

HCMP 1678/2017

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
MISCELLANEOUS PROCEEDINGS NO 1678 OF 2017**

IN THE MATTER of Section 45 of
the Arbitration Ordinance (Cap 609)
and Order 73 rule 4 of the Rules of
the High Court (Cap 4A)

BETWEEN

VE GLOBAL UK LIMITED

Plaintiff

and

CHARLES ALLARD JR

1st Defendant

INTELITA LIMITED (formerly known as

2nd Defendant

SOUTH CHINA SEA HOLDINGS LIMITED)

Before: Hon Mimmie Chan J in Chambers (Open to Public)

Date of Hearing: 25 September 2017

Date of Decision: 10 October 2017

DECISION

Background

1. The plaintiff in these proceedings (“**Global**”) claims to be the assignee of and successor to the business and assets of VE Interactive Ltd (“**Interactive**”). Interactive was the ultimate holding company of a global group of companies (“**VE Group**”), and which owned the business of developing and providing sales and marketing software for online businesses as well as online advertising services to clients (referred to as the “**VE Business**”). Interactive serviced its customers globally, through different companies in different regions, with senior administrators overseeing operations in different countries. One of these senior administrators is the 1st defendant named in these proceedings (“**CA**”). CA managed the VE Business in Asia, and holds (through his corporate vehicle, the 2nd defendant (“**Intelita**”)) a minority shareholding in the Asian subsidiaries in the VE Group. The Hong Kong based subsidiary of the VE Group is VE Interactive Asia Ltd (“**VE Asia**”), which is owned by Interactive as to 67.5%, and by Intelita as to 32.5%.

2. On 27 October 2014, Interactive and Intelita (then known as South China Sea Holdings Limited (“**South China**”)) entered into a Shareholders’ Agreement (“**Shareholders’ Agreement**”), relating to their shareholding in VE Asia. On the same day, a Licence Agreement was made between Interactive and Intelita (“**Licence**”), whereby Interactive and Intelita agreed terms for the establishment and operation of various Asian subsidiaries including VE Asia, and for the licensing of various rights to Intelita for the operation of the Asian subsidiaries and the VE Business.

3. Apparently as a result of disputes which arose in early 2017 between Interactive and the North American subsidiary of the VE Group, Interactive was put into administration on 25 April 2017. On 26 April 2017, Global acquired the business and assets of Interactive.

4. The facts leading to the termination of the Licence are disputed. The parties accept that the underlying dispute will have to be resolved in the arbitration and court proceedings which have since been commenced. On the evidence filed to date, it would appear that the former controllers of the US VE subsidiary set up a competing business in around June 2017, and had secretly transferred clients of the VE Business to their own rival business brand which they had set up (“Cybba”).

5. In July 2017, Global’s officers became suspicious that CA had also set up a rival business in Hong Kong, and was using Intelita to obtain the confidential information of the VE Business belonging to Interactive, and to transfer such confidential and client information to CA’s own rival business in Hong Kong. This was upon information given to Global by the Chief Operating Officer of the Asian VE subsidiaries (“Pierre”), who used to work for CA. Further investigations were carried out, as a result of which the Licence was assigned by the administrators of Interactive to Global, and notice of the assignment together with notice of termination of the Licence were served on Intelita on 25 July 2017. The notice of termination of the Licence referred to Intelita’s material breaches of the Licence, including the alleged breach of Intelita’s obligation not to make use of information relating to the VE Business other than exclusively for the purposes of the VE Business.

6. On 28 July 2017, Global obtained an *ex parte* injunction (“**Injunction**”) from the Court, whereby CA and Intelita (together referred to as “**Defendants**”) were restrained, essentially, from operating VE Asia and the Asian subsidiaries, from holding Intelita out as being related to Global/Interactive, from using the intellectual property owned by Global/Interactive, and from using or copying the software relating to the VE Business. The Injunction was continued on 4 August 2017, but the terms were extended (“**Revised Injunction**”).

7. At the adjourned hearing of the *inter partes* summons for the continuation of the Injunction, as revised, the issues between the parties focused on:

- (1) whether Global had the locus standi to obtain the Injunction and Revised Injunction against CA and Intelita;
- (2) whether the Injunction and Revised Injunction should be varied, to permit CA and Intelita to continue to operate various software licences and accounts held in the name of Intelita;
- (3) whether CA should continue to have access to the bank accounts of the VE Asian subsidiaries including VE Asia; and
- (4) if the Injunction and Revised Injunction should be continued, whether fortification should be provided by Global in respect of its undertaking as to damages.

