

**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

AND CLAIM No. BVIHC (COM) 2022/0042

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-

**(1) GREATER SAIL LIMITED
(a company incorporated in the British Virgin Islands)
(2) LI JIANPING (also known as GIGI LEE)
(3) MAI FAN**

Defendant

Appearances:

Mr. Edward Davies QC and Mr. Ben Griffiths, with them Mr. Nicholas Burkill of Ogier for the Claimants
Mr. John Carrington QC, Mr. Gerard Clarke and Mr. Ben Woolgar with them Mr. Andrew Emery of Emery Cooke for the Defendants

2022 April 12
May 4

JUDGMENT (SENTENCING FOR CONTEMPT)

- [1] **JACK, J [Ag.]:** On 14th March 2022 I found the three defendants in action 2022/0042 guilty of one allegation of contempt of court. I adjourned sentence. I heard mitigation on 12th April 2002 and further adjourned sentence pending a hearing of various matters before the Court of Appeal. In fact those matters have not yet been determined by the Court of Appeal. Mr. Carrington QC suggests that a final resolution may not be reached before the Long Vacation. It is in my judgment inappropriate to leave sentencing for contempt outstanding for so long and I therefore hand down this judgment.
- [2] The one matter in respect of which I found contempt proven was the first allegation that Greater Sail failed by 4pm on 8th February 2022 to send letters to the offices of three regulatory bodies in the People's Republic of China. The Court's order in respect of the letters was complied eventually, but with a delay of some 20 days or 14 working days.
- [3] In criminal cases, the main purposes of sentencing are punishment, deterrence and rehabilitation. The same applies in quasi-criminal matters like contempt. In the current case, I have already indicated in my earlier judgment that the contempt did not pass the custody threshold in respect of Ms. Lee and Mr. Mai or the similar threshold for appointing sequestrators over Greater Sail. Issues of rehabilitation have accordingly very little importance in considering sentence in the current case.
- [4] Mr. Carrington QC, who appeared for the defendants, submitted that this was a case in which the Court could mark its disapproval of the defendants' breaches of this Court's order by making solely an order of costs. A further financial penalty was not required. He pointed to the fact that the period of disobedience to the

Court's order was only twenty days (and less in terms of working days). No prejudice has been caused by the breach. Further the defendants had apologised profusely. The force of this last point is in my judgment reduced by the fact that Ms. Lee and Mr. Mai contested the allegation in respect of which they were found guilty of contempt. In relation to Ms. Lee, Mr. Carrington QC relies on the health issues which I summarised in my earlier judgment and her being junior to Mr. Mai.

[5] So far as the parties' means are concerned, Mr. Mai is earning a seven figure salary in US dollar terms. Ms. Lee is not earning that amount, but nonetheless is earning very substantial salary. In relation to Greater Sail, it is said that Greater Sail has no assets apart from its claim against IsZo for repayment of the monies from the PIPE which I set aside in the original 2020 action. That is surprising in the light of the evidence at that trial that Greater Sail was an investment vehicle for Kaisa. No explanation has been given as to why Greater Sail's assets might now be reduced to a rump consisting of the PIPE claim. On the admitted facts, however, Greater Sail has a claim for a nine figure sum in US dollar terms. Even though the arbitral award is still outstanding, Greater Sail could obtain a temporary loan from another part of Kaisa. Despite the well-known current difficulties in the Chinese property sector, no evidence has been adduced to suggest that monies to pay a fine could not be forthcoming.

[6] This is a case where considerations of deterrence are relevant. Most BVI companies have an overseas element, which makes the enforcement of orders of the Court more difficult than cases where, for example, all the directors are in this Territory and imprisonment for contempt is a realistic option. Sequestration presents difficulties, if the company's assets are situated abroad. Foreign jurisdictions are liable to refuse recognition of sequestrators, due to the "revenue rule", which I discussed in my judgment in this matter of 14th March 2022 at para [15]ff. As I outlined there, fines are also problematic. However, the threat of the appointment of liquidators at the instance of the BVI fisc, will in many cases be sufficient incentive for the company to pay a fine. It is important for those subject to orders of this Court to know that punishment can follow a finding of contempt.

- [7] I shall start considering the position in relation to Mr. Mai. He is earning a very large salary indeed and can easily afford to pay a fine. Now in some jurisdictions fines are assessed in accordance with a certain number of days' pay. This means that someone earning twice of a similar malefactor pays a fine twice as large as the other person. That is not the practice in this Territory. While the salary of a person to be fined is relevant, it is not a ground for imposing a swingeing sum, not otherwise appropriate.
- [8] In my judgment, I should fix a figure which will deter others who might be minded to breach Court orders, but which would not be a disproportionate as a punishment for the contempt proved. In my judgment, a fine of \$10,000 is appropriate.
- [9] Turning then to Ms. Lee, she was junior to Mr. Mai and has personal mitigation in respect of her health. She also earns less than him. In my judgment a fine of \$4,000 is appropriate.
- [10] Lastly, Greater Sail is the main offender. That part of the order in respect of which I have found them to be in contempt required steps to be taken to ensure a proper handover of the assets of Nam Tai Property Inc and its subsidiaries to the new management. Greater Sail's failure to write timeously to the Chinese regulatory authorities is a serious breach, albeit it has not in fact prejudiced the claimants. In my judgment, a fine of \$125,000 is appropriate.
- [11] In addition all the defendants shall pay the costs of the claimants of and in the contempt application to be the subject of detailed assessment if not agreed. I will hear counsel on how long should be given for payment.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar