

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Tsoi Tin -v- Tan Haihong and Yu Heng International Investments Corporation **Claim No. BVIHCMAP 2013/0023**

INJUNCTION - WHETHER PERSON WHO IS NOT JOINED OR MADE PARTY TO PROCEEDINGS CAN HAVE LOCUS STANDI TO APPEAL - INTERPRETATION OF CPR 7.3(5)(B) - BLACK SWAN JURISDICTION - BASIS UPON WHICH AN APPELLATE COURT WOULD DISTURB THE EXERCISE OF THE TRIAL JUDGE'S DISCRETION - CIVIL PROCEDURE RULES 62.1(2) AND 2.4

This case concerned an interlocutory appeal brought by Tsoi Tin ("Mr. T") against the decision of the trial judge, Mr. Justice Bannister, to continue a freezing injunction against the respondent (the "Company").

Mr. T and Tan Haihong ("Mrs. H") are husband and wife engaged in a matrimonial dispute in the People's Republic of China. Mrs. H alleged that the Company shares represented approximately 50% of the value of the total matrimonial assets (of which she was entitled to half). Mrs. H caused a stop notice to be issued in respect of the shares and obtained an injunction to restrain the transfer of the shares. Mr. T appealed the Order.

Mr. T was not named or joined as a party to the first instance proceedings, although he did attend the proceedings as an interested person and the trial Judge heard submissions on his behalf on that basis. Mr. T appealed the freezing injunction challenging the jurisdiction to make the order and the exercise of the judge's discretion to grant the relief.

Mrs. H raised a primary objection saying that Mr. T had no *locus standi* to bring the appeal as he was not a party to the proceedings and could not therefore be an "appellant".

The Court dismissed the appeal and held that Mr. T was not properly an appellant, and therefore had no standing to bring the appeal since he was not an appellant within the meaning of Civil

Procedure Rules ("CPR") 62.1(2) which defines an "appellant" as "the party who first files a notice of appeal". CPR 2.4 defines a party as "includes both the party to the claim and any legal practitioner on record for that party".

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