The Injunction and the Revised Injunction

8. The material terms of the Injunction prohibit the Defendants from: operating VE Asia or any of the other VE Asian subsidiaries (“**Companies**”), including exercising any management powers, operating any bank accounts, authorizing any payment, or contacting any person on behalf of the Companies; holding Intelita out as to indicate any relationship with Global and Interactive (“**VE**”); using the intellectual property of VE and the “**Business**” (defined in the Injunction as “offering the products and services of VE as advertised on www.veinteractive.com); using or copying the software, hardware, materials and documentation relating to the Business whether registered or purchased in the name of the Companies or Intelita.

9. The Revised Injunction contains additional orders against the Defendants, including the following:

“5. The Defendants shall not block, impede or otherwise interfere with the Plaintiff’s access to:

(a) the accounts with Xero (an accounting and finance system) in the respective name of Ve Asia, Ve Interactive (Singapore) Pte Ltd, and Weiyi information Technology Ltd (the “**Xero Accounts**”); and

(b) the account with The Trade Desk (a trading platform) presently under the name of the 2nd Defendant and which Ve Asia and its personnel have been using (the “**Trade Desk Account**”),

provided that the Plaintiff shall pay the costs associated with such access within 7 days of receipt of any invoice;

6. The Defendants shall forthwith provide the Plaintiff with access (including login names and passcodes) to the Xero Accounts and the Trade Desk Account.”

Locus of Global

10. On behalf of the Defendants, it was argued that Global is not a registered shareholder of VE Asia or any of the Companies, and has no rights under the Shareholders Agreement which was made between Intelita and Interactive.

11. The claims made by Global against Intelita are that Intelita was in breach of its duties under the Licence made between Intelita and Interactive, that Global has been assigned Interactive's rights under the Licence, and that upon termination of the Licence, Intelita should be restrained from using the intellectual property belonging to VE and the confidential information acquired by Intelita in relation to the VE Business under the Licence.

12. The claims of Global are not made as shareholder of VE Asia.

13. Under the Licence, "Business" is defined as offering the products and services of Interactive as advertised on Interactive's website. The offering of such products and services would be the VE Business. "Confidential Information" is defined in the Licence to mean "any information which is disclosed to (Intelita) by (Interactive) pursuant to, or in connection with, (the Licence) (whether orally or in writing and whether or not such information is expressly stated to be confidential), or which otherwise comes into the hands of (Intelita) in relation to the Business, (Intelita's) Business, (Interactive's) services or (Interactive's) products other than information which is already in the public domain (otherwise than as a result of a breach of any obligation of confidentiality)".

14. "Intellectual Property" is also widely defined in the Licence to include (inter alia) copyright, trademarks, business names and domain names, goodwill, database rights, rights to use confidential information, and "all similar or equivalent rights or forms of protection which subsist or will subsist ... relating to (Interactive's) products and services and the Business, owned by (Interactive)".

15. The Defendants sensibly accept that questions as to whether Intelita was in breach of the Licence and whether Global was entitled to terminate the Licence as assignee of Intelita are questions for determination by the tribunal in the arbitration to be commenced, and now commenced, pursuant to the arbitration clause in the Licence. It suffices to say at this stage that on the evidence available, there is a serious question to be tried in relation to Global's claim, that Intelita was in breach of its duties under the Licence, and upon the termination of the Licence, neither Intelita nor CA (as director of Intelita and VE Asia) has the right to continue to use either the intellectual property licensed to Intelita for its use during the term of the Licence, or the confidential information acquired by Intelita in relation to the VE Business or Interactive's products pursuant to the Licence.

16. As the undisputed assignee of the Licence, notice of assignment of which was served on Intelita, Global is entitled to seek remedies from Intelita in respect of any breach or alleged misappropriation of Interactive's rights under the Licence.

