

Heung & Choy

Claim nature:
A. Monetary Claim
B. ~~Breach of Contract~~

Form No. 1



(Folio 1)

HCA 1090/2011

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION NO. OF 2011**

BETWEEN

SUN FINANCE COMPANY LIMITED

Plaintiff

AND

K&L GATES (A FIRM)

Defendant

TO THE DEFENDANT, K&L GATES (A FIRM) of 44/F, EDINBURGH TOWER, THE LANDMARK, 15 QUEEN'S ROAD CENTRAL, HONG KONG.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the back.

Within (14 days) after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Registry of the High Court the accompanying ACKNOWLEDGMENT OF SERVICE stating therein whether you intend to contest these proceedings or to make an admission.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings or to make an admission, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.


*[If you intend to make an admission, you may complete an appropriate form enclosed in accordance with the accompanying Directions for Acknowledgment of Service.]

Issued from the Registry of the High Court this day of 29 JUN 2011

Note: – This Writ may not be served later than 12 calendar months beginning with the date renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.



SEAL OF THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

Accounts Office
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29/06/2011 04:24 PM
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Fees Paid 1.045.00

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION NO. OF 2011

BETWEEN

SUN FINANCE COMPANY LIMITED Plaintiff

and

K&L GATES (A FIRM) Defendant

STATEMENT OF CLAIM

1. At all material times:-
 - (a) the Plaintiff was, and still is, a limited liability company engaged in the business of licenced money lender under the Money Lenders Ordinance (Cap 163); and
 - (b) the Defendant was, and still is, a firm of solicitors carrying out business in Hong Kong.
2. By a letter of appointment dated 27 May 2011 (the "Letter of Appointment"), the Plaintiff and Advance Day Investments Limited ("Advance Day") agreed to appoint and the Defendant agreed to act as the escrow agent for the sum of \$50,000,000 (the "Escrow Sum") which was deposited by the Plaintiff in its Client Account with the Defendant (HSBC Account No. 004-500-572797-001).

3. The following were, inter alia, the express conditions of the Letter of Appointment:-
 - (a) upon the Plaintiff giving written notice of transfer of the whole or any part of the Escrow Sum, the Defendant shall within 3 business days effect such transfer and comply with the instructions contained in such notice (Paragraph 1);
 - (b) subject to Clause 1 of the Letter of Appointment, the Defendant shall release the Escrow Sum to the Plaintiff on 24 June 2011 (Paragraph 2); and
 - (c) the Defendant undertakes and agrees that, throughout the continuation of its appointment as escrow agent, it shall:-
 - (i) subject to Paragraphs 1 and 2, not (nor shall it have or be deemed to have any power or authority to) dispose of, deliver, release or otherwise deal with the Escrow Sum;
 - (ii) take all steps which may be necessary or expedient to preserve or protect the Plaintiff's interest in the Escrow Sum; and
 - (iii) not do or cause or permit to be done by any other person anything which may in any way depreciate, jeopardise or otherwise prejudice the value of the Escrow Sum (Paragraph 3).

4. The following were the implied conditions of the Letter of Appointment, namely, that the Defendant would discharge a duty of fiduciary and good faith towards the Plaintiff and that such duties would include, inter alia, the following:-
 - (a) not to act in conflict with the interest of the Plaintiff;
 - (b) not to act in conflict with the terms upon which the Defendant was appointed under the Letter of Appointment;

- A. Monetary
- (c) not to misappropriate or convert the Escrow Sum or any part thereof in any manner which may be inconsistent with the Plaintiff's interest; and
 - (d) to account to the Plaintiff the entire or any part of the Escrow Sum which may be found to be missing.
 5. In breach of the Letter of Appointment, the Defendant has refused to return the Escrow Sum to the Plaintiff despite:-
 - (a) on 15 June 2011, the Plaintiff had, during a meeting with a Mr. Vincent Cho and Mr. David Tung who was acting for and on behalf of the Defendant, requested the release and return of the Escrow Sum;
 - (b) on 15, 16 and 21 June 2011, the Plaintiff had, by way of letter addressed to the Defendant and its solicitors, requested the release and return of the Escrow Sum; and
 - (c) the express provisions of Paragraph 2 of the Letter of Appointment.
 6. In the foregoing premises, the Plaintiff is entitled to the return of the Escrow Sum of \$50,000,000 or alternatively damages in the sum of \$50,000,000.

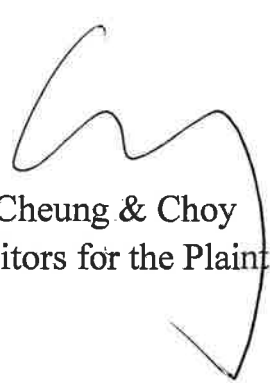
AND THE PLAINTIFF THEREFORE CLAIMS

- (1) for the return of the sum of \$50,000,000;
- (2) alternative to (1) above, damages in the sum of \$50,000,000;
- (3) interest to be assessed according to Sections 48 and/or 49 of the High Court Ordinance (Cap 4);
- (4) costs; and

(5) further or other relief as is just.

Dated the 29th day of June 2011


Lisa K.Y. Wong, S.C.
Norman Hui
Counsel for the Plaintiff



Cheung & Choy
Solicitors for the Plaintiff

Statement of Truth

The Plaintiff believes that the facts stated in this Statement of Claim are true.
I am duly authorised to sign on this Statement of Truth on behalf of the Plaintiff.



Name: Lee Chi Shing, Caesar

Position: Director

For and on behalf of the Plaintiff, SUN FINANCE COMPANY LIMITED.

Dated this 29th day of June 2011.