

CHAN, TANG & KWOK
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Claim nature:
A. Mixed Claim
B. Intellectual Property & Defamation

No. 1
Writ of Summons
(O. 6 r. 1)

HCA 2160 12009

嚴禁將任何法庭已存
檔文件帶離本登記處
(高等法院條例第63號命令第9條)
Restriction on removal of documents
(The Rules of the High Court,
63 Rule 9)

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

ACTION NO. 2160 OF 2009

BETWEEN

TANG KA SIU JOHNNY 1st Plaintiff

ZHONG YI (HONG KONG) C.P.A. COMPANY LIMITED 2nd Plaintiff

and

CHRISTIAN EMIL TOGGENBURGER Defendant

TO THE DEFENDANT CHRISTIAN EMIL TOGGENBURGER whose last known address is 1403A, Tower 2, Admiralty Centre, 18 Harcourt Rd., Admiralty, 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 22nd day of October 2009

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 Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The 1st Plaintiff ("**Mr. Tang**") is and was at all material times a certified public accountant (CPA) in Hong Kong and a director and shareholder of the 2nd Plaintiff ("**Zhong Yi**").
2. Zhong Yi is and was at all material times a registered CPA company with the Hong Kong Institute of Certified Public Accountants ("**the Institute**"). Zhong Yi's clients include a number of public companies listed in Hong Kong, Singapore, London and the United States.
3. The Defendant ("**Mr. Toggenberger**") is a Swiss national.
4. Mr. Tang met Mr. Toggenberger on or around 12 June 2006. In or around November 2006, Mr. Tang introduced Mr. Toggenberger to a Canadian/Hong Kong businessman by the name of Derrick Luu ("**Mr. Luu**").
5. Subsequently, in the period between 2007 and 2008, Mr. Toggenberger entered into a number of business ventures with Mr. Luu in the PRC, including an investment in shares of a company known as China Oil and Methanol Group Incorporated ("**China Oil**"). Mr. Toggenberger suffered substantial losses from the said business ventures, including China Oil.
6. To the knowledge of the Plaintiffs (as informed by Mr. Toggenberger):
 - (1) Mr. Toggenberger was acquainted with another Swiss national by the name of Martin Fuerst ("**Mr. Fuerst**");
 - (2) In or around 2007, Mr. Toggenberger recommended to Mr. Fuerst to invest in China Oil, and as a result, Mr. Fuerst invested 25,000 Swiss Franc (approximately, HK\$191,300) in the shares of China Oil.
 - (3) Mr. Fuerst suffered a substantial loss from his investment in China Oil.

7.

In or shortly before July 2008, Mr. Toggenberger told Mr. Fuerst that the loss in value of shares of China Oil was due to:

- (1) The fraudulent conduct of Mr. Tang in his dealings with China Oil, including securities fraud in breach of United States securities laws; and
- (2) Zhong Yi having unlawfully misappropriated or paid to Mr. Luu sums of more than HK\$100 million belonging to Mr. Toggenberger which had been intended for China Oil

("the said Allegations").

8. As Mr. Toggenberger well knew, the said Allegations were false. Further, the said Allegations are defamatory as they allege that:

- (1) Mr. Tang was guilty of fraud and/or serious professional misconduct as an accountant; and
- (2) Zhong Yi was guilty of fraud and/or serious professional misconduct as a CPA company.

9. By reason of the said Allegations, in the period between July 2008 and April 2009, Mr. Fuerst launched a harassment campaign against *inter alios* Mr. Tang:

- (1) Mr. Fuerst wrote numerous threatening emails to Mr. Tang demanding compensation for his loss from the China Oil shares, for which he blamed Mr. Tang and Zhong Yi;
- (2) Mr. Fuerst told Mr. Tang that he had filed complaints with *inter alia* the United States Securities and Exchange Commission and the Institute in respect of the said Allegations;
- (3) Mr. Fuerst threatened to publish on a website created by him containing defamatory materials relating to the said Allegations; and