17. On the facts of the case, information relating to the clients of Interactive, the services and products offered by Interactive to its clients,

A
B and the software offered by Interactive for the advertising campaigns
C purchased by clients from Interactive, fall within the scope of the
D Confidential Information and/or Intellectual Property as defined in the
E Licence, which Intelita is obliged under the Licence to use only for and in
F connection with the VE Business. On termination of the Licence, Intelita
G is under a duty, pursuant to clause 17.2 of the Licence, to cease using and
return such Intellectual Property and Confidential Information to
Interactive, and hence to Global as Interactive's assignee.

H 18. The Injunction was applied for under s 45 of the Arbitration
I Ordinance ("**Ordinance**"), and obtained in aid of arbitration to be
J commenced pursuant to the arbitration clause in the Licence. Clause 40.1
K of the Licence provides for all disputes arising out of and in connection
L with the Licence to be finally settled in England under the Rules of
M Arbitration of the International Chamber of Commerce. The Request for
N Arbitration ("**Request**") was finally served on Intelita on 21 September
O 2017. The claims made by Global against Intelita in the arbitration are on
the basis of Intelita's breach of the Licence, the relief sought being (*inter*
alia) damages as a result of Intelita's said breach, and orders compelling
Intelita to comply with its post-termination obligations under the Licence.

P 19. I am satisfied that Global has locus to bring proceedings in
Q respect of Intelita's breach of the Licence.

R 20. In relation to Global's claims against CA, it cannot be
S disputed that CA is not a party to the Licence or the arbitration agreement.
T In respect of the *ex parte* application for the Injunction, it was made
U known to the Court that Global's dispute with CA personally might have
V

to be resolved in court, ie by court proceedings, if the parties could not ultimately agree on including CA in the arbitration between Global and Intelita.

21. The draft Writ for the proceedings against CA refer to Global's claims against him for procuring and inducing Intelita's breach of the Licence assigned to Global, procuring and inducing Global's employees to breach their contractual and fiduciary duties to Global, breach of confidence and misappropriation of intellectual property and confidential information owned by Interactive under the Licence assigned to Global. VE Asia is named as 2nd plaintiff in the legal proceedings against CA, making claims of breach of fiduciary duties owed by CA to VE Asia, and that CA had procured and induced employees of VE Asia to breach their contractual and fiduciary duties to VE Asia.

22. It cannot be said that there is no serious question to be tried, that Global has a claim against CA and Interactive, in respect of the matters of which it complains, and as more particularly described in the draft Writ and the Request, on the basis of the Licence made between Intelita and Interactive (of which Global is the assignee). Global's damages in respect of the breaches of Intelita and CA, as alleged, cannot be dismissed simply as reflective of any damage that may be sustained by VE Asia.

Delay

23. Despite having sought and obtained urgent *ex parte* relief from the Court on 28 July 2017, it was only on 21 September 2017 that Global served the Request and the draft Writ in relation to the arbitration

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B and legal proceedings, for which the Injunction was granted in support. I
C agree with the Defendants that there has been delay in the
D commencement of the London arbitration and the Hong Kong court
E proceedings, and that it is imperative for an applicant who comes to seek
F the urgent aid of the Court, claimed to be in contemplation and for the
G interim of proceedings to be commenced, whether in Hong Kong or
H outside Hong Kong, pursuant to either s 45 of the Ordinance or s 21M of
I the High Court Ordinance, to act with diligence and speed in the service
J of the documents which initiate the primary proceedings for which the
K interim relief was granted in support. A defendant should be promptly
L informed of the nature and particulars of the claims which are made
M against it, on the basis of which the *ex parte* (and often drastic) relief was
N sought, and granted by the Court. To the extent that it is not expressed
O (as it should be) in the undertakings on which the order is granted, that
P the plaintiff will issue and serve on the defendant the notice of arbitration
Q or the writ of summons (as appropriate) as soon as practicable, the Court
R should be informed of this, and an explanation given as to why such an
S undertaking is not offered.

O 24. In this case, Global has explained its delay on the basis that
P since the grant of the Injunction, CA had intimated that he would not be
Q challenging the termination of the Licence and the relationship between
R Intelita and VE, and would be cooperating to comply with the post-
S termination obligations and arrangements, such that it might not have
T been necessary to commence proceedings.

T 25. At the end of the day, in deciding whether or not to discharge
U or refuse the grant of an injunction on the ground of delay, or abuse of
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process as the Defendants suggest, it is for the Court to consider all the circumstances of the case, including the length of the delay, any explanation put forward therefor, the degree of prejudice liable to be caused to the defendant as a result of the delay and the prejudice liable to be caused to the plaintiff if the injunction is to be discharged, and whether the defendant has in any way caused or contributed to the delay.

