

**EASTERN CARIBBEAN SUPREME COURT  
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE  
(COMMERCIAL DIVISION)**

**CLAIM No. BVIHC (COM) 2022/0016**

**BETWEEN:**

**(1) NAM TAI PROPERTY INC.  
(a company incorporated in the British Virgin Islands)  
(2) NAM TAI GROUP LIMITED  
(a company incorporated in the Cayman Islands)  
(3) NAM TAI INVESTMENT (SHENZHEN) CO LTD  
(a company incorporated in the People's Republic of China)**

**Claimants**

**-and-**

**GREATER SAIL LIMITED  
(a company incorporated in the British Virgin Islands)**

**Defendant**

**Appearances:**

Mr. Edward Davies QC and Mr. Ben Griffiths, with them Mr. Nicholas Burkill of Ogier for the Claimants

Mr. John Carrington QC, with him Mr. Andrew Emery of Emery Cooke for the Defendant

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2022 July 6  
July 7

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**JUDGMENT (DECLARATORY RELIEF)**

[1] **JACK, J [Ag.]:** By an application issued on 31<sup>st</sup> May 2022 the claimants seek summary judgment against the defendant for the following relief, namely declarations:

“(a) The resolutions that were put to the special general meeting of the First Claimant Nam Tai Property Inc (‘NTP’) that was convened and held

on 30 November 2021 pursuant to the Order of the Eastern Caribbean Court of Appeal dated 4 October 2021 (re-issued on 6 October 2021) in appeal number BVIHCMAP 2021/10 were validly passed by the shareholders of NTP at the special general meeting, with the result that each of Dr. Lai Ling Tam, Dr. Wing Yan (William) Lo, Professor Aiping Lyu and Professor Si Zong Wu was validly removed as, and thereby ceased to be, a director of NTP and each of Michael Cricenti, Cindy Chen Delano, Bo Hu, Leung Lin Cheong (Louis Leung), Paula J. Poskon and Jeffrey Tudor was validly appointed as a director of NTP;

(b) The resolution considered and approved at the meeting of NTP's board of directors held on 13 December 2021 to appoint Yu Chunhua as a director of NTP with immediate effect was validly passed by the board of directors of NTP, with the result that (amongst other matters) Yu Chunhua was validly appointed as a director of NTP with effect from that date;

(c) The directors of NTP were as at 1 December 2021 Michael Cricenti, Cindy Chen Delano, Bo Hu, Leung Lin Cheong (Louis Leung), Paula J. Poskon, Jeffrey Tudor, Peter Kellogg and Mark Waslen, and each of those persons has remained a director of NTP thereafter; and the directors of NTP were as at 13 December 2021, and have at all times since been, each of the aforementioned persons and additionally Yu Chunhua; and

(d) Jiabiao Wang was validly and effectively removed from his role as chief executive officer of NTP with effect from 1 December 2021."

[2] The background to this matter is heavy litigation in this Territory, which resulted in my making an order (subsequently upheld by the Court of Appeal) for the holding of a special general meeting ("SGM") of members of NTP. That meeting was held on 30<sup>th</sup> November 2021, where the changes in the board were made as set out in para (a) of the declaration sought. There was subsequently a meeting of the new board on 1<sup>st</sup> December 2021. The board removed Jiabiao Wang ("Mr. Wang") as the chief executive officer of NTP.

[3] Notwithstanding this, Mr. Wang has refused to accept his removal. Further he has refused to deliver up the chops of various subsidiaries of NTP. NTP has still not as at today's date been able to obtain physical possession of its assets in the People's Republic of China ("the PRC").

[4] Mr. Wang has issued proceedings in the PRC. Mr. Cricenti, a director of NTP, says this in his affidavit in support:

“19. [In the exhibit to his affidavit] is a copy of a claim (with translation) commenced by Mr. Wang (the former Chief Executive Officer of NTP) in the [PRC] against NTP, NTG and NTI dated 26 February 2022. In those proceedings, Mr. Wang has:

- a. asserted (wrongly) that the SGM resolutions are not duly established and have no legal effect on the basis (wrongly) that the ‘shareholders’ voting rights related to the resolutions passed at the [SGM] made by NTP do not comply with the provisions of the Company Law and the company’s Articles of Association and those shareholders participating in the voting may have sold their shares without voting rights’;
- b. asserted (again wrongly) that the NTP Board resolutions and the NTG resolution were consequently invalid and of no legal effect; and
- c. sought an order from the PRC court that the SGM resolutions, the NTP Board resolutions and the NTG resolution are all invalid and of no legal effect.

