



## VICTOR JOFFE QC (ENGLAND & WALES) 鍾偉滔御用大律師

Call: 2011 (HK); 1975 (UK)

Inner Bar: 2001 (England & Wales)

Admitted to New York State Bar: 1998

Admitted as Barrister of the Eastern Caribbean Supreme Court: Anguilla Circuit 2003 and BVI Circuit 2005

Admitted to Bar of New South Wales: 2012

Admitted to Bars of Gibraltar and Grand Cayman ad hoc

Accredited as a mediator by CEDR: 2007

### PROFILE

Victor Joffe QC (England and Wales) practised for many years at the highly respected London chambers Serle Court before commencing full time practice at the Hong Kong Bar in 2011. Since then he has appeared regularly in the Hong Kong Courts at both first instance and appellate level. His practice encompasses all aspects of company law (including corporate insolvency), commercial law, and trusts (particularly international trusts), and he has extensive experience in injunctions and other interlocutory applications. Victor has likewise appeared frequently at both first instance and appellate level in England, the BVI, Anguilla, Grand Cayman and Gibraltar. He is also well known for his leading publication *Minority Shareholders: Law, Practice and Procedure* (6<sup>th</sup> edition, 2018, OUP).

### CONTACT

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### PRACTICE AREAS

- Company
- Insolvency
- Injunction / Contempt
- Commercial
- Civil Fraud / Asset Recovery
- Equity / Trust

### EDUCATION

1973 BA (Hons) in Law, University of Cambridge

1974 LLB, University of Cambridge

1975 MA, University of Cambridge

## PUBLICATIONS AND ARTICLES

- *Minority Shareholders: Law, Practice and Procedure* (6<sup>th</sup> edition, O.U.P., 2018)

## SELECTED CASES

### COMPANY

- *Chen Hongqing v China Shanshui Investment Co Ltd* [2021] HKCFI 699: injunction to restrain directors from proceeding with disputed allotment of shares
- *Paloma Co Ltd v Capxon Electronic Industrial* [2020] HKCFI 754: whether charging order nisi could be made absolute in the case of unregistered company in solvent voluntary liquidation in the place of its incorporation.
- *Orlov v Roth* [2019] HKCFI 2120: cross unfair prejudice petitions, whether cross-petition properly brought where no claim made for monetary relief on behalf of company and whether double jeopardy arose.
- *Sociedade Nacional De Combustíveis De Angola-Empresa Publica v China Sonangol International Ltd* [2019] HKCFI 1443: interim injunction refused in unfair prejudice proceedings, since no serious issue to be tried, due to failure to plead in petition proper basis on which quasi-partnership said to arise.
- *Yeung Bing Kwong, Kenneth v Yeung Ping Leung* [2019] HKCFI 1465: proper construction of articles of company limited by guarantee.
- *Re Minloy Ltd* [2019] HKCA 461: successful appeal against trial judge's finding that unfair prejudice had been established and consequent buy-out order.
- *Shih-Hua Investment Co Ltd v Zhang Aidong* [2018] HKCFI 1234: striking out of statement of claim in common law derivative action by reason of abuse of process and/or reconstitution of company's board.
- *China Shanshui Cement Group Ltd v Zhang Caikui* [2018] HKCFI 973 and [2018] HKCA 409: whether "interim interim" injunction should be granted pending hearing of application to appoint receivers over shareholding in company.
- *Tsoi Chik Sang Lawrence v Tasty Catering Group Ltd* (HCMP 812/2017, 12 September 2017): appointment of receivers over company where no functioning board.
- *Loyal Profit International Development Ltd v Travel Industry Council of Hong Kong* (HCMP 256/2016, 27 April 2017): whether directives passed by TIC were ultra vires and void or contrary to s 6 of Competition Ord. Cap 619
- *Shih-Hua Investment Co Ltd v Zhang Aidong* (HCCW 198/2016, 19 January 2017): whether board of company could be reconstituted on an interlocutory application in unfair prejudice case.
- *Speedy Brilliant Investments Ltd v China Health Group Ltd* (HCCW 816/2006, 2 June 2016): injunction restraining board of listed company from (i) preventing shareholder from convening meeting; and (ii) interfering with the proper conduct of the meeting.
- *Foo Tsing v Roeders Geschaefstuehrungs GMBH* (HCCW 68/2016, 26 May 2016): whether shareholder entitled to injunction restraining his removal as director pending hearing of petition for unfair prejudice/just and equitable winding up relief.
- *Re Yung Kee Holdings Ltd* (HCCW 154/2010, 31 October 2012); [2014] 2 HKLRD 313; (2015) 18 HKCFAR 501: jurisdiction to grant relief in respect of BVI company for unfair prejudice and just and equitable winding up.
- *張才奎所託管中國山水投資有限公司股份及另一人 v. 張才奎及另一人* (HCA 1661/2014, 30 September 2015; 26 October 2015): whether interim receivers should be directed (i) not to seek to change composition of board of company in which subject company held shares; (ii) to reverse appointment of directors; refusal of leave to appeal.
- *Veron International Ltd v RCG Holdings Ltd* (HCMP 3210/2013, 20 July 2015: whether leave to be given to minority shareholder to bring statutory derivative proceedings.
- *張才奎所託管中國山水投資有限公司股份及另一人 v. 張才奎及另一人* (HCA 1661/2014, 14 July 2015 and 23 July 2015): whether interim receivers of shares should be (i) directed to vote in particular manner at EGM; (ii) allowed to vote as they thought fit.
- *Re China Kingstone Ltd* (HCMP 1472/2015, 8 July 2015): injunction requiring shares in open offer to be allotted to shareholder rather than underwriter.