26. On behalf of the Defendants in this case, it was argued that the Court's jurisdiction to support arbitral proceedings is exceptional and based on "the principle of limited and cautious curial assistance" (referring to the decision of the Singapore High Court in *NCC International AB v Alliance Concrete Singapore Pte Ltd* [2008] 2 SLR 565). As such, the Defendants argued that by virtue of Global's delay and failure to proceed with the substantive arbitration and court proceedings diligently and expeditiously, the Court should take a dim view of such conduct, which constitutes abuse of the process of the Court.

27. The balance between the Court's readiness to grant interim relief in aid of arbitration and the caution to be exercised in interfering with the primary jurisdiction and process of the arbitral tribunal or court outside Hong Kong is recognized, and reflected, in s 45 of the Ordinance. The Court has the power under s 45 to grant interim measures in relation to arbitral proceedings in or outside Hong Kong. Under s 45 (4), the Court may decline to grant an interim measure on the ground that the interim measure sought is currently the subject of arbitral proceedings, and the Court considers it more appropriate for the interim measure sought to be dealt with by the arbitral tribunal. In exercising its power to grant interim measures in aid of arbitral proceedings outside Hong Kong,

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B the Court is required under s 45 (7) to have regard to the fact that the
C power is only ancillary to the arbitral proceedings outside Hong Kong,
D and is for the purposes of facilitating the process of a court or tribunal
E outside Hong Kong that has primary jurisdiction over the proceedings.
F So long as the Court gives regard to the matters set out in s 45 (7), there is
no reason why the Court should not order interim measures where it is
appropriate so to do, to facilitate the process of the tribunal.

G 28. In this case, I am not persuaded that the applications for the
H Injunction and Revised Injunction amount to an abuse of the process of
I the Court. The delay in the commencement of the underlying arbitration
J and the legal proceedings against CA is regrettable and frowned upon by
K this Court, but I am not satisfied that the Defendants have suffered any
L prejudice as a result. The consideration of whether the Injunction was
M properly granted, and whether it and the Revised Injunction should be
N continued, depends on whether, in all the circumstances of the case
including the factors set out in s 45 (7), it is more appropriate for the
orders to be dealt with by the tribunal, and on a balance of the risks of
injustice that may be caused by the grant or refusal of the relief sought.

O 29. On the evidence, and Global's claims of the surreptitious acts
P of CA and Intelita in transferring the confidential information and
Q intellectual property rights of VE, and the claims that a competing
R business was in the process of being set up, there was ground for Global
S to apply for the Injunction on an *ex parte* basis, instead of awaiting the
T appointment of the tribunal and the application for *inter partes* relief from
U the tribunal. The factors set out in s 45 (5) are satisfied in this case.
V

Whether the Injunction and the Revised Injunction should be continued, or varied as the Defendants ask, is dealt with below.

The software licences and accounts in name of Intelita

30. Amongst the property sought by Global to be returned to it by Intelita upon termination of the Licence are systems, software and/or accounts maintained with third parties such as Xero, Mercury FX, TradeDesk and Google DBM (“3rd party Accounts”). Under the Injunction, the Defendants are restrained from using and copying the software, hardware and materials relating to the Business, which Global claims extend to these 3rd party Accounts, and should all be returned to Global.

31. Xero is an accounting and finance system, whereas Mercury FX is a foreign exchange account system, licensed to and maintained by Intelita in its name, and used in the VE Business. On the Defendants’ case, Intelita performs a central administrative function for VE Asia and the other Asian subsidiaries of the VE Group, pursuant to an Intercompany Service Agreement, whereby Intelita was to provide central administrative services to the Asian subsidiaries for the benefit of all companies within the VE Group and to achieve operating economies. According to the Defendants, the 3rd party Accounts were established in the name of Intelita in order to gain access to the licences provided by the third parties, and the 3rd party Accounts and licences were used by Intelita to provide accounting, HR and other services for VE Asia and the other VE Asian subsidiaries.

32. As for the TradeDesk (“TD”) and Google DBM (“Google”) accounts, these are Demand Side Platforms (“DSP”) which provide access to advertising network functions, and in layman’s terms, are where online advertising space on websites can be purchased. The functions provided by TD and Google under the licences maintained in the name of Intelita include effective tracking of metrics and data, simplifying the ability to serve and customize online advertisements linked to a website, and allow online advertising to be optimized. The Defendants highlight the fact that the services and products offered to clients by Interactive/Global do *not* contain the functions embodied in the TD and Google software licences, which were issued to Intelita for use. The Defendants further emphasized that VE Asia and the other Asian subsidiaries of the VE Group could not gain access to the DBM 3rd party Accounts by procuring the necessary licences themselves, since Interactive had been unable to pay the fees due, was indebted to Google for over 5 million pounds, and had been financially discredited. According to the Defendants, other subsidiaries of the VE Group had to gain access to the TD and Google 3rd party Accounts through Intelita’s licences, and Intelita billed these VE companies for their utilization of the services licensed to Intelita.

33. On the evidence available at this stage, I am satisfied that the 3rd party Accounts and the services, software and data licensed by the 3rd party DSP providers to Intelita for its use do not form part of the intellectual property belonging to, or developed by or for, Interactive/Global. In so far as the Injunction and the Revised Injunction refers to the Business, I accept that the mere provision by the Defendants

to any third party of access to the platform of TD, Google, or any other DSP is not, by itself, carrying on the VE Business.

34. However, although the software and licensed access to the 3rd party Accounts do not form part of the intellectual property developed by or for Interactive/Global, I am not prepared, for the reasons set out below, to amend the Injunction and Revised Injunction to permit the Defendants to continue its use of the 3rd party Accounts now registered and maintained in the name of Intelita. In this respect, the Defendants are prepared only to transfer to Global, and permit Global to download, the information and data of VE Asia, of the other VE Asian subsidiaries and their clients as are contained in the 3rd party Accounts, to provide Global access to the services through the 3rd party Accounts until completion of the transfer, and upon completion of such transfer, the Defendants wish to continue and retain free and unrestricted use of Intelita's 3rd party Accounts.

35. There is dispute between the parties at this stage as to whether it is possible to transfer the learned data from the 3rd party Accounts to another account of or system maintained by Global. Global claims that it is not possible. The Defendants maintain it is. Without further evidence, this cannot be resolved at this stage.

36. I accept the submissions made on behalf of Global, that even on CA's own evidence, the 3rd party Accounts including the TD and Google accounts and DSP were used by Intelita *solely* for the business of VE Asia and the VE Asian subsidiaries, and for serving clients of the VE Business. Notwithstanding the Defendants' claim that Intelita was only

providing central administrative functions for VE Asia and the other VE Asian subsidiaries under the Intercompany Service Agreement, it has never been alleged that during the term of the Licence, Intelita had been servicing its own individual clients apart from or outside the VE Group of Companies, on Intelita's own business.

37. Taken to its highest, the Defendants' case is that they had received "expressions of interest" in August 2017, after the grant of the Injunction, from prospective clients who had interest in paying for access to the DSP through the TD and Google accounts and licences obtained by Intelita in its name.

38. On the evidence, it seems clear that the use of the 3rd party Accounts, and in particular the TD and Google accounts, have generated confidential information and data concerning the clients and business of VE Asia, and the offering of VE products and services which is part of the VE Business. Such information and data includes the "learned data" stored on the DSPs and generated from the advertising campaigns set up for the clients of the VE subsidiaries: being the historical records of bids set up for VE clients, the campaign performance data for each client, as well as the data imported by VE Asia into the DSP in relation to the advertising campaigns. Part of such information amounts to data imported by Intelita into the DSP which is property in which Intelita acquires rights under its service agreements with the DSP providers, which rights are arguably held by Intelita on trust or as agent for VE Asia. All such information falls within the scope of "Confidential Information" under the Licence, which Intelita has no right to use after the termination

of the Licence, and which Intelita has to return to Interactive, ie Global, its assignee.

39. The Defendants claim that the 3rd party Accounts themselves cannot be transferred into Global's name under the service agreements made between Intelita and the 3rd parties DSP providers such as TD and Google. However, under these service agreements, Intelita has the right to use the data derived from its use of the DSP for VE Asia and the VE subsidiaries during the term of the Licence, and Intelita had been using such data and services for VE Asia and the other VE subsidiaries, during the term of the Licence and in relation to the VE Business.

