

HCA 349 /2012

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
ACTION NO. 349 OF 2012  
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BETWEEN

**K & L GATES**

Plaintiff

and

**MELCO CROWN GAMING  
(MACAU) LIMITED**

Defendant  
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**WRIT OF SUMMONS**

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Issued the                      day of March 2012

5 MAR 2012

**ROBERTSONS**  
**Solicitors for the Plaintiff**  
**57<sup>th</sup> Floor, The Center**  
**99 Queen's Road Central**  
**Hong Kong**  
**Tel : 2868 2866**  
**Fax : 2868 5820**

**Ref: 88161.MA**

Claim nature:  
A. Mixed Claim  
B. Trust.

HCA 349 / 2012

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE

ACTION NO. 349 OF 2012

BETWEEN

**K & L GATES**

Plaintiff

and

**MELCO CROWN GAMING (MACAU) LIMITED**

Defendant

To : The Defendant of Avenida Dr. Mario Soares, n°25, Edificio Montepio, 1° andar, Comp. 13, em Macau.

**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 **ACKNOWLEDGEMENT 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 Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein an intention to contest the proceedings, 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 5<sup>th</sup> day of March 2012

Registrar.

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

**IMPORTANT**

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

## Statement of Claim

A Statement of Claim must be verified by a Statement of Truth in accordance with Order 41A of the Rules of High Court (Cap.4 sub. leg A).

(Where the Plaintiff's claim is for a debt or liquidated demand only : If, within the time for returning the Acknowledgment of Service, the Defendant pays the amount claimed and HK\$9,000 for costs, further proceedings will be stayed. The money must be paid to the Plaintiff or his Solicitors.)

**THIS WRIT** was issued by **Messrs Robertsons** of 57<sup>th</sup> Floor, The Center, 99 Queen's Road Central, Hong Kong, Solicitors for the Plaintiff of 44<sup>th</sup> Floor, Edinburgh Tower, The Landmark, 15 Queen's Road Central, Hong Kong.

A handwritten signature in black ink, consisting of a stylized, cursive initial followed by a horizontal line extending to the right.

## STATEMENT OF CLAIM

1. The Plaintiff is a firm of solicitors, practicing in Hong Kong from their offices in the Central District and the Hong Kong office of K&L Gates LLP which is an international law firm, comprising about 2,000 lawyers in 41 offices around the world.
  
2. At all material times, in the course of its practice, the Plaintiff operated the following segregated client accounts (the “**Client Accounts**”) for the purpose of receiving, holding and disbursing funds belonging to clients of the Plaintiff:-
  - (1) DBS Bank – Account number (“**A/C No.**”) – 016-478-78-16002-10;
  - (2) HSBC – A/C No. – 004-002-7-651116;
  - (3) HSBC – A/C No. – 004-500-572797-001;
  - (4) HSBC – A/C No. – 002-3-408925;
  - (5) HSBC – A/C No. – 400-620571-201;
  - (6) China Construction Bank (Asia) Corporation Limited – A/C No. – 009-634-000365090;
  - (7) China Construction Bank (Asia) Corporation Limited – A/C No. – 679-000365089;
  - (8) China Construction Bank (Asia) Corporation Limited – A/C No. – 679-000365086;

- (9) Bank of China – A/C No. – 012-692-0-001600-0;
- (10) Hang Seng Bank – A/C No. – 210-116240-001;
- (11) Citibank – A/C No. – 1128779007;
- (12) Citibank – A/C No. – 1128779023;
- (13) Citibank – A/C No. – 1128779074;
- (14) Citibank – A/C No. – 1128779058;
- (15) Citibank – A/C No. – 2128779003;
- (16) Citibank – A/C No. – 1128779015.

3. Navin Kumar Aggarwal (“**Aggarwal**”) was at all material times a solicitor, who became a partner in the Plaintiff in or around 2000, practising in the corporate and commercial area. He resigned from the Plaintiff with immediate effect on 11<sup>th</sup> June 2011.