- *Re Chun Yip Holdings Ltd* (HCCW 463/2012, 26 March 2015): series of cases relating to group of companies, striking out of certain winding up petitions and striking out of prayer for just and equitable winding up in others.
- *Yu Yuchuan v China Shansui Investment Co Ltd* (HCMP360/2015, 17 March 2015) whether leave to be given to minority shareholders to present unfair prejudice petition on behalf of subject company.
- *Antenna Investments Ltd v Asia Television Ltd* [2015] 1 HKLRD 907: representing the company (ATV) in unfair prejudice petition.
- *Luck Continent Ltd v Chung Chee Tock Theodore* (i) [2013] 4 HKLRD 181: whether unfair prejudice could arise from company's arrangements with Hong Kong Stock Exchange; (ii) (2014) 7 HKCFAR 863: whether appeal could be continued where appellant had disposed of shareholding in subject company.
- *Re Central Billion Inc* (HCCW 369/2011, 24 February 2014): whether petition for just and equitable winding up of BVI company should be struck out.
- *Waddington Ltd v Chan Chun Hoo* (2008) 11 HKCFAR 370: whether multiple derivative action was permissible and whether the claim was barred by "no reflective loss" principle.

#### INSOLVENCY

- *Byers v Chen Ningning* [2021] UKPC 4: whether respondent liable to account where owed fiduciary duties to company but failed to prevent it making preferential payment when insolvent.
- *Re Minloy Ltd* [2020] HKCFI 2215: whether creditor's winding up petition should be stayed pending creditor's application for leave to appeal to CFA in unfair prejudice proceedings.
- *Shandong Chenming Paper Holdings Ltd v Arjowiggins HKK 2* [2020] HKCA 670: whether, in the case of an unregistered company, the prospect of being wound up is sufficient to satisfy the second core requirement for jurisdiction as explained in *Re Yung Kee Holdings Ltd* (2015) 18 HKCFAR 501.
- *Ho Chor Ming v Hong Kong Chiu Chow Po Hing Buddhism Assn* [2019] 2 HKLRD 1181: whether the Court has jurisdiction to reopen assessment of receiver's fees previously conducted by the Court.
- *Re STX Pan Ocean (Hong Kong) Co Ltd* [2018] HKCFI 2210: whether *ad valorem* fees payable in respect of funds transferred by former voluntary liquidators after making of compulsory winding up order.
- *Re Lehman Brothers Futures Asia Ltd* [2107] 2 HKLRD 871: scheme of arrangement in relation to companies in liquidation for distribution of surplus to avoid litigation over legal issues, and correct determination of classes of creditors.
- *Re The Grande Holdings Ltd* [2016] 1 HKLRD 435: whether sum due to bank under interest rate swap transaction was liquidated debt.
- *Re Wongs Investment Development Holdings Group Ltd* (HCCW 332/2012, 10 July 2015): whether liquidators should (i) be ordered to enter into loan agreement with third party and (ii) be restrained from exercising votes attached to shares held by company in liquidation in particular way.
- *Re The Grande Holdings Ltd* [2015] 1 HKLRD 743: whether lawyers' fees were liquidated debt/admissible for voting purposes.

#### INJUNCTION / CONTEMPT

- *Chen Hongqing v China Shanshui Investment Co Ltd* [2021] HKCFI 699: injunction to restrain directors from proceeding with disputed allotment of shares.
- *Pacific Bulk Supramax Co Ltd v Bintan Mining Corp* [2021] HKCFI 680: worldwide Mareva injunction against company with overseas mining interests.
- *The Joint and Several Liquidators of China Medical Technologies Inc v Abbiss and others* [2019] 1 HKLRD 755: whether contempt proceedings were properly brought against named respondents; and [2019] HKCFI 501 whether leave to commence contempt proceedings should be set aside for non-disclosure.
- *China Shanshui Cement Group Ltd v Zhang Caikui* [2018] HKCFI 973 and [2018] HKCA 409: whether "interim interim" injunction should be granted pending hearing of application to appoint receivers over shareholding in company.
- *XY LLC v Jesse Zhu* (CACV 11/2016, 5 December 2016): continuation of Mareva injunction against third party (*Chabra* jurisdiction).
- *Classroom Investments Inc v HK Wanshitaiping Investment and Management Ltd* (HCMP 577/2016, 16 June 2016): in case of alleged fraud, continuation of Mareva injunction over deposit maintained with bank representing proceeds of P's property.
- *Speedy Brilliant Investments Ltd v China Health Group Ltd* (HCCW 816/2006, 2 June 2016): injunction restraining board of listed company from (i) preventing shareholder from convening meeting; and (ii) interfering with the proper conduct of the meeting.
- *Re China Kingstone Ltd* (HCMP 1472/2015, 8 July 2015): injunction requiring shares in open offer to be

allotted to shareholder rather than underwriter.

