

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION NO. 815 OF 2009

BETWEEN

CHRISTIAN EMIL TOGGENBURGER
PROMISED LAND ENTERPRISES LIMITED
GLOBE DRAGON LIMITED

1st Plaintiff
2nd Plaintiff
3rd Plaintiff

and

LUU, HUNG VIET DERRICK
ZHONG YI (HONG KONG) C.P.A. COMPANY LIMITED
TANG, KA SIU JOHNNY

1st Defendant
2nd Defendant
3rd Defendant

DEFENCE OF THE 2ND AND 3RD DEFENDANTS

1. Unless otherwise stated:
 - (1) References herein to numbered paragraphs are references to the corresponding paragraphs in the Statement of Claim.
 - (2) The 2nd Defendant (“Zhong Yi”) and the 3rd Defendant (“Mr Tang”) adopt the same definitions used in the Statement of Claim.
2. It is averred at the outset that a substantial number of the allegations in the Statement of Claim concerning Mr Tang and Zhong Yi are wholly untrue and are sheer fabrications on the part of the Plaintiffs.
3. Save that it is averred that, to the best of the knowledge of Zhong Yi and Mr Tang:
 - (1) The 1st Plaintiff (“Mr Toggenburger”) at all material times held himself out to be an experienced investor in companies with business projects or

operations in Hong Kong and Mainland China;

(2) Mr Toggenburger is or was at one time a shareholder of a number of companies listed on the Hong Kong Stock Exchange (“**Stock Exchange**”), including Beauforte Investors Corporation Limited (“**Beauforte**”), PYI Corporation Limited (“**PYI**”), Hanny Holdings Limited and China Strategic Holdings Limited;

(3) Mr Toggenburger is a Swiss and Danish national;

paragraph 1 is not admitted.

4. Subject to the production of the relevant incorporation documents and certificates of incumbency, paragraph 2 is admitted.
5. Save that it is admitted, subject to the production of the relevant incorporation documents and certificate of incumbency, that Betterment is a company incorporated in the BVI and that Mr Toggenburger is the sole director and shareholder of the same, paragraph 3 is not admitted.
6. Although paragraph 4 makes no allegation against Mr Tang or Zhong Yi, the paragraph is correct to the best of their knowledge.
7. Paragraphs 5 and 6 are admitted.
8. Paragraph 7 is admitted, save that Tang Wong carries on business at the same address as Zhong Yi, and not the 1st Defendant (“**Mr Luu**”).
9. Paragraph 8 is denied:
 - (1) Neither Zhong Yi nor Mr Tang has ever provided any accounting or business advisory services to Mr Luu;

- (2) Mr Tang first became acquainted with Mr Luu in Beijing in early August 2006, after Zhong Yi was appointed the auditor of Xinhua China Limited (“**Xinhua**”), a company traded on NASDAQ OTC, in July 2006. Mr Luu was a major shareholder of Xinhua;
 - (3) Shortly thereafter, upon Mr Luu’s request, Mr Steven Kwok (“**Mr Kwok**”) sent an email to Mr Tang enclosing a “Strategic Business Plan” of China Oil and Methanol Group, Inc. (“**China Oil**”), to demonstrate Mr Luu’s current projects and as a display of his financial position;
 - (4) At all material times, Mr Luu had his business and investments advisers, including, Mr Kwok, a certified public accountant qualified in the United States, and Mr Jessie Chan, an experienced stockbroker.
10. Mr Tang met Mr Toggenburger for the first time at an Extraordinary General Meeting of Beauforte (“**Beauforte EGM**”) held at the Novotel Century Hong Kong Hotel on 12th June 2006:
- (1) At the time, Mr Tang had just been appointed an independent non-executive director of Beauforte (Mr Tang subsequently resigned his directorship on 4th April 2007);
 - (2) Mr Toggenburger was accompanied by his legal and financial advisers, namely, Mr Patrick Rattigan (“**Mr Rattigan**”) of Messrs. Haldanes, his solicitors in the present Action, and Mr John Maguire of Ernst and Young;
 - (3) Mr Rattigan told Mr Tang that Mr Toggenburger was a descendant of a wealthy family in Switzerland and an experienced investor and businessman;
 - (4) During that period, Mr Toggenburger was making a hostile attempt to acquire control of Beauforte from the other major shareholder, a company known as Smartmax Holdings Limited (“**Smartmax**”);

- (5) Mr Rattigan also told Mr Tang that Mr Toggenburger had been misled into acquiring shares of Beauforte by the previous management of Beauforte;
- (6) Mr Tang told Mr Rattigan that although he had been appointed as an independent non-executive director of Beauforte by Smartmax, his role was to remain independent and protect the interests of Beauforte.