20. The assertion by Mr. Wang that the SGM resolutions, and consequently the NTP Board resolutions and the NTG resolution, are not duly established and of no legal effect was without foundation and incorrect. I refer to the letter from Global Law Office in the PRC dated 18 May 2022..., which explains the use of the term ‘not duly established’ in PRC law.

21. In his PRC claim, Mr. Wang has asserted the following in support of his claim that the SGM resolutions were not duly established:

‘on March 3, 2021, NTP announced that it planned to hold a shareholders’ meeting, informing that the record date was March 15, 2021, and determined that the shareholders registered as of 4 p.m. on March 15, 2021 were entitled to vote as voting shareholders; on March 22, 2021, NTP announced to the shareholders a notice of the shareholders’ meeting, informing that the shareholders’ meeting would be held at 10 a.m. on April 26, 2021; on April 21, 2021, the BVI court agreed the shareholders’ meeting scheduled on April 26, 2021 would be postponed; on October 4, 2021, the BVI court ordered NTP to hold a shareholders’ meeting on November 30, 2021. However, NTP did not issue a new notice of the meeting to the shareholders before November 30, 2021 or re-determine the record date. In the end, NTP still adopt March 15, 2021 as the record date, as a result of which certain shareholders were still entitled to attend the shareholders’ meeting even though they had sold the shares of NTP and thus should have no voting rights, and on the contrary,

certain shareholders who should have voting rights in NTP failed to exercise their voting rights. Therefore, there were serious flaws in the procedures of the shareholders' meeting held by NTP, at which shareholders without voting rights had exercised their voting rights, which violated the provisions of the Company Law and the Articles of Association, and the number of votes actually did not meet the requirement for the affirmative votes to pass a resolution under the Company Law and the Articles of Association."

[5] This repeats the argument made by a Mr. Chen Zhuangrong in an action brought by him against NTP in December of last year. In my judgment in that matter, I said:<sup>1</sup>

"7. The statement of claim in the current action pleads in para 3:

'As at 16 November 2021, Mr. Chen has acquired and is the legal and beneficial owner of 1,348,888 shares in NTP. Mr. Chen holds 3.435957% of the issued shares in NTP. His name appears as a member in the register of member of NTP.'

8. This pleading does not show that the claimant was entitled to vote at the meeting on 30<sup>th</sup> November 2021. In order to be entitled to do that, he had to have been a shareholder on 15<sup>th</sup> March 2021.

9. The Court of Appeal in refusing a stay of the meeting due to be held on 30<sup>th</sup> November 2021 held:

"43. ...[T]he new shareholders [i.e. those acquiring their shares after the record date] would have acquired their shares knowing that the record date for the meeting had been set by the Court. The settled practice of the Company and other companies listed on the New York Stock Exchange is that the record date for a meeting is published and brokers advise their clients of the date. This was done in this case and the majority of shareholders lodged proxies with their custodians with their votes on the resolutions. Mr. Cricenti's evidence is that proxies representing more than 60% of the shares in NTP have been lodged with the custodians. Of this amount, 69% are votes in favour of the resolutions. Mr. Cricenti also made the point that if the votes cast by GSL are taken out of the calculation, more than 96% of the proxy votes are in favour of the resolutions. If the record date is changed a significant amount of these votes would not be counted. The evidence of Mr. John Ferguson, a proxy solicitor

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<sup>1</sup> Chen Zhuangrong v Nam Tai Property Inc [2021] ECSCJ No 818 (30<sup>th</sup> December 2021).

who gave evidence on behalf of IsZo, is to the same effect as Mr. Cricenti's.

44. The Court also noted that the unchallenged evidence is that persons who buy shares in the Company have access to detailed information about the Company and its activities and business, including full details of the ongoing litigation in the Virgin Islands. Any investor acquiring shares after the record date would have been aware, either directly or through their broker, that the shares that they were acquiring would not be eligible to vote at the court-ordered shareholders' meeting. Mr. Ferguson's evidence confirms that this is the practice regarding companies listed on the New York Stock Exchange. He deposed that — "It is therefore incontrovertible that shareholders who acquire shares after a given record date are not able to vote at the corresponding meeting and should have no expectation of being entitled to vote at such meeting."