- (4) On 30th April 2009, Mr. Tang had no alternative but to commence High Court Action 1120/2009 for defamation against Mr. Fuerst. On the same day, the Honourable Mr. Justice Stone granted an interim injunction restraining Mr. Fuerst from publishing the said material.
10. Mr. Fuerst's campaign against Mr. Tang only ceased when in May 2009, Mr. Luu arranged for the purchase of Mr. Fuerst's shares of China Oil.
11. By reason of the said Allegations:
- (1) The reputation of Mr. Tang and Zhong Yi has been seriously and irreparably damaged. Mr. Tang and Zhong Yi estimate that the loss of income from lost business is in excess of HK\$2,000,000.
- (2) Zhong Yi and Mr. Tang had to spend substantial amounts of administrative time costs and legal costs dealing with Mr. Fuerst. Mr. Tang and Zhong Yi estimate that such costs are in excess of HK\$450,000.
- (3) Further, due to the sensitivity of Zhong Yi's clients to the reputation of their professional advisers, Mr. Tang had no alternative but to set up a new CPA company by the name of ZYCPA Company Limited to serve Zhong Yi's publicly listed clients since February 2009.
12. Mr. Toggenberger well knew that the said Allegations would cause serious embarrassment and prejudice to the business and reputations of Mr. Tang and Zhong Yi. Mr. Toggenberger made the said Allegations maliciously and for the unlawful purpose of exerting pressure on Mr. Tang to:
- (1) Assist him to seek compensation from Mr. Luu for his losses in *inter alia* China Oil; and/or
- (2) Persuade Mr. Luu to compensate Mr. Toggenberger for the said losses.

In the circumstances, both Mr. Tang and Zhong Yi have suffered serious loss and damage. Mr. Tang and Zhong Yi also claim exemplary damages.

14. The Plaintiffs claim interest pursuant to section 48 of the High Court Ordinance (Cap 4) or alternatively under this Honourable Court's equitable jurisdiction, at such rate and for such period as this Honourable Court thinks just.

AND THE PLAINTIFFS CLAIM:

1. An injunction to restrain the Defendant, whether by himself, his servants or agents or otherwise howsoever, from publishing, circulating, distributing or otherwise writing with a view to be published or causing to be circulated distributed or otherwise published the said Allegations;
2. Damages for defamation and injurious falsehood, including exemplary damages;
3. Interest on all sums found due at such rate and for such period as the Court deems just pursuant to Section 48 of the High Court Ordinance (Cap. 4);
4. Costs; and
5. Further or other relief.

Dated this 22nd day of October 2009



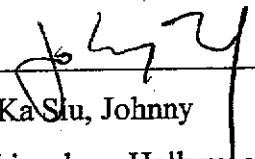
CHAN, TANG & KWOK

Solicitors for the Plaintiffs

STATEMENT OF TRUTH

I, Tang Ka Siu, Johnny, believe that the facts stated in this Statement of Claim are true.

Dated the *22nd* day of October 2009.

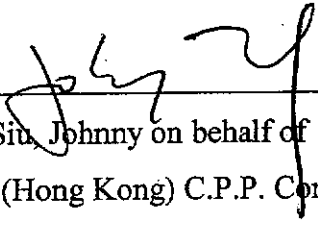


Tang Ka Siu, Johnny
9/F Chinachem Hollywood Centre
1-13 Hollywood Road
Central, Hong Kong

STATEMENT OF TRUTH

I, Tang Ka Siu, Johnny, director of Zhong Yi (Hong Kong) C.P.A. Company Limited, believe that the facts stated in this Statement of Claim are true.

Dated the *22nd* day of October 2009.



Tang Ka Siu, Johnny on behalf of
Zhong Yi (Hong Kong) C.P.P. Company Limited
9/F Chinachem Hollywood Centre
1-13 Hollywood Road
Central, Hong Kong

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COMPANY LIMITED

and

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TOGGENBURGER

WRIT OF SUMMONS

Issued on the 22nd day of October 2009

Filed on the 22nd day of October 2009

陳鄧郭律師行

Chan, Tang & Kwok

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Ref.: BC-16455