40. On a balance of convenience, and for maintaining the status quo pending the determination of the arbitration, the Defendants should, upon termination of the Licence, give to Global access to the 3rd party Accounts and to the information and data contained therein, which accounts and data form part of the Confidential Information and/or Intellectual Property as defined in the Licence. The Defendants have not established that they have been operating any business independently of the VE Business, such that their continued use of the 3rd party Accounts for such independent business would, firstly, be allowed under clause 6.5 of the Licence (which restricts Intelita and CA in the carrying on of any business which competes with VE), and secondly, that such independent business would be prejudiced without the Defendants' access to the 3rd party Accounts. If there was any intention to use the 3rd party Accounts for any business other than that of the VE Business, this was only demonstrated in August 2017, when expressions of interests were solicited and obtained from some clients, to use the 3rd party Accounts of

Intelita. However, on Global's evidence, most of these clients were existing clients of VE Asia, to which Intelita and CA are restrained from providing goods or services or from dealing with for 2 years after termination of the Licence (under clause 6.5 of the Licence).

41. It is open to Intelita and CA to establish new 3rd party Accounts with the DSP providers, for use in any business or purpose which does not constitute the carrying on of any competing business which is a breach of clause 6.5 of the Licence. They are still entitled to operate any business which does not fall within clause 6.5 of the Licence, to maintain their own accounts with DSP providers and to offer such access and services to their own clients in such business. At the hearing, Global through Counsel undertook to pay Intelita's expenses for setting up its new 3rd party Accounts, as a result of the Defendants' compliance with the Injunction and Revised Injunction.

42. In contrast, Global would suffer irreparable damage if it is precluded from gaining access to the information and learned data concerning the advertising campaigns of the VE clients, which data is stored in the TP and Google 3rd party Accounts now registered in the name of Intelita, or if Intelita should be allowed to gain access to the confidential information of the VE Business and clients of VE Asia contained in these 3rd party Accounts. Balancing the risks of injustice that may be caused by granting or refusing the interim relief, I consider that Global should be given access to the 3rd party Accounts, and the Defendants should be restrained from further using and gaining access to the 3rd party Accounts now in Intelita's name, and the confidential information contained therein.

43. The variations proposed by the Defendants in relation to the Xero, Mercury FX, TD and Google accounts are therefore not allowed. Paragraph 5 of the Revised Injunction already provides for Global's access to the TD and Xero accounts upon Global's payment of the costs of access. Global should likewise make payment of any outstanding fees due to Intelita for its access to the other 3rd party Accounts, including the Google and TD accounts, before being granted access.

Bank accounts access

44. CA was, until the commencement of these proceedings, the sole director of VE Asia and the Companies, but the parties have since agreed to sign the necessary resolutions for the appointment of additional directors to the board of VE Asia and the Companies.

45. CA wants to have continued access to all the bank accounts of VE Asia and the Companies, although he accepts that he will not be able to transfer or deal with any monies within the accounts. CA is still a director of VE Asia, and Counsel argued that CA should continue to have rights to receive information on, and to monitor the operation of, the bank accounts.

46. Under the Licence, Interactive agreed with Intelita that CA would be appointed as the Representative Director of VE Asia and the other Asian subsidiaries. On behalf of CA, Counsel pointed out that under the Shareholders' Agreement, no resolution of the board of the Companies would be passed or effective unless the Representative Director (ie CA) has voted in favor of the resolution.

47. On behalf of Global, Counsel emphasized that the powers of the directors of a company are conferred on them collectively as a board, and can only be exercised at a board meeting. As a director, CA has no individual power, or right, to operate the business and dealings of VE Asia.

48. I agree with Counsel for Global that upon the termination of the Licence, Intelita and CA as the director/officer of Intelita have no further right to operate the VE Business under the Licence. Clause 17 of the Licence dealing with the consequences of termination of the Licence does not expressly provide for restriction of Intelita's right to "exercise management powers" or to operate bank accounts. However, clause 17.2 expressly states that on termination, Intelita shall "cease to operate" the Companies, and this must extend to the management of the business of the Companies. If Intelita is to cease operation of VE Asia, it is no longer necessary for Intelita and CA, as director/officer of Intelita, to have access to documents and information, such as access to the bank accounts of VE Asia, for the purpose of operating VE Asia and the VE business under the Licence.