45. This conclusion appears to be completely logical and was accepted by the Court."

...

11. ...[T]he claimant's claim is in my judgment completely hopeless. The Court of Appeal fixed the record date for the special meeting of shareholders of the defendant. There is no basis on which the claimant can go behind that. The Court of Appeal was entitled to fix the record date: see sections 83(4) and 86(1)(b) and (3) of the **[BVI Business Companies Act 2004]**.<sup>2</sup> The claimant was not entitled to vote his shares at the meeting of 30<sup>th</sup> November 2021."

[6] In the current case, the defendant ("Greater Sail") makes no case to the contrary. Accordingly there is no dispute as to the facts as stated in the declarations sought. Greater Sail therefore has in my judgment no defence to that issue, so summary judgment is in principle available: CPR 15.2(b).

[7] Mr. Carrington QC argues for Greater Sail that it is not appropriate to make a declaration. He points out — rightly in my judgment — that the making of a declaration is always a discretionary matter. He says that, although there are allegations that Greater Sail was party to a conspiracy against NTP, it is not pleaded that the bringing of Mr. Wang's action in the PRC was part of that conspiracy. Greater Sail was therefore effectively a bystander to the Wang action. NTP was acting in a "cocky" manner in applying for summary judgment.

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<sup>2</sup> No 16 of 2004, Laws of the Virgin Islands.

[8] Further, he relied on the Court of Appeal judgment in **International Trading Holding Co Ltd v Med Trading Ltd**<sup>3</sup> for the proposition that “courts reach decisions as to its jurisdiction over a claim and its power to grant certain types of remedies, based upon expert evidence of foreign law, and not on the basis of a declaration made by the foreign court as to its own law.” That was, in my judgment, referable to the particular facts of that case, where there had been proceedings in Dubai ongoing for some time and where the claim in Dubai was by a shareholder for “profits”, whereas the declaration sought related to dividends. Whether a declaration is merely academic is fact-sensitive.

[9] In the current case, an important element in exercising the Court’s discretion is to ask whether the making of a declaration is likely to have some useful purpose. I agree that it is relevant that Greater Sail are not accused of involvement in the Wang action. However, that in my judgment overlooks the reality of the position. Greater Sail is a wholly owned subsidiary of Kaisa Group Holdings Ltd (“Kaisa”). In turn Mr. Wang is an associate of Kaisa. Whether Mr. Wang would be treated as Greater Sail’s privy for the purposes of the Chinese equivalent of *estoppel per rem judicatam* or whether the Chinese Court would admit a declaration as evidence of foreign law is a matter for the courts of the PRC. However, in my judgment a declaration is likely materially to assist in NTP obtaining justice in the PRC. That is the uncontradicted evidence of Mr. Cricenti at para 25 of his affidavit.

[10] This Court recognises and enforces the judgments of the courts of the PRC: **Industrial Bank Financial Leasing Co Ltd v Xing Libin**<sup>4</sup> and **Ge Wu v Xun Liu**.<sup>5</sup> It is to be assumed those courts would reciprocate.

[11] In my judgment this is an appropriate case to make the declarations sought and I do so.

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<sup>3</sup> [2021] ECSCJ No 462 at [82].

<sup>4</sup> [2020] ECSCJ No 420 (28<sup>th</sup> January 2020).

<sup>5</sup> [2022] ECSCJ No 63 (3<sup>rd</sup> March 2022).

[12] This leaves the question of costs. Originally in a letter of 23<sup>rd</sup> June 2022 Greater Sail, through its lawyers, indicated that it would take a neutral position with regard to the declarations sought. However, in a *volte face* Mr. Carrington QC presented a vigorous defence to the application. If Greater Sail had kept to its neutral position, then there would be a good case for making no order for costs on the application. Since Greater Sail has not kept to that position, in my judgment the usual order that costs follow the event should apply. There are no sufficient circumstances for making a different order.

**Adrian Jack**  
Commercial Court Judge [Ag.]

**By the Court**

**Registrar**