4. As a partner in the Plaintiff, Aggarwal occupied a position of trust and confidence, under which he owed fiduciary duties to all the partners in the Plaintiff, including the following:-

- (1) a duty of fidelity and good faith;
- (2) a duty not to misappropriate nor to misapply nor to intermeddle with monies of the firm or monies held by the firm, including funds held in the Client Accounts; and

- (3) a duty to avoid conflicts of interest between his own interests and the interests of the firm.
  
5. The Defendant is a company incorporated under the laws of Macau. At all material times:-
  - (1) the Defendant operated and operates the following casinos in Macau:
    - (a) City of Dreams; and
    - (b) Altira Macau;
  - (2) the Defendant's holding company was and is Melco Crown Entertainment Limited incorporated in Cayman Islands and carries its principal place of business in Hong Kong.
  - (3) Golden Future (Management Services) Limited is another subsidiary of Melco Crown Entertainment Limited which was set up to provide supporting services to the Defendant including the receipt of payments and deposits from patrons of the casinos operated by the Defendant.
  
6. On 9<sup>th</sup> June 2011, police officers from the Commercial Crime Bureau of the Hong Kong Police conducted a search of the offices of the Plaintiff, pursuant to search warrant No. 6313/2011 (the "**Search Warrant**") issued by a Magistrate. The Search Warrant was issued pursuant to the arrest and investigation of Aggarwal on suspicion of theft offences, contrary to Section 9 of the Theft Ordinance (Cap. 210).

7. Prior to 9<sup>th</sup> June 2011, the Plaintiff was not aware of the misconduct of Aggarwal as hereinafter pleaded.
8. On 11<sup>th</sup> June 2011, Aggarwal attended the offices of the Plaintiff and tendered his written resignation from the partnership with immediate effect.
9. On 16<sup>th</sup> June 2011, Aggarwal met with a partner of the Plaintiff, Mr. Vincent Tso Shiu Kei (“**Mr. Tso**”). In the course of that meeting:
  - (1) Aggarwal admitted to Mr. Tso and apologized for misconduct which he had committed to the detriment of the Plaintiff.
  - (2) Aggarwal also passed to Mr. Tso a hand-written confession (the “**Confession**”) which was addressed to the Asia Managing Partner of K&L Gates, LLP, Mr. David Tang.
  - (3) The gist of the Confession is set out in **APPENDIX 1** hereto.
10. By the Confession, Aggarwal confessed to having, *inter alia*, operated over a protracted period a fraudulent scheme whereby he misappropriated or misapplied substantial sums of money from 19 entities, through purported “escrow” arrangements (the “**Purported Escrow Arrangements**”) and bogus loan arrangements (the “**Bogus Loan Arrangements**”) set up by him, in respect of monies which he caused to be placed into the Client Accounts, wherefrom he caused them wrongfully to be paid (*inter alia* by misrepresenting the facts to his other partners and by forging signatures) to allegedly fund his gambling activities.

11. Since 9<sup>th</sup> June 2011 the Plaintiff has undertaken an investigation of Aggarwal's conduct while he was a partner in the firm (the "**Investigation**").
12. The Investigation revealed that Aggarwal had, *inter alia*, misappropriated or misapplied monies belonging to the clients of the Plaintiff which had been entrusted with the Plaintiff and which had been deposited into the Client Accounts, including funds belonging to:-
  - (1) Mr. Hui Kau Mo;
  - (2) Mr. Mark Lightbown;
  - (3) Golden Bridge United Holdings Group (HK) Limited; and
  - (4) Laxmi Niwas Jhunjhnuwala.
13. The Plaintiff has since made full restitution to each of these clients referred to in the preceding paragraph by depositing into the Client Accounts funds equivalent to those which Aggarwal had misappropriated or misapplied. The total costs to the Plaintiff of providing that restitution was HK\$117,268,936.
14. The other entities named in the Confession apart from those described in paragraph 12 were either not clients or were not made clients of the Plaintiff in any respect, further or alternatively, were either not clients or were not made clients of the Plaintiff in the ordinary course of business with regard to the Purported Escrow Arrangements and/or the Bogus Loan Arrangements and no client/solicitor relationship exists in respect of those transactions (the "**Non-Clients**"). In particular, contrary to the standard mandatory



requirements which must be undertaken before an entity can become a client of the Plaintiff, in respect of these Non-Clients, Aggarwal:-

