

**FORTUNA INTERNATIONAL HOLDINGS LTD:
WHO IS TANNING WHOSE HIDE ?**

The former Chairman of publicly listed Fortuna International Holdings Ltd, Mr Wan Sitt Kam, has been told by his company to put up and shut up.

Because Mr Wan Sitt Kam is alleged to have signed as a Guarantor of a \$HK53.76-million loan, which Fortuna International afforded to 2 companies, incorporated in the Hongkong Special Administrative Region (HKSAR) of the People's Republic of China (PRC).

That is the essence of High Court Action Number 1416, an Action between:

Fortuna International Holdings Ltd	Plaintiff
and	
Lixcon Ltd	First Defendant
Fujicon Electric Company Ltd	Second Defendant
Wan Sitt Kam	Third Defendant

According to the Statement of Claim, attached to the Writ of Summons, Lixcon Ltd executed a Promissory Note, dated May 20, 1999 *'in respect of \$(HK)51,545,313 in favour of the Plaintiff.'* [Paragraph 3.(1)]

Lixcon is alleged to have defaulted on its obligations to Fortuna International and, by February 20, 2000, it was indebted to the publicly listed company to the tune of \$HK53,761,063, it is alleged at Paragraph 3.(2).

The Statement of Claim, then, explains that a Settlement Agreement was entered into between the Plaintiff and the 3 Defendants whereby Fortuna International agreed *'to extend the repayment period of the Outstanding Amount (as defined in the Settlement Agreement), subject to the terms and conditions stated therein.'*

Some of the terms and conditions of this Settlement Agreement included:

'Upon and subject to the terms of [the Settlement Agreement] and conditional upon each payment on the Outstanding Amount in accordance with Clause 3 being made on the due date therefor, [the Plaintiff] shall waive the then Outstanding Amount on the Final Release Date to the intent that on the Final Release Date not more than HK\$10,000,000 of the principle amount of the Promissory Note will be outstanding. (Clause 2(A)). ...

'This [Settlement Agreement] is conditional upon ... the [1st Defendant] delivering on execution hereof to [the Plaintiff] ... 36 post dated cheques made out to "Fortuna International Holdings Limited" in respect of principal repayment of HK\$1,000,000 each and each dated on a different one of the "Due Dates" as set out in column 1 of Schedule 2' ...

Paragraph 5 of the Statement of Claim alleges that the Second and Third Defendants – Fujicon Electric Company Ltd and Mr Wan Sitt Kam – *'executed and delivered a Deed of Guarantee and Indemnity on 20th February 2000*

... in the Plaintiff's favour in respect of the 1st Defendant's liabilities under the Settlement Agreement.'

The terms and conditions of the Guarantee were, inter alia:

1. Fujicon Electric Company Ltd and Mr Wan Sitt Kam *'unconditionally and irrevocable guarantee, as a continuing obligation, the due and punctual payment by the [1st Defendant] of the Guaranteed Indebtedness under the terms of the Settlement Agreement ...; and,*
2. The Plaintiff, at its full discretion, had the right to enforce the terms and conditions of the Guarantee *'without first having made any demand or taking any other steps or proceedings against any other person and may be enforced for any balance due after resorting to any one or more other means of obtaining payment or discharge of the monies, obligations and liabilities hereby secured.'*

Then, at Paragraph 7 of the Statement of Claim:

'Wrongfully and in breach of the terms of the Settlement Agreement pleaded ... the 1st Defendant has failed and neglected:-

- (1) *To make payments to the Plaintiff since 31st October 2000 in accordance with the payment schedule set out in column 1 of Schedule 1 thereto; and*
- (2) *To make any further payments to the Plaintiff (save for 2 payments of \$(HK)500,000 each in January and February 2002 respectively) in accordance with the payment schedule set out ... thereby leaving due the balance of the Outstanding Amount of \$(HK)26,000,000 (excluding accrued interest thereon) which remains unpaid to date.'*

Up to and including April 22, 2003, it is the contention ... [CLICK TO ORDER FULL ARTICLE](#)

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