#### COMMERCIAL

- *Global Gaming Philippines LLC v Deutsche Bank AG* [2019] HKCFI 405: whether third party discovery order could be made against person ordinarily resident overseas.
- *Li Shiu To v Cheung Pik Ng* [2018] 1 HKLRD 934: whether contribution payable under Civil Liability (Contribution) Ordinance, Cap 377 in the case of accessory liability in dishonest assistance case.
- *Days Impex Ltd (In Liquidation) v Fung, Yu & Co (A Firm)* (HCA1035/2014, 24 October 2017): refusal to strike out auditors' negligence claim by company in liquidation where directors' fraud not attributable to company.
- *Franz Josef Adick v Grosvenor International Holdings Ltd* (HCA 1327/2012, 4 October 2016): recovery of deposit by cancelling purchaser.
- *Pacific Harbor Advisors Pte Ltd v Winson Federal Ltd* (CACV 115/2016, 22 June 2016): whether privilege against self-incrimination available in oral examination under RHC O 48.
- *Natamon Protpakorn v Citibank NA* (CACV 163/2013, 22 October 2015): whether promissory estoppel precludes a bank from relying on oral representations inconsistent with its written conditions.
- *Re Birmingham International Holdings Ltd* (HCMP 395/2015, 28 August 2015): whether receivership order should be continued.
- *Capital Wealth Finance Co Ltd v Lai Yueh-Hsing* (HCA 686/2012, 31 July 2015): whether orders for discovery/striking out should be made.
- *WDA Architects Ltd v MHS Planners* (CACV116/2114, 21 July 2015): whether amendments to Amended Statement of Claim could be made.
- *FCL China Development Ltd v Lai Yuen Ling* (CACV 193/2014, 20 March 2015): whether summary judgment on settlement agreement to be set aside by reason of alleged misrepresentation, prevention principle or set off.
- *Alhamrani v Alhamrani* [2014] UKPC 37: Consideration of approach to contractual interpretation; approach to expert evidence and approach of an appellate court to findings of the trial judge on the proper meaning of a contract governed by foreign law.
- *Johnson Electric International Ltd v Bel Global Resources Holdings Ltd* (HCA 1240/2012, 18 March 2014): grant of stay pending appeal.
- *China Metal Recycling Ltd v Chun Chi Wah and others* (HCA 1412/2013, 15 August 2013): discharge of interlocutory injunction obtained by provisional liquidators.
- *Wright v Deccan Chargers Ltd* [2011] EWHC 1307 (QB): representing claimant in jurisdictional dispute with one of founder members of the Indian Premier League.
- *Proform Sports Management Ltd v Proactive Sports Management Ltd* [2007] 1 All ER 542: no liability for procuring breach of voidable contract. Agency contract with minor footballer Wayne Rooney not contract for necessities and therefore voidable.

#### CIVIL FRAUD / ASSET RECOVERY

- *XY LLC v Jesse Zhu* (CACV 11/2016, 5 December 2016): continuation of Mareva injunction against third party (*Chabra* jurisdiction).
- *Classroom Investments Inc v HK Wanshitaiping Investment and Management Ltd* (HCMP 577/2016, 16 June 2016): in case of alleged fraud, continuation of Mareva injunction over deposit maintained with bank representing proceeds of P's property.
- *Armstrong DLW GmbH v Winnington Networks Ltd* [2013] Ch 156: unjust enrichment, fraud and knowing receipt in relation to incorporeal property.
- *Mohammed v Durbar* [2010]: Representing claimant in multi-million pound claim for recovery of proceeds of fraud laundered through foreign bank accounts.

#### EQUITY / TRUST

- *Yang Hsueh Chi Serena v Equity Trustee Ltd* BVIHC (COM) 0059 of 2016: striking out by BVI court of action against trustee as an abuse of process.
- *Fok Chun Yue Benjamin v Fok Chun Wan Ian* [2015] 2 HKLRD 212: whether proceedings should be stayed pending determination of issues arising from family settlement agreement. (Costs determination: CACV 17/2014, 20 January 2016).
- *LEMS v LCTN* (HCMP2237/2014): whether anticipated future inheritance could be brought into account in ancillary relief proceedings.

- *Timmerton Company Inc v Equity Trustee Ltd* [2015] 1 HKLRD 247: whether trustee entitled to limitation defence.
- *Kan Lai Kwan v Poon Lok To Otto* (2014) 7 HKCFAR 414: whether discretionary trust to be regarded as resource of spouse for ancillary relief purposes.
- *LN v SCCM* (CACV 62/2013, 4 June 2013): stay of Hong Kong ancillary proceedings by reason of existence of Singapore matrimonial proceedings.