

HONGKONG SOLICITORS FIRM SUED FOR \$HK38 MILLION

A firm of solicitors of the Hongkong Special Administrative Region (HKSAR) of the People's Republic of China (PRC) has been sued for a little more than \$HK38 million.

The firm is Messrs Hui and Lam, the Proprietors of which are Messrs William Alvin Hui, Lam Ching Wan and Yeung Man Sing.

According to the Statement of Claim, attached to the Writ of Summons, Number 2464, Messrs Hui and Lam were the advising solicitors of a Mr Liu Kwai Man, who had borrowed money from an HKSAR company, Win Source International Ltd, which was trying to acquire and, then, sell, a half share interest in 4 pieces of property, all of which were situated in the territory.

This half share, originally, belonged to a Mr Lam Chok Wai (C.W. Lam).

The Statement of Claim, at Paragraph 2 alleges that, on July 16, 2001, Citi Honour Ltd '*commenced an action under HCA (High Court Action) 3191 of 2001 against C.W. Lam claiming for repayment of a loan of HK\$30 million with Citi Honour obtaining default judgment on 4th October, 2001. ("Citi Honour's Judgment")*

Citi Honour obtained a Charging Order Nisi (a statutorily created means for a creditor of a judgment debtor, who is a partner of others, to reach the debtor's beneficial interest in the partnership, without risking dissolution of the partnership) over Mr C.W. Lam's half share and interest in the properties, which had been registered in The Land Registry on December 20, 2001 and with the Charging Order Nisi, made Absolute on January 28, 2002.

On March 8, 2002, Citi Honour obtained an Order for the sale of Mr C.W. Lam's half share in the properties in enforcement of the Charging Order Absolute. (Paragraph 4 of the Statement of Claim)

Paragraphs 5, 6 and 7, then, continue:

- '5. *The Order for Sale provided, inter alia, that unless within seven days from the date of order C.W. Lam redeemed the charge under the Charging Order, his interests in the Properties would be sold by private treaty and that the conduct of the sale shall be committed to Citi Honour.*
- '6. *In purported exercise of its power to deal with C.W. Lam's Half Share under the Order for Sale, Citi Honour entered into a memorandum of agreement for sale and purchase dated 15th March, 2002 ("the Memorandum") whereby Citi Honour as vendor purported to sell to Mr. Liu Kwai Man ("Liu") C.W. Lam's Half Share for the price of HK\$30,000,000 subject to the Tenancies with completion to take place on or before 15th April, 2002. Pursuant to the Memorandum, Liu paid to Citi Honour (the) sum of HK\$300,000 as deposit. The Memorandum was registered with the Land Registry under Memorial No. 8667946.*
- '7. *By a supplemental agreement dated 4th April, 2002 ("Liu's Supplemental Agreement") registered in the Land Registry under Memorial No. 8667947 entered into between Citi Honour and Liu the parties agreed, inter alia, that Liu was entitled to extend the completion*

date of the sale by two months upon satisfactory proof that (the) mortgage loan to facilitate the purchase was not available on the completion date.'

During this time, Hui and Lam was the solicitors of Mr Liu Kwai Man in the purchase of Mr C.W. Lam's half share interest in the properties, it is alleged at Paragraph 8.

Mr Liu Kwai Man had borrowed money from Win Source International, the Plaintiff of High Court Action Number 2464, and this was admitted, openly, Paragraph 9 attests, with Mr Liu Kwai Man, engrossing a Deed of Nomination in favour of Win Source International.

Paragraph 10 and 11 of the Statement of Claim continues:

- '10. Upon execution of the Deed of Nomination the Plaintiff retained the Defendants and the Defendants agreed to act for the Plaintiff as its solicitors in investigating, purchasing and acquiring good title to C.W. Lam's Half Share and in the preparation of all relevant documents in relation to (the) purchase of C.W. Lam's Half Share ("said Retainer").*
- '11. It was (an) implied term of the said Retainer by reason of business efficacy that the Defendants would exercise such care and skill as expected of reasonably competent conveyancing solicitors in performing of their duties and obligations pursuant to the said Retainer, including but not limited to ensuring that Citi Honour had a right to sell and assign to the Plaintiff C.W. Lam's Half Share under the Order for Sale and that the Plaintiff acquire a good title to C.W. Lam's Half Share in the said purchase.'*

A Sales and Purchase Agreement was entered into, with Citi Honour, purporting to sell Mr C.W. Lam's half share to Win Source International, evidenced by Memorial Number 8667949, as registered in The Land Registry of the HKSAR. (Paragraph 13)

