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DCCJ 4871/2024
[2024] HKDC 2023

IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
CIVIL ACTION NO 4871 OF 2024

BETWEEN

PENG XULEI Plaintiff

and

CHANGZ TRADE LIMITED
(創正安貿易有限公司) 1st Defendant

DUOHUI TRADE CO., LIMITED
(多惠商貿有限公司) 2nd Defendant

JUMPING OVERSEAS LIMITED
(跳動貿易有限公司) 3rd Defendant

SALMOPH LIMITED
(莎拉曼菲有限公司) 4th Defendant

WORLD BEATING LIMITED
(名品貿易有限公司) 5th Defendant

ZHUO YANG TRADING CO., LIMITED
(卓揚貿易有限公司) 6th Defendant

Before: Her Honour Judge G. Chow in Chambers (Open to public)

Date of Hearing: 26 November 2024

Date of Judgment: 26 November 2024

JUDGMENT

Introduction

1. This is the hearing of an application by the Plaintiff (“P”) for default judgment against the 1st to 6th Defendants (collectively, “Ds”) pursuant to O 19, r 7 of the Rules of the District Court, Cap 336H (“RDC”) by Summons dated 4 October 2024 (“the Summons”). P further seeks orders for payment of various sums of monies together with interest, declaratory relief, account and inquiries as well as costs against Ds.

Background Facts and Procedural History

2. The following background facts are taken from what has been pleaded in the Statement of Claim (“SOC”).

3. P is a Hong Kong resident.

4. Ds are all private limited companies incorporated in Hong Kong.

5. P claims that she is a victim of an investment scam as a result of which she transferred various sums of monies to the respective bank accounts of Ds.

6. In around the end of April 2023, P came across a Facebook post claiming to have tips on stock investment with an invitation to join a WhatsApp chat group (“the Chat Group”). The person managing the Chat Group was known as “Cathy”.

7. Upon Cathy’s invitation, P attended various online investment seminars purportedly given by an instructor known as “Lo Ying Kin” (“Lo”) between 11 May 2023 and 31 July 2023.

8. On around 20 June 2023, Cathy referred P to another “manager” known as “Chow” to set up an investment account to trade stocks in accordance with the instructions of Lo and/or Cathy. Upon Chow’s instructions, P downloaded a mobile application (“the Platform”) and registered a purported investment account on the Platform.

9. Between 30 June 2023 and 25 July 2023, P transferred the following sums of monies into the bank account of the 1st Defendant (“D1”) maintained with Hang Seng Bank Limited (“HSB”) and the respective bank accounts of the 2nd Defendant (“D2”), the 3rd Defendant (“D3”), the 4th Defendant (“D4”) and the 5th Defendant (“D5”) maintained with The Hongkong and Shanghai Banking Corporation (“HSBC”):

Date	Amount	Recipient	Bank/account number
30/6/23	HKD15,000	D2	HSBC/582-659363-838
4/7/23	HKD16,000	D4	HSBC/149-485120-838
5/7/23	RMB9,715	D2	HSBC/582-659363-838
10/7/23	RMB20,000	D3	HSBC/149-475931-838
10/7/23	HKD10,900	D3	HSBC/149-475931-838

Date	Amount	Recipient	Bank/account number
10/7/23	HKD3,000	D3	HSBC/149-475931-838
14/7/23	HKD170,000	D3	HSBC/149-475931-838
14/7/23	RMB33,000	D5	HSBC/747-291466-838
25/7/23	HKD79,500	D1	HSB/369-688361-833
25/7/23	HKD29,800	D1	HSB/369-688361-833
25/7/23	HKD55,600	D1	HSB/369-688361-833
25/7/23	HKD2,000	D1	HSB/369-688361-833

10. On 2 August 2023, the Platform showed the purported account of RMB1,142,743.96 (“the Purported Balance”). However when she requested to withdraw the investment proceeds from her account she was requested by Chow to pay another sum of HK\$239,399, being 30% of her gain earned, which she did on 3 August 2023 to a bank account of the 6th Defendant (number 747-276749-838) maintained with HSBC.

11. Since 10 August 2023, P was no longer able to access or download the Platform and could not retrieve the Purported Balance. It was then that she realized she was a victim of an investment scam.

12. By Writ of Summons dated 22 August 2024 (“the Writ”), P commenced the present action against Ds.

Applicable principles

13. The applicable principles to an application under O 19, r 7 have been discussed in several cases brought by victims of fraud. The power to grant judgment under the provision is discretionary. The court is

required to scrutinize whether the matters pleaded in the Statement of Claim entitle the plaintiff to the judgment sought. The court's decision is made on the basis of the pleaded facts, rather than on the evidence. See: *Hong Kong Civil Procedure 2024*, Vol 1, §§19/7/11 and 19/7/14; *Sultana Distribution Services Inc v Hong Kong Fuheng Technology Co Ltd* [2018] HKCFI 1480, §7; *Wells Fargo Securities LLC v Tian Ruida Industrial Co Ltd* [2018] HKCFI 2495, §1; *Minebea Cambodia Co Ltd v Zhao Jin Fang trading as Anzhan Industrial & Commercial Company* [2022] HKCFI 3325, §28; and *Peter Shoikhet and Gale Shoikhet v Chen Guoqiang* [2022] HKDC 369, §8.