11. Save that it is admitted and/or averred that:

- (1) Trading of shares in Beauforte was suspended on 4th July 2006;
- (2) In order for the suspension to be lifted, it was necessary for Beauforte to show the Stock Exchange that it had a viable business operation or at least a feasible business plan;
- (3) Mr Toggenburger approached Mr Tang in or around October 2006 and asked Mr Tang whether he knew anyone who was involved with projects in the energy sector which Beauforte could invest in or acquire;
- (4) Mr Tang recalled receiving the China Oil "Strategic Business Plan" from Mr Luu, and he therefore suggested to Mr Toggenburger that he might be interested in meeting Mr Luu. Mr Tang explained that had become acquainted with Mr Luu through Zhong Yi being appointed as the auditor of Xinhua; and
- (5) Mr Tang introduced Mr Toggenburger and Mr Luu to each other at a casual meeting at the Renaissance Harbour View Hotel in Hong Kong in or around November 2006. At the meeting:
 - (a) Mr Luu described his background to Mr Toggenburger and told him that he was experienced in investments in Mainland China. He also described his latest project, namely, China Oil;

- (b) Mr Toggenburger explained to Mr Luu his investment history and experience and that he was interested in finding good investment projects for Beauforte such as to enable its shares to resume trading on the Stock Exchange;
- (c) Mr Luu mentioned that China Oil intended to spin off one or more of its subsidiaries and suggested that Beauforte could potentially acquire an interest in such subsidiaries by way of a share swap ("**China Oil Spin Off**");
- (d) Mr Toggenburger made it clear, however, that the objective of injecting such projects into Beauforte was to enable him to acquire shareholder control of Beauforte;
- (e) Mr Toggenburger also expressed interest in making a cash investment in China Oil related projects; and
- (f) Mr Tang indicated to Mr Luu and Mr Toggenburger that as he was an independent non-executive director of Beauforte, it would not be appropriate for him to express any opinion on any proposed joint venture between Mr Luu and Mr Toggenburger to acquire control of Beauforte in order to avoid compromising his independence;

paragraph 9 is denied.

- 12. After the first meeting between the Mr Luu and Mr Toggenburger as pleaded above, Mr Toggenburger and Mr Luu quickly developed a close relationship and frequently met each other without the presence of Mr Tang. On the other hand, Mr Tang saw Mr Toggenburger mostly during board meetings of Beauforte and communicated with him primarily by email rather than face to face meetings.
- 13. In a board meeting of Beauforte immediately after the introduction between Mr Luu and Mr Toggenburger, Mr Toggenburger told Mr Tang that he felt Mr Luu was a

trustworthy and a very capable person. Mr Toggenburger mentioned that Mr Luu had a similar background and demeanour as Mr Tom Lau, the CEO of PYI, a person for whom Mr Toggenburger had great admiration and respect.

14. Paragraph 10 is admitted, save that Mr Luu was subsequently represented by Messrs Herbert Smith and Messrs Wong and Chan.

Alleged Warderly Agreement

15. Each and every allegation in paragraphs 11 to 13, insofar as they relate to Mr Tang, is denied. It is specifically denied that:
 - (1) Mr Tang ever approached Mr Toggenburger to procure a loan of HKD 25 million, or any other sum, to Warderly;
 - (2) Mr Tang attended the alleged meetings with Mr Toggenburger and Mr Tang or any similar meetings; and
 - (3) Mr Tang made the Warderly Representations or any similar representations to Mr Toggenburger.
16. Shortly after the initial meeting between Mr Luu and Mr Toggenburger, Mr Tang arranged at Mr Toggenburger's request a casual meeting in Lan Kwai Fong between Mr Tang, Mr Kwok, Ms Lucy Sun ("**Ms Sun**") (a director of Smartmax) and Mr Luu to discuss the China Oil Spin Off. Ms Sun was impressed by Mr Luu and suggested to Mr Luu that Beauforte could participate in the China Oil Spin Off, or alternatively, Mr Luu could buy out Smartmax's shareholding in Beauforte at an appropriate price to be agreed.
17. A further meeting was held at SW's office on 13th November 2006:
 - (1) The attendees of that meeting were Mr Toggenburger, Mr Luu, Mr Kwok, Ms

Sun, three representatives of REXCAPITAL Securities Limited (the proposed independent financial advisor), Mr Hank Lo (a partner of SW) and Mr Tang.

(2) The purpose of the meeting was to consider whether Beauforte would participate in the China Oil Spin Off or whether Mr Luu and Mr Toggenburger would acquire Smartmax's shareholding in Beauforte. At the meeting, Mr Luu showed the parties China Oil's "Strategic Business Plan", the document which Mr Kwok had previously sent to Mr Tang.

(3) However, no conclusion was reached at the meeting.

18. Mr Toggenburger was, however, keen to have Beauforte participate in the China Oil Spin Off. On 20th November 2006, Mr Tang received an email from Mr William Courtauld, another independent non-executive director of Beauforte, requesting Mr Tang to persuade Ms Sun to support the China Oil Spin Off. He also said that Mr Toggenburger indicated to him that he "...*would like to try and do a deal with the oil people.*" Mr Tang was able to speak Putonghua and Ms Sun's spoken English was not very good.
19. Pursuant to these requests, Mr Tang sent a number of emails to Ms Sun concerning the China Oil Spin Off in his capacity as an independent non-executive director of Beauforte and serving the interests of Beauforte and its shareholders. However, Ms Sun eventually decided against the China Oil Spin Off. Mr Luu and Mr Kwok then presented Ms Sun with various offers to acquire Smartmax's shareholding in Beauforte, but she refused to accept any of them. Discussions ended by around the end of December 2006.
20. In January 2007, Mr Toggenburger approached Mr Tang and asked him whether he could introduce financiers to him. He explained that he wished to obtain financing for two purposes - first, to enable him to make a further investment in Beauforte, and second, to enable him to invest in certain projects introduced to him by Mr Luu.