49. It is true that as a director remaining on the board of VE Asia, CA has the right to be given notice of any board meeting of VE Asia to be held, to vote on resolutions proposed at meetings of the board, and for that purpose, to consider and request such information and documents (for example, bank statements) as are necessary for the purpose of deciding on business to be conducted, and to be voted upon, at board meetings. However, CA has no right on his own, as an individual director of VE Asia, to be given general access to the bank accounts of

VE Asia, and to monitor payments in and out of and transactions conducted through the bank accounts, which may relate to the carrying on and operation of the VE Business, and contain information on transactions with the clients of VE Asia.

50. At this stage, it is neither necessary nor appropriate to allow the amendments to the Revised Injunction in the manner sought by the Defendants, to give CA continued access to the bank accounts of VE Asia in purported exercise of his rights of oversight, monitor and review. If Global is prepared to consent to any form of access, that can be dealt with by agreement.

51. Global is apparently agreeable to allow payments to be made out of the bank accounts of the Companies, for normal business transactions and payments not exceeding \$200,000, without the need for approval by board resolution. As suggested, I will leave it to the parties to formulate and agree on the final wording for the exclusions and exceptions to paragraph 8 of the Revised Injunction.

Fortification

52. The burden of showing the need for fortification and the appropriate quantum falls on a defendant seeking fortification (*Sun Yan v Superb Jade Ltd* HCA 813/2014, 3 March 2016). The defendant has to show the likelihood of significant loss arising as a result of the injunction.

53. There is no evidence that the Defendants have established any independent business apart from the VE Business which Intelita operated under the Licence. Hence, there is no evidence that the

Defendants will suffer irreparable damage by the grant of the Injunction and Revised Injunction, as a result of the termination of the Licence and/or their loss of the use of either the bank account or the 3rd party Accounts. The Defendants accept that there should be a clean break in their relationship with Global/Interactive after the termination. Hence, I am not satisfied on the evidence that there should be fortification of Global's undertaking as to damages.

Orders

54. I will continue the Injunction and the Revised Injunction, with the allowance for payment of the ordinary expenses of VE Asia and the Companies (the language of which to be agreed). For the Injunction, I allow the amendments proposed by the Defendants for paragraph 7.

55. Apart from the submissions made on the 3rd party Accounts and whether they should be transferred to Global, no arguments have been made in opposition to the orders sought in Global's 2 summonses of 31 July 2017 and 17 August 2017. (The order sought in paragraph 2 of the first summons was not pursued, as the relevant resolution had been signed.) With the exception of paragraph 3(a) of Global's summons issued on 31 July 2017 ("**Para 3(a)**"), I see no reason not to grant the orders sought, which are essentially clarifications of the Injunction and Revised Injunction. I can find no factors which make it more appropriate for the orders to be dealt with by the tribunal which is being constituted. The maintenance of the status quo in the interim would facilitate the arbitration. When the tribunal is empaneled, it is open to the parties to seek further or more appropriate orders or directions from the tribunal, on the state of the evidence then.

56. With regard to Para 3(a), I see no urgent necessity on the facts and evidence in this case for the Court to order the Defendants at this stage to make disclosure as to their contacts with clients of the Companies. I have not been referred to any evidence which shows that there has been contact made with VE clients, in breach of the Injunction or Revised Injunction. Now that the arbitration has been commenced, and bearing in mind the matters referred to in paragraph 27 above, I am reluctant to deal with further applications involving interrogatory types of relief, and it would be more appropriate for the parties to seek the necessary directions from the tribunal and for the tribunal to entertain such applications. If there is any evidence of breach of the orders of the Court, contempt proceedings may be pursued.

57. There will be liberty to the parties to apply, in default of agreement on the terms of the orders to be drawn up.

58. Global has substantively obtained the relief it seeks, and I will make an order nisi that the Defendants are to pay to Global the costs of the Originating Summons, the summons issued on 31 July 2017, and the 2 summonses issued on 17 August 2017, with certificate for counsel.

(Original signed)

(Mimmie Chan)
Judge of the Court of First Instance
High Court

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Mr Laurence Li and Mr Martin Ho, instructed by Herbert Smith Freehills,
for the plaintiff

Mr Christopher Chain, instructed by Howse Williams Bowers,
for the 1st & 2nd defendants

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