14. As for declaratory relief, the rule of the court that a declaration will not be granted when giving judgment by consent or in default without a trial is a rule of practice and not of law and will give way to the paramount duty of the court to do the fullest justice to the plaintiff to which he is entitled. The court will consider whether the declaratory relief is properly made out on the pleadings and whether it is appropriate in the overall exercise of discretion for such relief to be granted without trial. In exercising its discretion, the court will consider whether any useful purpose would be served by granting declaratory relief. In email fraud cases where a proprietary claim was asserted, the court has granted declaratory relief in the default judgment context in order to secure the plaintiff's proprietary claim as opposed to merely personal claim, particularly given that the defendant may have other creditors. See *Hong Kong Civil Procedure 2024*, Vol 1, §§19/7/14 and 19/7/20; *Mesirow Financial Administrative Corporation v Best Link Industrial Company Limited* (Unrep) HCMP 1846/2015, 25 January 2016, §§35-38; *Guaranty Bank and Trust Company*

v ZZZIK Inc Ltd (unrep) HCA 1139/2016, 18 July 2016, §38; and *Peter Shoikhet and Gale Shoikhet*, §22.

Analysis

15. I am satisfied from the affirmations of service filed on behalf of P that Ds were duly served a copy of the Writ by leaving it at their respective registered office. I accept that the said service amounts to proper service on Ds under s 827 of the Companies Ordinance, Cap 622.

16. Ds have not filed any acknowledgment of service or Defence within the time limit for doing so or at all.

17. Ds are absent from today's hearing. This court is empowered by O 32, r 5(1) of RDC, to proceed with a summons at its first or any resumed hearing in the absence of a party thereto, if having regard to the nature of the application, it thinks it expedient to do so.

18. Personal service of the Summons is not required under O 10, r 1(2) of RDC and Ds have defaulted as to acknowledgment of service. Under O 65, r 9 of RDC, service of the Summons is not required. Since the commencement of these proceedings, Ds have not appeared to participate or contest these proceedings. It seems to me that there is no point in adjourning the hearing of the Summons and directing service of the Summons on Ds. In the circumstances, I consider it expedient to proceed with today's hearing in the absence of Ds.

19. P's account of the events leading up to the transfer of her monies to respective bank accounts of Ds as pleaded has not been contested due to Ds' non-appearance. I see no reason not to accept P's pleaded case of fraud. The basis upon which default judgment can be obtained in circumstances where no defence is filed is that the court will assume that the Statement of Claim has been impliedly admitted by the defendant. This is why, in an application for default judgment, the court will only consider the Statement of Claim without admitting any evidence: see *Hong Kong Civil Procedure 2024*, Vol 1, §19/2/1.

20. On the averments in the SOC, I am satisfied that P is entitled to enter judgment against Ds for payment of the sum(s) transferred by P to their respective bank accounts.

21. A case of unjust enrichment has been pleaded in the SOC. There are 4 elements to a claim in unjust enrichment: (1) enrichment of the defendant; (2) at the expense of the plaintiff; (3) enrichment being unjust; and (4) no defence applicable. See *Shanghai Tongji Science & Technology Industrial Co Ltd v Casil Clearing Ltd* (2004) 7 HKCFAR 79 at §67.

22. Each of the defendant, having no entitlement to the sum(s) transferred to it, plainly was enriched at the expense of P. But for the mistaken belief that the transfers made were in relation to the trading of stocks through the Platform, P would not have transferred those sums to Ds with whom she had no commercial or other dealings with. Ds have not filed any defence so there is no applicable defence.

23. P further seeks interest on the various sums at judgment rate from the date of transfer to Ds to the date of judgment and thereafter at judgment rate until full payment. However, there is no plea that the sums transferred to Ds had been earning interest at a rate equivalent to judgment rate and thereby Ds were enriched in the amount of such interest. I would therefore refuse to order such interest. Rather, I would allow the pleaded interest of prime rate plus 1% from the date of transfer until date of judgment and thereafter at judgment rate until full payment.

24. As for P's proprietary claim to the sums transferred to Ds, it is now well-established that when property is obtained by fraud, equity imposes a constructive trust on the fraudulent recipient so the property is recoverable and traceable in equity. See eg: *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 at 716C-D; *Minebea Cambodia Co Ltd*, §32 and *Peter Shoikhet and Gale Shoikhet*, §21.

25. Further, even if the recipient was not a party to the fraud, if his state of knowledge is such as to make it unconscionable for him to retain the property, the defrauded claimant has a tracing remedy. Moreover, knowledge does not have to be acquired at the time of receipt, and it can be acquired subsequently while the property is in the recipient's hands: see *Minebea Cambodia Co Ltd*, §§33-34 and *Guaranty Bank and Trust Company*, §§32-33.

26. It is pleaded that Ds are fraudulent recipients of the sums transferred to them by P. Alternatively, upon service of the Writ, Ds must have known the sums were transferred under a mistake of fact, without P

ever intending Ds to have it and without any consideration given by Ds. Ds' state of knowledge are such as to make it unconscionable for them to retain the sums. I am therefore satisfied on the SOC that a constructive trust in favour of P attached to the sums transferred to Ds.

27. Furthermore, I am satisfied that the present case is one where justice requires the court to grant the declarations sought to enable P to pursue proprietary in addition to personal remedies against Ds. I would therefore exercise my discretion in favour of the declarations sought.

Disposition and orders

28. Accordingly, I will therefore grant judgment to P and order judgment be entered against Ds. I will further make an order in terms of the draft order submitted save as amended by me.

(G. Chow)
District Judge

Mr Huang Yi Jun, Eugene, of Haldanes, assigned by the Director of Legal Aid, for the plaintiff

The 1st to 6th defendants were not represented and did not appear