- (1) did not perform the Plaintiff's compulsory anti-money laundering procedures and requirements before an entity can become a client of the Plaintiff;
  - (2) did not open client file(s);
  - (3) did not open ledger records in relation to clients' funds;
  - (4) did not cause the Plaintiff to issue any statement of account in respect of clients' funds held by the Plaintiff; and
  - (5) did not issue any invoice for services provided by the Plaintiff (or any member thereof).
15. Aggarwal caused the funds from the Non-Clients to be paid into the Client Accounts for the credit of Rim China Co. Ltd., a non-active but previously *bona fide* client of the Plaintiff.
16. The Plaintiff is presently unaware of the full extent of Aggarwal's misconduct involving the Non-Clients.
17. The Plaintiff avers that, in the above-described manner, Aggarwal has breached his fiduciary duties to the Plaintiff in the manner including but not limited to the following:-

- (1) he has misappropriated or misapplied monies from the Client Accounts and/or defrauded his former partners and others with monies deposited in the Client Accounts;
  - (2) he has systematically falsified the Plaintiff's accounting records in order to conceal or to disguise his misappropriations or misapplications of monies held in the Clients Accounts; and/or
  - (3) he has fraudulently misrepresented to his partners the nature and purpose of transactions involving monies held in the Client Accounts and/or forged signatures of his partners and others in order to effect transfers of monies from the Client Accounts.
18. On 24<sup>th</sup> June 2011, Aggarwal was charged with 3 counts of theft and 3 counts of forgery involving the theft of about HK\$16.6 million. On 25<sup>th</sup> June 2011, Aggarwal appeared before Kowloon City Magistrates Court and his bail was revoked. At present the Plaintiff does not know whether or not other charges will be laid.
19. The Investigation to date has revealed that Aggarwal had, in breach of his fiduciary duties owed to the Plaintiff, *inter alia* misappropriated substantial funds from the Plaintiff's Client Accounts of at least HK\$34,101,550.00 by effecting bank transfers directly from the Client Accounts to the Defendant or to the Defendant's order, in the manner particularised in APPENDIX 2 hereto (the "**Misappropriated Trust Monies**").

20. Further or in the alternative:

(1) Aggarwal had, in breach of his duties owed to the Plaintiff, gambled with the trust money he misappropriated from the Client Accounts including but not limited to the Misappropriated Trust Monies, and incurred a net loss of at least HK\$9,918,500 to the Defendant (the “**Defendant’s Net Winnings**”).

(2) The Defendant issued a purported statutory demand dated 3<sup>rd</sup> January 2012 to Aggarwal claiming that among the Defendant’s Net Winnings, Aggarwal has failed to pay the Defendant the principal sum of HK\$4,539,320 with interest.

21. For the avoidance of doubt, the Plaintiff reserves its right to provide further and better particulars of, *inter alia*, the extent of Aggarwal’s misappropriation from the Client Accounts and the Defendant’s Net Winnings as and when the same are available after completion of discovery and/or administration of interrogatories.

22. The Defendant received the Misappropriated Trust Monies and/or the Defendant’s Net Winnings:-

(1) in the knowledge that it was not entitled to receive the same from the Plaintiff;

(2) in the absence of legal entitlement to the same;

(3) without giving valuable consideration for the same;

(4) in the knowledge that the monies received were not Aggarwal's funds;  
and/or

(5) in the knowledge of circumstances which would indicate the foregoing matters (namely those pleaded in these sub-paragraphs) to an honest and reasonable recipient, namely:-

(a) Aggarwal's history as an unsuccessful gambler;

(b) the Plaintiff had no dealings with the Defendant;

(c) a solicitors firm's client account monies are trust monies;

(d) each bank transfer identified the source of the funds to have been one of the Client Accounts;

(e) the amounts received from the Client Accounts were disproportionate to Aggarwal's likely means as a solicitor;  
and/or

(f) the monies concerned were either paid over in order to assist Aggarwal to fund gambling beyond his means or as a means of money laundering.

