

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

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

CLAIM No: BVIHC (COM) 2018/0172

BETWEEN:

HU LAN

Claimant

and

- (1) SUNDALE INTERNATIONAL LIMITED**
- (2) BEST LAND INVESTMENTS LIMITED**
- (3) HARNEYS CORPORATE SERVICES LIMITED**
- (4) DAVID GOLDEN**
- (5) GAO JIAREN**

Defendants

Appearances:

Ms. Victoria-Ann Lord and Mr. Richard Parchment of Harneys for the Fourth Defendant
No appearance for the Claimant

2021 July 22

JUDGMENT: SUMMARY JUDGMENT

[1] **JACK, J [Ag.]:** By an application made on 13th July 2021, the fourth defendant (“Mr. Golden”) seeks summary judgment on his counterclaim against the claimant (“Hu Lan”). The Court has the power to give summary judgment (including on a counterclaim) where the party against whom the counterclaim is brought “has no real prospect of successfully defending” against the counterclaim: CPR 15.2(b) read with CPR 18.2(1).

[2] Hu Lan’s claim and defence to counterclaim was struck out by me in earlier proceedings on the grounds that she is in contempt of court by reason of her

failure to comply with an anti-suit injunction. The fact that she currently has no defence to the counterclaim does not, however, mean that summary judgment will be granted automatically. I have to be satisfied to the requisite standard that the grounds for granting summary judgment are made out on the merits.

[3] The case of the applicant for summary judgment must carry some degree of conviction: the court is not required to accept without analysis everything said by a party in its statements before the court. In assessing the counterclaim's prospects of success and evaluating the evidence and submissions of the Applicant, the court is not required to abandon its critical faculties: **ED&F Man Liquid Products Ltd v Patel**.¹

[4] Mr. Golden is the only registered director and registered shareholder of the shares in the first defendant ("Sundale") since 10th January 2013. This is evidenced by the original register of members and register of directors of Sundale. The original registers were initially held by Hong Kong Managers ("HKM"), a professional corporate services provider based in Hong Kong. Those original registers were collected directly by Harneys' Hong Kong Office and are in evidence. Since all of Sundale's shares are registered in Mr. Golden's name, he needs to prove nothing and Hu Lan bears the burden of establishing a right in those shares: **Chen v Ng**.² The register of members is *prima facie* evidence of his legal and beneficial title in the shares. Hu Lan has not established any proof to the contrary.

[5] The registers in the present case are in my judgment decisive. It follows that I can summarily determine that Mr. Golden is the legal and beneficial owner of the shares in Sundale.

[6] Mr. Golden also seeks declarations as follows:

¹ [2003] EWCA Civ 472, [2003] CP Rep 51 at [10].

² [2017] UKPC 27 at [40] and [43].

that the legal and beneficial ownership of Sundale was transferred to and vested in him at the latest on 10th January 2013 when he was registered as the shareholder in the records of Sundale;

that Hu Lan held no beneficial interest in Sundale from at least 10th January 2013;

that Mr. Golden is and was, since at least 10th January 2013, entitled to hold himself out as the beneficial owner of Sundale and he was not under any obligation to transfer any rights or title in respect of Sundale or its assets including but not limited to, the second defendant ("Best Land");

that Hu Lan had no authority to exercise any voting rights or pass any resolutions on behalf of Sundale or Best Land or its assets and any such purported resolutions are void and of no legal effect; and

that Hu Lan never had any right to represent Mr. Golden for any purposes in relation to Sundale or Best Land from at least 10th January 2013, including prior to 18th October 2019 when in any event the Fourth Defendant caused Sundale and Best Land to revoke all and any powers by valid resolutions of Sundale and of Best Land as its sole and lawful director, said resolutions being notified to Hu Lan on 1st November 2019.

[7] The making of a declaration is always discretionary, so I need to analyse the evidence filed to date in order to decide whether to make the declarations sought.

I have considered the following:

- (a) There is no declaration of trust or other such document capable of displacing the finding that Mr. Golden is the legal and beneficial owner of the shares. Hu Lan was the person liaising with HKM: see the first affirmation of Mr. Golden and the third affidavit of Stuart Rau.
- (b) The numerous and differing versions of events presented by Hu Lan before this Court and the Hong Kong Court: see the third affidavit of Stuart Rau and the relevant parts of Exhibit SR-3 as well as Hu Lan's writ of summons dated 5th November 2019, her amended writ of summons dated 6th November 2019, her unsworn first affirmation exhibited to Exhibit JF-1, her sworn first affirmation in support of her fixed date claim form and her answers to Mr. Golden's request for further information.
- (c) Both Hu Lan and her husband, the fifth defendant ("Mr. Gao"), have a track record of doctoring and fabricating documents, as evidenced by:
 - (i) Hu Lan's admission that she would affix Mr. Golden's signature to documents: see the second affidavit of George Anthony

Ribeiro. This was something she did so often that Mr. Gao referred to such behaviour as a “practice”: see Mr. Gao’s witness statement.