Win Source International, on reliance of Good Title in respect of the properties, entered into a Supplemental Agreement, dated April 30, 2002, with Citi Honour, *'confirming and giving effect to Liu's (Kwai Man) Supplemental Agreement...'* (Paragraph 14)

The Statement of Claim continues from Paragraph 15 as follows:

- '15. Pursuant to the Sale and Purchase Agreement, various requisitions were raised by the Defendants relating to title to C.W. Lam's Half Share with no requisition raised as to Citi Honour's right and power to sell and assign C.W. Lam's Half Share to the Plaintiff.*
- '16. Upon advice and/or approval of the Defendants, the Plaintiff executed an assignment dated 29th May, 2002 with Citi Honour ("the Assignment") whereby Citi Honour purported to exercise its right under the Order for Sale to assign to the Plaintiff C.W. Lam's Half Share for the price of HK\$30,000,000 with the same being registered in the Land Registry under Memorial No. 8706190.*
- '17. To finance the said purchase, two legal charges were created over C.W. Lam's Half Share in favour of one GE Capital (Hong Kong) Limited ("GE") and one Winland Capital Limited ("Winland") in the sum of HK\$5,000,000 and HK\$25,000,000 respectively.*
- '18. In HCA 3185/2001 and HCA 3191/2001 where, C.L. Lam (who is the brother of Mr C. W. Lam [Lam Chok Lai] and one of the 2 Registered Owners of the 4 pieces of property – Paragraph One) sought into, inter alia, to set aside the Charging Order and which the Plaintiff was allowed to intervene pursuant to leave granted on 29th January, 2003, it was held by Deputy High Court Judge Poon, inter alia, that the Plaintiff acquired no interest in C.W. Lam's Half Share on the basis that:*

- (a) *The Charging Order did not confer on Citi Honour any title or interest in C.W. Lam's Half Share which was capable of being conveyed by it as vendor to the Plaintiff as purchaser.*
 - (b) *To convey C.W. Lam's Half Share to the Plaintiff, the Citi Honour had to obtain an order under section 75A of the High Court Ordinance (Cap.4) or section 48 or section 51 of the Trustee Ordinance (Cap.29), and that Citi Honour had failed to obtain any of the aforesaid orders.*
 - (c) *The Order for Sale merely committed the conduct of sale to Citi Honour and such conduct normally referred to administrative matters of the sale only.*
 - (d) *Thus, Citi Honour had no right to convey C.W. Lam's Half Share to the Plaintiff and the Plaintiff did not acquire from Citi Honour any title to or interest in C.W. Lam's Half Share.*
- '19. *It was further ordered by Deputy High Court Judge Poon that various registrations be removed from the Land Registry including the Memorandum, Liu's Supplemental Agreement, Sale and Purchase Agreement, Supplemental Agreement and the Assignment.*
- '20. *It is averred that the Defendants were in breach of terms of the said Retainer and/or negligently failed to exercise such care and skill expected of reasonably competent conveyancing solicitors in performing their duties owed and obligations to the Plaintiff in the purchase of C.W. Lam's Half Share.*

Particulars of breach and negligence

- (a) *failing to conduct proper investigation of title to C.W. Lam's Half Share;*
- (b) *failing to give any and/or any proper advice as to City Honour's right to assign C.W. Lam's Half Share;*
- (c) *failing to give any and/or any proper advice as to effect of the Order for Sale;*
- (d) *giving wrong and/or improper advice as to Citi Honour's right to assign C.W. Lam's Half Share under the Order for Sale;*
- (e) *permitting the Plaintiff to enter into the Sale and Purchase Agreement without advising the Plaintiff that Citi Honour had no right to sell or assign C.W. Lam's Half Share;*
- (f) *advising the Plaintiff to execute the Assignment and to advance payment for purchase of C.W. Lam's Half Share without advising the Plaintiff that Citi Honour had no right and title to sell or assign C.W. Lam's Half Share;*
- (g) *failing to take all such steps necessary to ensure that the Plaintiff obtain good title to C.W. Lam's Half Share pursuant to the Sale and Purchase Agreement and the Assignment;*
- (h) *in all circumstances, failing to act with reasonable care, skill and diligence.'*

While TARGET makes every attempt to ensure accuracy of all data published, TARGET cannot be held responsible for any errors and/or omissions.

If readers feel that they would like to voice their opinions about that which they have read in TARGET, please feel free to e-mail your views to editor@targetnewspapers.com or targnews@hkstar.com. TARGET does not guarantee to publish readers' views, but reserves the right so to do subject to the laws of libel.

 [Site Meter](#)