23. Alternatively, the Defendant wilfully or recklessly failed to make such enquiries as an honest and reasonable recipient would make which would have revealed the matters pleaded in the preceding paragraph.

24. In the premises, the Defendant is liable to account to the Plaintiff as a constructive trustee for the Misappropriated Trust Monies and/or the Defendant's Net Winnings.
25. Additionally and alternatively, the Plaintiff is entitled to recover the monies which Aggarwal dishonestly caused to be paid and/or transferred to the Defendant as money had and received including but not limited to the Misappropriated Trust Monies and/or the Defendant's Net Winnings.
26. The Plaintiff claims interest on any damage awarded at such rate and for such period as the Court thinks fit pursuant to Section 48 of the High Court Ordinance (Cap. 4), and if awarded in the Court's equitable jurisdiction, compounded.

**AND THE PLAINTIFF CLAIMS:-**

- (A) An enquiry as to what property in the hands of the Defendant or under its control presently represents the Misappropriated Trust Monies and/or the Defendant's Net Winnings.
- (B) An Order that the Defendant account to the Plaintiff as a constructive trustee for all monies which it received from the Client Accounts as a result of Aggarwal's breaches of trust including but not limited to the Misappropriated Trust Monies and/or the Defendant's Net Winnings.
- (C) An Order that the Defendant pay to the Plaintiff all sums for which it is liable to account as aforesaid.

- (D) An order that the Plaintiff is entitled to trace any of its monies and/or assets misappropriated by Aggarwal and wrongly received by the Defendant wherever situated in the world.
- (E) Further or alternatively, damages or such equitable restitution as this Honourable Court may deem fit.
- (F) Interest, and if awarded in the Court's equitable jurisdiction, compounded.
- (G) All other necessary accounts and enquiries.
- (H) Further or other relief.
- (I) Costs.

Dated this the 5<sup>th</sup> day of March 2012

Russell Coleman S.C.

Frances Lok

Counsel for the Plaintiff

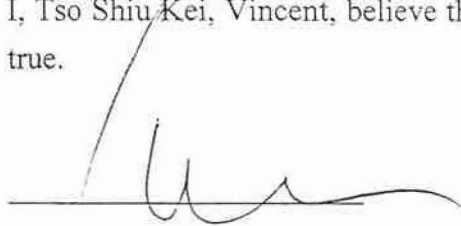


ROBERTSONS

Solicitors for the Plaintiff

Statement of Truth

I, Tso Shiu Kei, Vincent, believe that the facts stated in this Statement of Claim are true.

A handwritten signature in black ink, appearing to be 'Tso Shiu Kei', written over a horizontal line.

Tso Shiu Kei, Vincent

Dated: 5<sup>th</sup> March 2012

## APPENDIX 1

### THE GIST OF AGGARWAL'S CONFESSION

*"Dear David,*

*I am really sorry about everything. I am not sure if its possible but I really hope the firm survives all this caused by me.*

*The "escrows" (sic) are listed below:-*

1. *Wang Qiang* - HK\$75m
2. *Sun Finance* - HK\$50m
3. *Silver Vision/Sanrio Kwong* - HK\$10m  
*28699922/61223333* - HK\$20m
4. *Joy Benefit + Great Advice?* - HK\$50m  
*(through Ng Sai Kit)* - HK\$40m  
- HK\$15m
5. *S W Kingsway* - HK\$40m
6. *Emperor Securities* - HK\$15m  
- HK\$25m
7. *Delta Wealth* - HK\$15m  
*(contact Stephen Hon – 9250 8626)* - HK\$12m  
- HK\$10m  
- HK\$7m
8. *Lam Shu Chung* - HK\$30m  
*6777 7777*
9. *New Credit/International Prism* - HK\$60m  
*(Mr. Ngai – 98567201)* - HK\$35m
10. *Evenstar/ Geminis/ Cosmos etc* - US\$1m  
*(Contact James Yang/Alan Chen)* - US\$3.5m



