

BRITISH VIRGIN ISLANDS
IN THE COURT OF APPEAL

CIVIL APPEAL NO.7 OF 1998

BETWEEN:

TELE-ART INC

Appellant

AND

NAM TAI ELECTRONICS INC

Respondent

AND

BANK OF CHINA

Intervening Creditor

BEFORE: THE HON. MR. SATROHAN SINGH JUSTICE OF APPEAL
THE HON. MR. ALBERT REDHEAD JUSTICE OF APPEAL
THE HON. MR. ALBERT MATTHEW JUSTICE OF APPEAL (AG.)

Appearances: Mr. Gerald St. C. Farara Q.C. for the Appellant
Mr. John Eric I. Carrington for the Respondent

[June 21, 1999]

JUDGMENT

SATROHAN SINGH JA

On December 7th 1998, during the pendency of the above captioned appeal, this Court made an order that “the appellants do provide security for costs of the appeal in the sum of \$75,000: within 7 days of this Order....” On December 14, 1998, the appellant duly complied with the aforementioned order. On January 25, 1999, this Court dismissed the appellant’s appeal in the substantive matter and ordered that the appellant pay the respondent’s costs of the appeal from its assets.

Elma Yuen is a director and a shareholder of the appellant and the person who was responsible for initiating the dismissed appeal. This is an application

brought by the appellant for an order that the \$75,000 lodged as security for costs be paid out to **Elma Yuen**. In the application, the appellant claimed that **Yuen** had provided the security from his own funds and not from the appellant's assets. The available evidence show that the \$75,000 may in fact have come, from **Elma Yuen** personally.

The issue before us is whether the \$75,000 should be paid to **Elmer Yuen** or the respondent and whether there was any ambiguity in the Order for costs made by this Court in the substantive appeal.

THE ISSUE

The order of this Court was that the appellant, from its assets, pay the respondent its costs of the appeal. That language in my opinion is clear and simple. There is no room for ambiguity. The order for Security for Costs was made against the appellant, and the appellant, without more, complied with that order and lodged \$75,000 with the Court.

Prima facie therefore, that sum must be categorized as assets of the appellant company and as such would stand charged for any payment of costs made against the appellant. In the appellant's application to pay out, **Elmer Yuen** has not personally testified, and he did not make the application. The accepted evidence however is that he is a director of the appellant and that he was the person prosecuting the appeal for the appellants.

In my judgment even if it can be said that the \$75,000: came from his personal self, when that money was lodged by the appellant, it became a part of the assets of the appellant having regard to the order which asked the appellant to lodge the security. **Yuen's** grievance therefore, if any, would have to be against the appellant.

An order for security for costs means what it says, to secure the costs of the respondent should an order for costs be made in its favour. It would indeed be a grave injustice and a possible fraud by an appellant to a recipient of an order for costs, if a Court without good reason, were to deprive that recipient of that benefit, especially in the circumstances of this case where **Yuen** was not only a director of the appellant but also the appellant's activist in the appeal. It would make nonsense of the order for security.

CONCLUSION

The application to pay out the \$75,000: to **Elmer Yuen** is refused with costs to the respondent to be taxed if not agreed and to be paid by the appellant. The Order originally made by **Benjamin J** in this application on March 19, 1999 is by consent, set aside for want of jurisdiction.

SATROHAN SINGH
JUSTICE OF APPEAL

I concur

ALBERT REDHEAD
JUSTICE OF APPEAL

I concur

ALBERT MATTHEW
JUSTICE OF APPEAL (AG.)