

CAYMAN ISLANDS GRAND COURT

Seth Pinegar -v- iSoftstone Holding Limited
Cause No. FSD 584 of 2012, per Smellie CJ
(7 March 2014)

CAYMAN - PROCEDURE - STRIKE OUT -
EMPLOYMENT - SHARE OPTION AGREEMENT -
LOSS OF OPPORTUNITY TO ACQUIRE SHARES -
SPECIFIC PERFORMANCE

The action was brought by Mr. Pinegar (the "Plaintiff"), a resident of the People's Republic of China ("PRC"), against iSoftstone Holding Limited ("IHL"), a Cayman Islands company listed on the New York Stock Exchange. The Plaintiff claims damages for breach of his employment agreement with IHL's subsidiary, an agreement which includes vested share option agreements provided through IHL.

The breach is alleged to have resulted in the loss of opportunity to connect IHL shares (acquired by exercise of options) into American Depository Shares ("ADSs") and to acquire and track those ADSs to which the Plaintiff claims to have been entitled. Alternatively, the Plaintiff claims specific performance of the share option agreements, including the right of conversion to ADSs. IHL counterclaims for the sum of US\$1,210,058.00 said to be due from the Plaintiff as withholding taxes arising from the exercise of certain of the vested share options. This is the amount which IHL claims it is liable, as counterparty to the share option agreements, to pay to the Revenue of the PRC.

On 13 September 2013, the Chief Justice heard competing applications: that by the Plaintiff to strike out IHL's counterclaim and a cross-summons by IHL for summary judgement on its counterclaim, in the event the Plaintiff's strike out application failed. The Chief Justice dismissed both applications.

Firstly, on the Plaintiff's strike out application, he found it arguable that IHL would be entitled to be indemnified in respect of sums which it had personally been compelled to pay abroad in the PRC in satisfaction of the foreign government's claim, even though the claim itself may be unenforceable in the Cayman Islands (citing *Re Reid* [1971] 2 W.L.R. 121). The Chief Justice

also found that the question of whether the claim in substance was an attempt to collect Foreign Tax (*Wahr-Hansen -v- Compass Trust Co. Ltd* [2007] CILR 55) was a matter for evidence at trial.

It followed that the Chief Justice could not accede to IHL's summary judgement application on its counterclaim due to the questions of PRC Tax Law that needed to be resolved.

Nigel Meeson QC of Conyers Dill & Pearman (Cayman) Limited appeared on behalf of iSoftstone Holding Limited.

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