- |     |   |  |
|-----|---|--|
| 11. | <i>Golden Bridge</i><br>(Samuel Kong – 9071 6480)                       | - US\$4.2m<br><i>Less payment of</i><br><i>US\$500k + to Paul Hastings</i> |
| 12. | <i>Sutcliffe Properties Limited</i><br>(Sam Chan – 23543668)            | - HK\$10m  |
| 13. | <i>Hind International Investments</i><br>(Manoj Jhunjhnuwala -60785113) | - HK\$41m  |
| 14. | <i>Manoj Jhunjhnuwala</i>   | - HK\$4m   |
| 15. | <i>Selene Ng Sau Ling</i><br>98401818                                   | - HK\$4m   |
| 16. | <i>Darius Yuen</i><br>90811233  | - HK\$3m   |
| 17. | <i>Kattie Choi's husband</i><br>68018861                                | - C\$270,000   |
| 18. | <i>Hui Kau Mo</i>   | - C\$12m ~   |
| 19. | <i>Lightbown</i>  | - US\$600k+  |

*I confirm Clifford Ng had nothing to do with the above, including amount due to Mr Hui. He trusted me and I breached his trust, along with many other people.*

*The partners who co-signed the cheques, also knew nothing about what I was up to. They are all innocent. With my position, they all trusted me and never thought something like this could happen.*

*RIM China had nothing to do with the crime I committed. They didn't even now about it. I would prepare instructions for payment from RIM and sign them myself.*

*Neither Julianna nor Cherry, knew about this either.*

*I know the gravity of the crime committed. I can't live with this.*

*I am sorry that you and the others have to face all this and clear the mess.  
The money that I stole was used to pay my gambling losses that I have  
accumulated over the years. I was using one "escrow" to cover the other. I  
don't know what devil got into me.*

*Sorry*

*Navin Aggarwal*

*[signed]"*

APPENDIX 2

MONIES RECEIVED BY THE DEFENDANT BY DIRECT TRANSFER  
FROM THE PLAINTIFF'S CLIENT ACCOUNT

<b>Date</b>	<b>HKD</b>	<b>Amount</b>	<b>Payment by</b>
14/4/09	HKD	4,000,170	K&L client account 500-572797-001 at HSBC to Dah Sing Bank Limited 7415 115 865
2/6/09	HKD	6,500,170	K&L client account 500-572797-001 at HSBC to Dah Sing Bank Limited 7430 142 468
4/6/09	HKD	(6,499,985)	<u>Received from this entity</u> Dah Sing Bank Limited 500-572797-001 to K&L client account 500-572797-001 at HSBC
2/9/09	HKD	4,000,170	K&L client account 500-572797-001 at HSBC to Dah Sing Bank Limited 7415 115 865
7/1/10	HKD	5,000,170	K&L client account 500-572797-001 at HSBC to Dah Sing Bank Limited 7430 142 468
22/2/10	HKD	5,000,280	K&L client account 1128779007 at Citibank to Dah Sing Bank Limited 7430 142 468
23/4/10	HKD	4,000,120	K&L client account 1128779007 at Citibank to Dah Sing Bank Limited 7430 142 468
9/7/10	HKD	5,000,285	K&L client account 1128779007 at Citibank to Dah Sing Bank Limited 7430 142 468
17/9/10	HKD	7,100,170	K&L client account 500-572797-001 at HSBC to Dah Sing Bank Limited 7430 142 468
<b>Total HKD</b>		<b>34,101,550</b>	