21. Mr Tang therefore introduced Mr Andy Pau of Phillip Securities to Mr Toggenburger. However, Mr Tang was not acting as Mr Toggenburger's adviser, and it was always Mr Tang's understanding that Mr Toggenburger had his own legal and financial advisors.
22. By an email dated 9th January 2007, Mr Toggenburger informed Mr Tang that *inter alia* he had managed to secure financing in the amount of HKD35 million, which would be sufficient "...to pay back the existing loans of HKD 7 millions, having HKD 20 millions for [Mr Luu] and having some money to invest in Beauforte if needed in one or the other way..."
23. In early February 2007, Mr Toggenburger told Mr Tang that he had agreed to invest in certain projects of Mr Luu. Mr Tang later discovered that the investment was into a company associated with China Oil, known as New Energy.
24. By an email dated 13th February 2007 ("**February 13th Email**") from Mr Toggenburger's secretary, Ms Venus Ng ("**Ms Ng**"), Mr Toggenburger sent to Mr Mark Kirkam of Barclay Carrigan International ("**Barclay**"), an international offshore investment adviser and one of Mr Toggenburger's financiers, a copy of a signed transfer instruction to the Hong Kong branch of HSBC to transfer the sum of HKD25 million from Mr Toggenburger's account to the account of New Energy. The email was copied to Mr Toggenburger and Mr Tang.
25. The purpose of the February 13th Email was to show Barclay that Mr Toggenburger urgently required the sum of HKD 25 million, which was to be loaned by Barclay, for investment into New Energy.
26. Separately and at around the same time, Mr Luu had agreed to provide financing to Housely, a subsidiary of Warderly, a company listed on the Stock Exchange, in the sum of HKD 10,000,000, as part of a consortium of "white knights". The financing was to be made through a BVI shelf company known as Lanakia Investments Limited acquired by Tang Wong on behalf of Mr Luu.

27. By reason of the fact that the HKD25 million from Mr Toggenburger for investment into New Energy was not yet ready, Mr Luu agreed to make a short term advance of HKD5 million to Mr Toggenburger for the purpose of enabling him to invest the same into New Energy.
28. To achieve this, in the first or second week of February 2007, Mr Luu instructed SW to split the sum of HKD10 million originally earmarked for the loan to Housely into two tranches of HKD5 million each and then to transfer the first tranche into the bank account of Housely and the second tranche into New Energy's HSBC bank account as representing Mr Toggenburger's investment into New Energy.
29. Insofar as it is alleged that Mr Toggenburger relied upon any alleged representations from Mr Tang, paragraph 14 is denied. The paragraph is otherwise not admitted. Neither Mr Tang nor Zhong Yi has any knowledge of the alleged Warderly Agreement, or any similar agreement.
30. The first sentence of paragraph 15 makes no allegation against Mr Tang or Zhong Yi, and no admissions are made thereto.
31. Save that it is admitted that:
- (1) Mr Toggenburger instructed Tang Wong to acquire a BVI shelf company on his behalf;
 - (2) Pursuant to those instructions, Tang Wong acquired the 2nd Plaintiff ("**Promised Land**") as a shelf company;
 - (3) At Mr Toggenburger's request, he was appointed as a director of Promised Land and SW was appointed the first secretary; and
 - (4) SW was subsequently replaced by Tang Wong;

the second sentence of paragraph 15 is denied.

32. Paragraphs 16 to 21 make no allegations against Mr Tang or Zhong Yi. Neither Mr Tang nor Zhong Yi has any knowledge of the matters alleged in the said paragraphs, and no admissions are made thereto. It is noted, however, that Mr Toggenburger had already drafted instructions to HSBC to transfer HKD 25 million to New Energy as early as 13th February 2007, as annexed to the February 13th Email.
33. Insofar as paragraph 22 relates to Mr Tang, it is denied. It is specifically denied that Mr Tang ever told Mr Toggenburger that “...*the documentation for the intended loan to Warderly would be provided soon*” or anything to that effect. Otherwise, neither Mr Tang nor Zhong Yi has any knowledge of the matters alleged in the paragraph, and no admissions are made thereto. To the knowledge of Mr Tang, Mr Toggenburger never had any connection, or lent any money, to Housely or Warderly.
34. Paragraphs 23 to 27 make no allegations against Mr Tang or Zhong Yi. Neither Mr Tang nor Zhong Yi has any knowledge of the matters alleged in the said paragraphs, and no admissions are made thereto.
35. Save that it is admitted and/or averred that:
- (1) At the time, the suspension of trading of Warderly’s shares on the Stock Exchange was a publicly known event;
 - (2) Mr Toggenburger was aware that Mr Luu was involved in Warderly, and he was curious to find out from Mr Tang more about Warderly’s situation; and
 - (3) Mr Tang told Mr Toggenburger to ask Mr Luu directly for any details;
- paragraph 28 is denied.
36. Paragraphs 29, 30 and 32 are matters of public record, and subject to the production of relevant records, are admitted.

