
T
MR MOK: I don't think the school is registered as a
charity, it's the Convention that is registered as a
charity.

U
V
COURT: The Convention is registered as a charity.

A MR MOK: Yes, because it's a church organisation, so it had many activities. B

C COURT: Well, that may be the avenue for exploration, it's registered as a charity. What rules are -- what are the rules it's obliged to follow? What monitoring is there, of whatever else is under the umbrella originating D summons the convention? But it's not a proper basis within the context of this particular litigation. It's E gone as -- rather like that, sorry, it's gone about as far as it can go, at the moment, subject, of course, to the application for the payment out of the 14 million, F and whatever else transpires thereafter. If more money has got to be paid to the plaintiff, then somebody will want to look and see where that money is coming from, G when it's satisfied.

H MR MOK: Yes, so my Lord, thank you so much for all the comments which your Lordship has made, and we certainly would follow up on your Lordship's comment. So far as I today's summons are concerned, we have obtained your Lordship's order, that order, as your Lordship has J noted, was not strictly complied with. And as a result of that order, it throws to -- it comes to light that, in fact, they had been using the school's resources to K make the payment into court, which, as your Lordship have indicated, may indicate a prima facie case.

L COURT: That's the 14 million.

M MR MOK: The 14 million, which requires an explanation. And therefore, I do ask for the costs of this summons and today's application be paid by the 1st defendant because N they have -- it is their application to make the disclosure, and your Lordship had ordered it. They had failed to comply with it strictly, and also, even, as a result of that order, evidence has come about to show O that there is a lot of explanation to do. So I think it is only fair to demonstrate that we have come to court, P quite properly, and have elicited information which is useful, and we can follow up on. And also the 1st Q defendant, albeit have been under an order, has failed to comply. Those are my submissions.

R COURT: Mr Cheng, you've -- I take the view you've complied with the -- the defendants have complied with the order.

S MR CHENG: Yes.

T COURT: At the last minute.

U MR CHENG: Yes.

A COURT: And it needed to be here today because the
B affirmation and the exhibits weren't complete until
yesterday, and filed late yesterday.

C CLERK: There should be a bundle. There are two bundles.

D COURT: Yes, but they're not filed. They are not filed in
E here, all right? Now, those who had submitted it for
the purposes of today's hearing, all right. That
exchanges -- a mechanical exchange to deal with those
documents. But -- and as you say here, paragraph 3 of
your speaking note, Mr Cheng:

F "The 1st defendant fails to comply with the said
G order..."

H That's my order...

I MR CHENG: Yes.

J COURT: ...of October some time.

K MR CHENG: 24 October.

L COURT: 24 October. Because it takes more time than
M originally anticipated to complete the full picture of
the whereabouts and the flow of the gift of 20 million.
Right, belated compliance.

N Now, that means that on the face of it, you should pay
O the costs for the delay in dealing with that, and that
involved the plaintiff not getting that information to
that extent, until yesterday.

P MR CHENG: Yes. My Lord, just a few points I want to...

Q COURT: Now, are you opposing costs in principle?

R MR CHENG: I would ask for no orders as to costs.

S COURT: Well, when there is a bit of failure -- not
T necessarily a bit of failure, but perhaps on some views,
significant failure until the last minute. In other
words, it's taken two hearings in order to increase the
pressure upon the defendant.

U MR CHENG: Well, my Lord, the only point I want to make is
this. The summons -- in the summons, what now the
plaintiff has is not what they're asking for.

V COURT: Sorry? What the plaintiff now has is...

MR CHENG: Is not what they are asking for in the summons.

A COURT: You mean in the original summons? A

B MR CHENG: Yes. B

C COURT: Well, that can't be right, can it? Let me just look C
at the original summons. I can't recall any objection
D being raised to that effect. In your speaking note, you D
were saying can't do it in time. All this amount of
E work, which I don't accept, because it's a very E
straightforward exercise. Well, there is only two.
F I've made it -- item 2. A direction that the Baptist F
Convention shall be the entity bearing personal
G responsibility. Well, it's clear that the defendant, G
the 1st defendant, there is the entity bearing
responsibility for the payment of the 20 million.

H MR CHENG: Yes. H

I COURT: They paid it -- your explanation is that they've paid I
it into the school's accounts, and it's come back out of
J the account, and it was asking for all the details in J
the account to show, and we didn't get a full
explanation, if it be the full explanation, until
yesterday. So I am not with you on that.

K MR CHENG: Well, in that case, may I ask not all the costs K
of the -- of this application be borne by the 1st
L defendant, and of course, we oppose that the costs has L
to be made on indemnity basis, and we agree that it's
certificate for one counsel is sufficient.

M COURT: I agree with you about this. No disrespect to M
Mr Mok, I think this is a matter that should have stayed
N with one counsel, bearing in mind the liability for N
costs. So they have the luxury of Mr Mok today, helpful
O though it's been. I will make it clear, because it's O
consistent with what I had said before, the liability
P for the costs of this application of and incidental to P
this application of the summons, including today's
hearing, be to the plaintiff, to be borne by the
1st defendant.

Q And it seems to me that in the light of what I have seen Q
so far, unless I be substantially mistaken, that school
R -- those school funds, or the funds of that school R
should not be used for the settlement of these costs.

S MR CHENG: Certainly, certainly. S

T COURT: So I think that's understood. T

U Right, thank you, gentlemen. U

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MR MOK: Thank you, my Lord.

Hearing adjourns - 10.45 am
9 November 2017

I/we certify that to the best of my/our ability and skill, the foregoing is a true transcript of the audio recording of the above proceedings



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Ip Dik Man
Date: 29 November 2017

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