

FACV No. 5 of 2004

**IN THE COURT OF FINAL APPEAL OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION**

**FINAL APPEAL NO. 5 OF 2004 (CIVIL)
(ON APPEAL FROM CACV NOS. 306 & 414 OF 2002)**

Between:



WAT CHI

Appellant

- and -

SHARE LIMITED

1st Respondent

CHINA RESOURCES (HOLDINGS)

2nd Respondent

COMPANY LIMITED

3 MAR 2005

BEFORE THE HONOURABLE MR JUSTICE LI, CHIEF JUSTICE,
THE HONOURABLE MR JUSTICE BOKHARY, PERMANENT JUDGE,
THE HONOURABLE MR JUSTICE CHAN, PERMANENT JUDGE,
THE HONOURABLE MR JUSTICE RIBEIRO, PERMANENT JUDGE AND
THE RIGHT HONOURABLE THE LORD SCOTT OF FOSCOTE, NON-
PERMANENT JUDGE OF THE COURT OF FINAL APPEAL, IN COURT

ORDER

UPON hearing Mr. Brumen Li representing the Appellant, the
Amicus Curiae and Leading Counsel for the 1st and 2nd Respondents

IT IS ORDERED THAT:-

1. The appeal be dismissed;

2. The Orders and directions set out below be made in substitution for the Order of Deputy High Court Judge Carlson dated 28 October 2002 and the Order of the Court of Appeal dated 10 September 2003;

3. The Appellant be prohibited from commencing any fresh proceedings, by whatever originating process, in the High Court or District Court concerning any matters involving or relating to or touching upon or leading to the proceedings in HCCW No 321 of 1996, HCA No 2039 of 2002, and HCSD No 22 of 2002, without the leave of the Court of First Instance;

4. All applications for leave under paragraph 3 be made by the Appellant *ex parte* in writing to the designated judge, namely :

- (a) the Honourable Mr Justice Cheung; or
- (b) the Honourable Mr Justice Lam; or
- (c) in the event of their unavailability, such other Judge or Judges of the Court of First Instance as the Chief Judge of the High Court may designate;

5. At least 7 days before filing any application for leave under paragraph 3, the Appellant do notify in writing each intended defendant of its intention to make such application, enclosing a copy of the draft document by which the fresh proceedings are intended to be commenced, and if any response is received by the Appellant from any such intended defendant, that the Appellant do file a copy of each such response together with its said application for leave;

6. Any intended defendant having notice of such intended proceedings be entitled, but under no obligation, to place before the court written representations regarding the same;

7. All applications made pursuant to this Order and all ancillary matters be dealt with by the court on the papers and without any oral hearing unless the designated judge should otherwise direct;
8. If the Appellant should issue fresh proceedings falling or which may fall within the terms of paragraph 3 without first seeking the court's leave, and if such fact should come to the notice of the Registrar of the High Court or any Master or Judge, such fresh proceedings be referred to the designated judge for a decision as to whether they should be permitted to continue or should be dismissed;
9. Notice of each decision by the designated judge made pursuant to this Order be given in writing to the Appellant and to each intended defendant named in the fresh proceedings;
10. Whether or not any fresh proceedings are brought to the notice of the designated judge, if a defendant is served with such proceedings without the relevant documents being accompanied by either an Order giving leave to commence such proceedings or a Direction that leave to commence such proceedings is not required, such defendant be entitled to make no response to such service pending notification of the court's decision in relation to those proceedings; and that time for acknowledging service or for otherwise responding to such proceedings be deemed extended accordingly; and,
11. There be no order as to the costs of this appeal.

Dated the 3rd day of March 2005

Acting Registrar