37. Paragraph 31 makes no allegation against Mr Tang or Zhong Yi. Neither of them has any knowledge of the matters alleged therein, and no admissions are made thereto.
38. Paragraphs 33 to 38 make no allegations against Mr Tang or Zhong Yi, and no admissions are made thereto.

Car Racing Project

39. Paragraph 39 is denied. It is specifically denied that Mr Tang attended any such meeting or ever told Mr Toggenburger any such matters. As pleaded above, Mr Tang had resigned as an independent non-executive director of Beauforte on 4th April 2007. Sino Plaza was the address of Beauforte's registered office, and Mr Tang never attended that address after his resignation.
40. Insofar as paragraphs 40 and 41 make any allegation that Mr Tang, the paragraph is denied. It is specifically denied that Mr Tang attended any such meeting or told Mr Toggenburger of the matters alleged. The paragraph is otherwise not admitted.
41. Paragraph 42 makes no allegations against Mr Tang or Zhong Yi. Neither of them has any knowledge of the alleged 1st Defendant's Car Racing Representations, and no admissions are made thereto.
42. Each and every allegation in paragraph 43 is denied. It is specifically denied that Mr Tang ever made the alleged 3rd Defendant's Car Racing Representations, or any similar representations. The allegations in the paragraph are pure fabrications by the Plaintiffs.
43. Insofar as paragraph 44 makes any allegation against Mr Tang, it is denied. Otherwise, the paragraph is not admitted.
44. Save that it is admitted and/or averred that:

- (1) After Mr Tang resigned as an independent non-executive director of Beauforte on 4th April 2007, there was no contact between Mr Tang and Mr Toggenburger until 3rd May 2007, on which date, Mr Tang received an email from Mr Toggenburger asking Mr Tang whether there were any listed companies in Hong Kong interested in appointing Mr Toggenburger as an independent non-executive director.
- (2) By the same email, Mr Toggenburger informed Mr Tang, for the first time, that he was intending to invest into a car racing project in Mainland China with Mr Luu.
- (3) On or around 4th May 2009, Mr Luu instructed Tang Wong to acquire a BVI shelf company. Pursuant to the said instructions, Tang Wong acquired Fortune King Investments Limited (“**Fortune King**”).
- (4) In telephone conversations on 18th May 2007, Mr Luu informed Mr Tang that he and Mr Toggenburger intended to use Fortune King as a vehicle for their joint investment into a car racing project.
- (5) Mr Luu instructed Tang Wong to arrange for Mr Toggenburger’s registration as a shareholder and appointment as a director of Fortune King on 22nd May 2007. Tang Wong was also appointed as the first secretary of Fortune King.
- (6) On the same day, Mr Luu asked Mr Tang to bank in a cheque from Mr Toggenburger in the sum of HK\$15,702,670.40 into Zhong Yi’s bank account, to be held on trust for Fortune King. Mr Luu explained that the cheque represented Mr Toggenburger’s investment in Fortune King. However, Fortune King did not yet have a bank account.
- (7) In the period from 25th to 27th of May 2007, Mr Luu sent Mr Tang various emails and documents by email giving further details of the proposed car racing project to enable Tang Wong, in its capacity of Fortune King’s company secretary, to understand the nature of Fortune King’s intended business.

(8) On 30th May 2007:

- (a) Mr Simon Littmann (“**Mr Littmann**”), one of Mr Toggenburger’s chief investment advisers, sent an email to Mr Tang asking him for documents relating to the car racing project.
- (b) Mr Littmann also asked Mr Tang to provide an escrow agency agreement for the HK\$15,702,670.40 remitted by Mr Toggenburger into Zhong Yi’s bank account.
- (c) Mr Tang wrote an email to Mr Luu informing him that he had prepared an escrow agreement, and asked Mr Luu to ask Mr Toggenburger to send him, “...*an email to mention that he agree to the release of the whole of the first down payment to [Mr Luu]...*”
- (d) Mr Luu then wrote an email to Mr Toggenburger asking him to “...*email [Mr Tang] like what [they] talk about yesterday regarding releasing the fund so [they] could move the project forward according to plan...*”.

(9) The next day, on 31st May 2007:

- (a) Mr Tang responded to Mr Littmann’s request by email and informed him what he knew, which was fairly limited, about the car racing project.
- (b) Mr Tang also sent a further email on the same day to Mr Littmann enclosing a draft escrow agent agreement on behalf of Zhong Yi for his comments.
- (c) Mr Toggenburger sent an email to Mr Tang instructing Zhong Yi to “...*use the money in [his] escrow account for the projects with Derrick*”

Luu". This email attached the emails set out in paragraphs 44(8)(c) and (d) above.

- (d) Pursuant to the said request, Zhong Yi released the sum of HKD15,702,670.40 held on behalf of Mr Toggenburger to Mr Luu.
- (e) Zhong Yi received a further cheque postdated to 1st June 2007 drawn by Mr Toggenburger for the sum of HKD 26 million.
- (f) Mr Tang wrote to Mr Toggenburger and Mr Luu attaching a copy of the HKD26 million cheque, and stating that, "*...according to my understanding, the consideration that [Mr Toggenburger] should pay [Mr Luu] is USD4,950,000 (~HK\$38,610,000) and so far I received 2 cheques in the amount of HK\$15,702,670.40 and HK\$26,000,000 which equals to HK\$41,702,670.40. Please advise whether I should return the excess sum of HK\$3,092,670.40 to [Mr Toggenburger] or it should be for another project.*"
- (g) Mr Toggenburger then replied by email stating that, *inter alia*, "*The remaining money is for other projects. [Mr Luu] and I are planning to visit the seat-belt and parachute plant in the near future and we need also to buy two listed "shells"...*"
- (h) Mr Toggenburger further indicated that he will soon be receiving further funds of around HKD 55 million and that he will discuss with Mr Luu as to how that money would be used and how he should deal with loans that are still outstanding to his financiers.
- (i) Mr Tang also delivered a copy of the draft escrow agreement to Mr Luu's office in Lippo Centre, and both Mr Luu and Mr Tang (on behalf of Zhong Yi) signed upon it. The understanding was that, as both Mr Luu and Mr Tang travelled frequently, it would be convenient to sign the draft first, and if no further comments were received from Mr

Toggenburger or Mr Littmann, the copy could then be delivered to Mr Toggenburger for his signature.

- (10) Neither Mr Tang nor Zhong Yi received any comments or feedback from Mr Toggenburger or Mr Littman on the draft escrow agent agreement sent to them as pleaded above.
- (11) Although at the request of Mr Luu and Mr Toggenburger, Mr Tang and Zhong Yi agreed to handle the sums pleaded in paragraphs 43(8) and (9) above, neither Mr Tang nor Zhong Yi charged any fees from either Mr Luu or Toggenburger, and the matter was handled as a favour to Mr Luu and Mr Toggenburger, in the hope of cultivating future business prospect for Zhong Yi and Tang Wong.

paragraphs 45 is not admitted.

45. It should be emphasised that the draft escrow agreement was only a formality and not intended to have any real legal effect:

- (1) As pleaded above, Mr Toggenburger had already authorised Mr Tang to release the sum of HKD15,702,670.40 for use in Mr Luu's projects;
- (2) The draft escrow agreement provided that, *"If the closing takes place under the Contract, Escrow Agent at the time of closing shall pay the amount deposited with Agent to Seller or in accordance with Seller's written instructions, Escrow Agent shall make simultaneously transfer of the said equity ownership in Fortune King Investments Limited to the Buyer..."*.
- (3) However, that was meaningless, as the 37.5% equity stake in Fortune King had already been allotted to Mr Toggenburger, and Mr Toggenburger acknowledged the same, on 22nd May 2007. Mr Toggenburger was also appointed a director of Fortune King, and Mr Toggenburger signed a Consent to Act as Director on the same day.

- (4) Further, the “new company” referred to in the draft escrow agreement was China Sport Culture Development Limited (“China Sport”), a BVI company, had already been registered on 22nd May 2007.
46. Save that paragraph 46 sets out in part the terms of the draft escrow agreement, the paragraph is not admitted. Mr Tang and Zhong Yi repeats paragraph 45 above.
47. Paragraphs 47 and 48 are not admitted.
48. Save that it is admitted that Mr Toggeburger had instructed Zhong Yi to release the sum of HKD 15,702,670.40 to Mr Luu, as pleaded above, paragraph 49 is denied.
49. Paragraphs 50 to 53 make no allegations against Mr Tang or Zhong Yi. Neither of them has any knowledge of the matters alleged therein and no admissions are made thereto.
50. Paragraph 54 is not admitted. However, it is averred that:
- (1) Mr Luu had provided the corporate documentation for China Sport to Tang Wong sometime in 2007.
 - (2) By an email dated 23rd May 2008, pursuant to a request from Mr Littmann, Tang Wong provided copies of the corporate documents of, *inter alia*, China Sport, to Mr Littmann and Mr Toggenburger.
 - (3) Therefore, Mr Toggenburger was well aware of the role and existence of China Sport well before December 2008.
51. Paragraphs 55 and 56 make no allegations against Mr Tang or Zhong Yi. Neither of them has any knowledge of the matters alleged therein and no admissions are made thereto.

52. Save that it is admitted and/or averred that Zhong Yi had remitted the sum of HKD15,702,670.40 to New Energy, paragraph 57 is not admitted.
53. Insofar as paragraphs 58 to 60 make any allegations against Mr Tang, they are denied. Otherwise, the paragraphs are not admitted.
54. Each and every allegation in paragraph 61 to 64 is denied.

Listed Company

55. In or around December 2006, Mr Luu had discussed with Mr Tang that he wished to acquire a listed “shell” on the Stock Exchange. The purpose of such acquisition was to obtain a listed company platform for raising further capital for China Oil in Hong Kong.
56. At the request of Mr Luu, Mr Tang introduced him to Mr Michael Au-Yeung (“Mr Au-Yeung”), a representative of Richchamp, a broker for sourcing listed company “shells” in Hong Kong.
57. One of the fundamental requirements for entering into preliminary discussions for the acquisition of any listed “shell” is that the intending purchaser must demonstrate sufficient proof to the intending seller of availability of funds.
58. In December 2006 and April 2007, Mr Luu produced documents to Mr Tang and Mr Au-Yeung demonstrating that he had liquid assets in the tens of millions of US dollars.
59. In the period between the end of 2006 and early 2007, the costs of acquiring a controlling stake of a “shell” company listed on the Main Board of the Stock Exchange was around HKD90 million.

60. In or around early 2007, Mr Luu told Mr Tang that he was involved in negotiating the potential acquisition of Warderly and Forefront Group Limited.
61. By an email dated 31st May 2007, Mr Toggenburger informed Mr Tang for the first time that he was interested in investing in listed “shells” on the Stock Exchange with Mr Luu. No further details were given to Mr Tang as to the respective roles and responsibilities of such investments between Mr Toggenburger and Mr Luu.
62. In or around July 2007, Mr Luu told Mr Tang that he and Mr Toggenburger were negotiating the potential acquisition of BEP International Holdings Limited, Wang Sing International Holdings Group Limited (“Wang Sing”) and ZZNode Technologies Holdings Limited (“ZZNode”).
63. Mr Tang subsequently learned from Mr Luu and Mr Toggenburger that:
- (1) In the negotiations for acquiring Wang Sing and ZZNode, Mr Toggenburger was the nominal purchaser whilst Mr Luu was the actual purchaser;
 - (2) The reason for such an arrangement was that certain assets of China Oil would eventually be injected into the listed shell, and if Mr Luu were already a substantial shareholder of the same, the injection of assets from China Oil would trigger a General Offer under the Takeover Code; and
 - (3) Therefore, Mr Toggenburger did not in fact have to provide any funds for the acquisition.
64. Save for the matters pleaded in paragraphs 55 to 63 above, and insofar as paragraphs 65 to 68 make any allegations against Mr Tang, they are denied. It is specifically denied that there was any meeting at Zhong Yi’s office as alleged or that Mr Tang ever made the Listed Company Representations or any similar representations.
65. As pleaded above, Mr Toggenburger was an experienced investor in listed and unlisted companies with Hong Kong and Mainland China operations, and had his own

team of legal and financial advisers, including Mr Littmann, Messrs Haldanes and Ernst & Young.

66. Save that it is admitted that Zhong Yi received the sums alleged in paragraph 69, the paragraph is denied. It is averred that:

- (1) The sum of HKD 26 million was intended to be Mr Toggenburger's investment in the car racing project, as pleaded in paragraph 44(9) above.
- (2) The sums of HKD44 million, HKD200,000, HKD1,000,000 and HKD1,800,000 were intended for Mr Toggenburger's purchase of China Oil shares from Mr Luu, as pleaded below.

67. Paragraph 70 is denied. It is specifically denied that Zhong Yi or Mr Tang ever agreed to act, or did act, as Mr Toggenburger's escrow agent in relation to the said sum of HKD73 million.

68. Save that it is admitted and/or averred that:

- (1) In or around 26 July 2007, Mr Toggenburger instructed Tang Wong to acquire a BVI shelf company on his behalf;
- (2) Pursuant to the said instructions, Tang Wong acquired Betterment on behalf of Mr Toggenburger, and arranged for Mr Toggenburger to be appointed as the sole shareholder and director; and
- (3) Tang Wong was appointed as the first secretary of Betterment;

paragraph 71 is denied.

69. Mr Toggenburger and Mr Luu told Mr Tang at the time that:

- (1) Mr Toggenburger would (nominally) acquire ZZNode through Betterment, and

Mr Luu would then arrange for certain assets of China Oil to be acquired by ZZNode.

- (2) After the acquisition of these assets by ZZNode, Mr Luu (through the shareholding in his own name as well as those in the name of Mr Toggenburger) would acquire control of ZZNode.
- (3) The total costs of acquisition of ZZNode would be around HK\$140 million, all of which would be provided by Mr Luu.

70. However, Mr Toggenburger and Mr Luu did not tell Mr Tang how they would split the shareholding of ZZNode. Mr Luu and Mr Toggenburger also asked Mr Tang to act as a coordinator between them and the lawyers and financial advisers on this transaction.
71. Paragraph 72(1) is denied. As pleaded above, Mr Tang had introduced Mr Au-Yeung of Richchamp to Mr Luu in December 2006. Mr Tang never introduced Au-Yeung to Mr Toggenburger. To Mr Tang's knowledge, Mr Luu subsequently introduced Mr Au-Yeung to Mr Toggenburger.
72. To the best of the knowledge of Mr Tang and Zhong Yi, paragraphs 72(2) and (3) and 73 are correct.
73. Paragraph 74 is denied. Mr Tang and Zhong Yi repeat paragraph 66 above.
74. Each and every allegation in paragraph 75 is denied.
75. Paragraphs 76 and 77 make no allegations against Mr Tang or Zhong Yi, but to their knowledge the paragraphs are correct.
76. Save that it is denied that Mr Tang introduced Richcom to Mr Toggenburger, paragraph 78 is correct to the knowledge of Mr Tang or Zhong Yi. To Mr Tang's knowledge, Richcom was introduced to Mr Toggenburger by Mr Alan Fung of

Partners Capital International Limited.

77. Paragraphs 79 to 81 make no allegations against Mr Tang or Zhong Yi, but to their knowledge, paragraphs 79 to 81 are correct.
78. Paragraph 82 makes no allegation against Mr Tang or Zhong Yi, and no admissions are made thereto.
79. On 6th February 2008, Mr Toggenburger sent an email to Mr Luu stating that he was in financial difficulty and did not wish to continue with the acquisition of ZZNode. Mr Toggenburger wanted to meet with Mr Luu to discuss on how to end the acquisition of ZZNode and how Mr Luu could assist him.
80. In or around the end of February 2008, Mr Luu asked Mr Tang to join in a meeting between Mr Toggenburger, Mr Luu and Mr Littmann. During that meeting:
 - (1) Mr Tang was told that the original arrangement between Mr Toggenburger and Mr Luu was that after securing the control of ZZNode, Mr Luu and Mr Toggenburger would split the shareholding of ZZNode between them and Mr Luu would pay Mr Toggenburger a sum of HKD17 million in cash in order to help Mr Toggenburger to settle margin calls from his financiers.
 - (2) Mr Toggenburger complained that Mr Luu had failed to secure sufficient funds to complete the acquisition of ZZNode and, as a result, their project failed, and Mr Toggenburger was therefore deprived of his expected profit of HKD17 million.
 - (3) Mr Toggenburger then offered to sell his remaining 0.51% shareholding of Betterment to Mr Luu for HKD2.5 million. He also said that Mr Luu should be responsible for the founder's fees payable to Richchamp of HKD2.5 million, which had been guaranteed personally by Mr Toggenburger.
 - (4) Mr Luu agreed, and therefore, paid Mr Toggenburger HKD5 million, being the

sum of HKD2.5 million and HKD2.5 million.

- (5) Mr Tang noticed that the relationship between Mr Toggenburger and Mr Luu turned soured during that meeting. Mr Tang heard for the first time that Mr Luu demanded Mr Toggenburger for outstanding rental payments for the office that he shared with Mr Luu.

81. Paragraph 83 is denied.
82. Paragraph 84 makes no allegation against Mr Tang or Zhong Yi, and no admissions are made thereto.
83. Paragraph 85 is denied.
84. Paragraphs 86 and 87 make no allegation against Mr Tang or Zhong Yi, and no admissions are made thereto.
85. Paragraph 88 is denied. Paragraph 67 above is repeated.
86. Insofar as paragraphs 89 to 93 make any allegations against Mr Tang or Zhong Yi, these are denied. Otherwise, the paragraphs are not admitted.

China Oil

87. Paragraph 94 is denied. It is averred that:
- (1) On 5th July 2007, Mr Toggenburger instructed Tang Wong to acquire a BVI shelf company on his behalf. Pursuant to the said instructions, Tang Wong acquired the 3rd Plaintiff (“Globe Dragon”);
- (2) On 6th July 2007:

- (a) Mr Luu telephoned Mr Tang and told him that Mr Toggenburger had agreed to acquire USD10 million worth of shares in China Oil and Methanol Group, Inc (“China Oil”) from his nominee company, Richtex Investment Limited (“Richtex”).
 - (b) Mr Luu requested Zhong Yi through Mr Tang to receive a number of cheques from Mr Toggenburger for the sums of HKD44 million on 6th July 2007 and the sums of HKD200,000.00, HKD1 million and HKD1.8 million on 25th July 2007 for and on behalf of Richtex. The reason was that Richtex did not have a bank account.
 - (c) Mr Luu told Mr Tang that documents regarding the purpose of these sums of money would be provided at a later date.
 - (d) Mr Luu told Mr Tang that the total amount of HKD47 million, together with the HKD25 million and the sum of HKD3,092,670.40 previously given to Mr Luu by Mr Toggenburger would make up a total of the USD10 million purchase price.
88. Mr Toggenburger delivered the cheques pleaded in paragraph 87(2)(b) above to Zhong Yi on the specified dates. Mr Toggenburger never told Mr Tang that he required any security or collateral for the money transferred or to be transferred as alleged.
89. Paragraphs 95 to 97 are denied. It is specifically denied that Mr Tang made any invitation to Mr Toggenburger to accept the China Oil Shares, or showed Mr Toggenburger the “Strategic Business Plan” of China Oil, as alleged or otherwise. It is averred that Mr Toggenburger and Mr Luu had been exploring the opportunities of investing in the shares in the China Oil since November 2006, without any involvement of Mr Tang or Zhong Yi.
90. Paragraph 98 makes no allegation against Mr Tang or Zhong Yi. Neither of them has any knowledge of the matters alleged therein, and no admissions are made thereto.

91. Paragraph 99 is denied. As pleaded above, on 5th July 2007, Mr Toggenburger had instructed Tang Wong to acquire Globe Dragon on his behalf. In September 2007, pursuant to Mr Toggenburger's request, Tang Wong arranged for Dr Werner to be the first shareholder and director of Globe Dragon with effect from 6th July 2007.
92. In September 2007, Dr Werner signed a board resolution of Globe Dragon which was backdated to 6th July 2007 to confirm that the investment in China Oil was a long term investment and to authorize Mr Toggenburger to sign the Sale and Purchase Agreement with Richtex for the acquisition of the USD 10 million worth of shares of China Oil ("**China Oil SPA**").
93. On 3rd March 2008, Dr. Werner resigned as a director of Globe Dragon and transferred all his shares in Globe Dragon to Mr Toggenburger.
94. Subsequently, on 9th July 2007, Mr Toggenburger through his secretary faxed to Mr Tang a copy of the China Oil SPA.
95. Insofar as paragraphs 100 to 110 make any allegations against Mr Tang or Zhong Yi, these are denied. Otherwise, the paragraphs are not admitted.

Settlement Agreement

96. As to paragraph 111, it is admitted that Mr Tang attended a meeting on 24th June 2008 between Mr Toggenburger and Mr Luu. However, the contents of the meeting as alleged are denied. By an email from Mr Toggenburger to, *inter alios*, Mr Tang and Mr Luu dated 25th June 2008, Mr Toggenburger summarised the matters agreed at the meeting:

“(1) The cash originally invested by me into projects of Derrick amounts to HK\$111,702,670.40. Derrick agreed to bail out my investments himself and/or to arrange Investors to buy out all of my positions both before end of 2008 in order to settle the outstanding balance plus appropriate interest and inflation

compensation (no less than 10%) as follows:

- (2) *Under the given case of emergency Derrick agreed to scrape together a medium seven-digit HK\$ amount to ease my serious financial situation before 04 July 2008.*
 - (3) *Derrick agreed to bail out approximately 50% of my position before end of August 2008, partly in cash (HK\$10-30 million) and remaining amount with a portion of immediately tradable shares of recoverable value.*
 - (4) *Derrick agreed to bail out the outstanding amount either himself or by arranging investors in order to reach final settlement before end of 2008.”*
97. Paragraphs 112 and 113 make no allegations against Mr Tang or Zhong Yi, and no admissions are made thereto.
98. It is denied that the Plaintiffs are entitled to any relief against Mr Tang or Zhong Yi, whether as pleaded or at all.
99. Save for matters expressly admitted herein, each and every allegation contained in the Statement of Claim is denied as if the same were set forth herein and traversed seriatim.

Dated the 21st day of May 2009

Douglas Lam
Counsel for the 2nd and 3rd Defendants

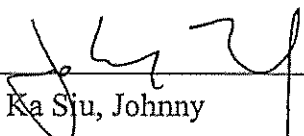


Chan, Tang & Kwok
Solicitors for the 2nd and 3rd Defendants

Statement of Truth

I, Tang Ka Siu, Johnny, director of Zhong Yi (Hong Kong) C.P.A., the 2nd Defendant in this action, believe that the facts stated in this Defence and Counterclaim are true.

Dated the 2/8th day of May 2009.

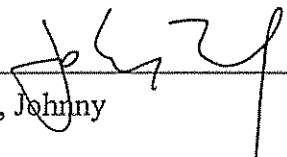


Tang Ka Siu, Johnny
Director of Zhong Yi (Hong Kong)
C.P.A. Company Limited

Statement of Truth

I, Tang Ka Siu, Johnny, the 3rd Defendant in this action, believe that the facts stated in this Defence and Counterclaim are true.

Dated the 21st day of May 2009.



Tang Ka Siu, Johnny

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE
REGION
COURT OF FIRST INSTANCE
ACTION NO. 815 OF 2009

BETWEEN

CHRISTIAN EMIL TOGGENBURGER 1st Plaintiff
PROMISED LAND ENTERPRISES 2nd Plaintiff
LIMITED
GLOBE DRAGON LIMITED 3rd Plaintiff

and

LUU, HUNG VIET DERRICK 1st Defendant
ZHONG YI (HONG KONG) C.P.A. 2nd Defendant
COMPANY LIMITED
TANG, KA SIU JOHNNY 3rd Defendant

DEFENCE OF THE 2ND AND 3RD DEFENDANTS

Dated the 21st day of May 2009.

Filed the 21st day of May 2009.

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