- (ii) Hu Lan’s admission that duplicate chops for Jiacheng had been commissioned and the subsequent destruction thereof: eighth affidavit of George Anthony Ribeiro dated 26th October 2020.
 - (iii) The suspicious share purchase agreement produced by Hu Lan and made available for inspection by Mr. Golden’s lawyers at JunHe LLP’s offices in Shanghai being comprised of three pieces of paper of different sizes and colours and having at least three sets of staple marks: see the first affidavit of Ma Wai Vivian and her exhibit.
 - (iv) The attempts by Hu Lan and Mr Gao to age documents through exposure to sunlight over several months, as witnessed by Qin Han: see the first affirmation of Qin Han and her exhibit thereto.
 - (v) Their admission in the proceedings brought against Jiacheng that a loan agreement by which fictitious interest had been claimed had indeed been created by them and that they had added the chopped signature page to the “new” loan agreement after 5th November 2019: see their statement together with English translation reproduced in Exhibit DG-12.
- (d) Evidence directly indicating that the purported declaration of trust (“the replacement document”) was fabricated, altered and manipulated and that the first page of the replacement document had been replaced:
- (i) Documentary evidence showing Mr. Gao’s efforts to procure multiple types of paper in order to find paper matching the signature page of a trust agreement: see the first affirmation of Qin Han and her exhibit thereto.
 - (ii) Instant chat messages from Mr. Gao to Qin Han telling her that Hu Lan had found paper similar to the signature page: *ibid*.

- (iii) Evidence adduced by Hu Lan that admitted that Qin Han had together with Zhao Lei, Pei Qibo and Mr. Gao, been on a shopping expedition to buy paper of different sizes and colours on the instruction of Mr. Gao. (She suggested that this was because of a paper jam in a printer, so as to enable Mr. Gao's young daughters to do their homework, but this is inherently improbable.) Many reams of differently coloured and weighted paper had to be bought immediately before a trip to Hong Kong to see Mr. Ribeiro: see the statement of Zhao Lei with English translation in Exhibit GAR-10.
- (iv) Instant chat messages from Mr. Gao to Qin Han instructing the latter to expose a "Declaration of Trust" document to the sun: see the first affirmation of Qin Han and her exhibit thereto.
- (v) Photographs of Hu Lan's and Mr. Gao's longstanding efforts to age the replacement document through exposure to sunlight: *ibid*.
- (vi) Photographs of the replacement document produced by Hu Lan and made available for inspection by Mr. Golden's lawyers at JunHe LLP's offices in Shanghai. These show at least three sets of staple marks: see the first affidavit of Ma Wai Vivian and the exhibit thereto.
- (e) Hours of audio recordings of conversations of Hu Lan and Gao Jiaren, which demonstrate fraudulent activity as set out in the schedules of iniquity, together with the admission by Hu Lan that her voice was recorded thereon: see the first affirmation of Qin Han referring to audio transcripts included in her exhibit and the fifth witness statement of Jevgenija Fedotova.
- (f) There was no covenant as to future property in the replacement document, in respect to the 999 shares issued to Mr. Golden on 9th May

2019 to be anything other than his. See **Tailby v Official Receiver** for the significance of this.³

- (g) Hu Lan purported to pass a written resolution by Sundale on 7th November 2019 to remove Mr. Golden as sole director of Sundale and to replace him with herself. At that time, she did not have, and knew she did not have, valid authority to cause the resolution to be passed:
- (i) The original authorisation letters dated 10th January 2013 held on HKM's files by which Mr. Golden's authority was purportedly given to Hu Lan to act in relation to the companies were forged: see the first affidavit of David Golden and the exhibit thereto;
 - (ii) Hu Lan's admission that the original of the authorisation letter was sent to HKM: see the email from Hu Lan's Hong Kong solicitors to Harneys dated 5th May 2020 exhibited at page 52 of Exhibit SR-3, Conyers' letter to Harneys dated 25th May 2020 exhibited at page 56 of the same exhibit, as referred to in the third affidavit of Stuart Rau.
 - (iii) The HKM file having been retrieved and retained directly by Harneys did not contain the spurious electronic authorisation letters relied upon by Hu Lan: *ibid*.

[8] In my judgment, this evidence shows an overwhelming case in support of the matters in respect of which declarations are sought.

³ (1883) 13 App Cas 523.

[9] In my judgment and in the exercise of my discretion I will make the declarations sought. The other relief sought is also appropriate.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar