



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**CAUSE NO. FSD 210 OF 2022 (DDJ)**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**CAUSE NO: FSD 210 OF 2022 (DDJ)**

**BETWEEN**

- (1) REN CI**
- (2) DAOYI HOLDING LIMITED**

**PLAINTIFFS**

**AND**

- (1) NEBULA (CAYMAN) LIMITED**
- (2) CHANG SHUAI**
- (3) WANG YANZHI**
- (4) ZHANG FAN**
- (5) HU HAO**
- (6) JIANG YANMENG**
- (7) MAN HO KEE HARRY**
- (8) LCA NINJA PTE LTD**
- (9) MATRIX PARTNERS CHINA VI HONG KONG LIMITED**
- (10) ALPHA STARTUP FUND LP**

**DEFENDANTS**



**Appearances:** Mr Paul Smith of Harneys for the First Defendant

**Before:** The Hon. Justice David Doyle

**Heard:** 29 November 2022

**Extempore  
Judgment delivered:** 29 November 2022

**Draft transcript of Extempore  
Judgment circulated:** 30 November 2022

**Transcript of Extempore  
Judgment Approved:** 2 December 2022

### **HEADNOTE**

*Law and procedure in respect of applications seeking ex parte without notice injunctive relief*

### **JUDGMENT**

#### **Introduction**

1. The *ex parte* (without notice) summons of the First Defendant dated 16 November 2022 (the “Summons”) which seeks 4 pages of wide ranging injunctive relief against the Plaintiffs and an order that the Plaintiffs pay the First Defendant’s costs of the Summons forthwith, arises in somewhat unusual circumstances.
2. First, only last month I heard and dismissed the Plaintiffs’ application for injunctions making an order on 19 October 2022. The parties to these proceedings have been at loggerheads for some



considerable time now and battle lines are being drawn. In very simple terms at the core of this dispute appears to be a battle for the control of the First Defendant. The First Plaintiff says he is still a director of the First Defendant. The Second Plaintiff says it is still a shareholder of the First Defendant. Those instructing Harneys say otherwise.

3. Second, the First Defendant by way of an email dated Wednesday 16 November 2022 4:03pm from Harneys requested that the summons be heard urgently. They requested availability on 17 or 18 November 2022 and added “our advocate is not available the following week. If His Lordship is not available this week, we request that the summons be heard at his earliest convenience in the week commencing 28 November 2022.” If the matter were genuinely urgent I would have thought that a firm the size of Harneys could have found an attorney available in the week commencing 20 November 2022 and I was somewhat surprised to see reference to that non-availability in the email seeking an urgent hearing. The two references did not sit easily together. Harneys in their 16 November 2022 email added that they anticipated being able to provide the Court with the First Defendant’s skeleton argument “first thing tomorrow” (ie Thursday 17 November 2022). They suggested a pre-reading time of 2 hours. That was a gross underestimation. Harneys by email dated 17 November 2022 1:59pm stated that they had uploaded their skeleton and bundles of authorities. I received the skeleton argument after 3pm that day. The hearing bundles were provided subsequently on Friday 18 November 2022.
4. By email dated 18 November 2022 10:06am Harneys were notified that the *ex parte* summons had been listed for 10am 29 November 2022.
5. By email dated 18 November 2022 11:04am Harneys referring to their previous statement that “our advocate was not available next week” added: “However, we are now able to attend Thursday 24 November (all day) and Friday 25 November (in the morning) ... the matter continues to be urgent and fast moving (and further developments overnight make it likely we will need to file a short updating affidavit early next week).” No such affidavit was brought to my attention early week commencing 20 November 2022 during which I was engaged in heavily contested hearings and other pressing judicial commitments. I will refer to certain more recent filings later in this judgment.



6. Harneys were notified that the hearing remained listed for 10am on 29 November 2022 as previously indicated.
7. Third, it is also somewhat unusual, to put it mildly, to see in an *ex parte* (without notice) summons a request that the absent parties do pay forthwith the costs of such a summons. The authors of the skeleton argument at paragraph 78 have the gall to state that if an injunction is granted on the *ex parte* without notice summons “the First Defendant seeks to recover its costs of the Summons from the Plaintiffs, to be assessed if not agreed.” I was directed to no relevant authority which justified such an order at this *ex parte* without notice stage. It may be a minor point in the grand scale of things but I think it may also be indicative of the aggressive and unfortunate way in which Harneys and the First Defendant have approached the Summons. Normally at the *ex parte* stage costs would be reserved. I can see no justification for making an order for costs against the Plaintiffs today, in their absence. Of much more fundamental importance however is my fourth point.
8. Fourth, nowhere in the skeleton argument or in the evidence provided in support of the Summons is there any section dealing with the massive hurdle the First Defendant faces in its request that the Summons be dealt with on an *ex parte* without notice basis. Harney’s skeleton argument is silent on this point as is the affidavit evidence in support. I searched long and hard to find the section dealing with the justification for *ex parte* without notice relief. I searched in vain. I could not find it. As one would expect there was a section headed “Full and Frank Disclosure”. There was not however a section headed “Justification for the court proceeding on an *ex parte* (without notice) basis.” There was not a section entitled “Evidence in support of proceeding *ex parte*/without notice.” The relevant law and justification was simply not addressed.

### **The relief requested in the Summons**

9. It may be helpful at this stage to pause and take a quick look at the relief presently requested by the First Defendant. At paragraph 3 of its skeleton the First Defendant says its draft Order is “based on the standard form.” The “standard form” was not produced and the relief requested appears in parts anything but standard. Attorneys, as officers of the court, should take great care as to what



they say in skeleton arguments especially those in support of *ex parte* without notice relief. The First Defendant seeks wide ranging orders against the Plaintiffs. In the case of Ren Ci it seeks orders restraining him from holding himself out as authorised to act on behalf of the First Defendant or “any of its affiliated companies and entities including but not limited to Nebula Asia (Hong Kong) Limited and Beijing Nebula Technology Co Ltd (the “Group”)”. The places of incorporation of these companies are not identified in the Summons and not all the relevant companies are specified. I note in particular the use of the word “including”.

10. The First Defendant seeks against the Second Plaintiff an order restraining it from holding itself out as a shareholder or having a beneficial interest in the First Defendant or any of the Group (as widely defined without all relevant entities being specified).
11. At paragraph 1 (c) of the Summons it states “in the case of both Respondents”. I think that is an error and should read Plaintiffs, restraint orders against them (i) dealing with bank accounts or third party platform of the First Defendant and the Group (ii) dealing with Amazon accounts of the First Defendant or any of the Group (iii) setting up entities related to the First Defendant or any of the Group (iv) dealing with assets and rights belonging to the First Defendant or any of the Group. Paragraph 1 (c) (v) is poorly drafted. Paragraph 1 starts with “be restrained from.” Paragraph 1 (c) (v) does not seek a restraining order but seeks an order that if the Plaintiffs have transferred any assets to a party outside the Group or issued shares to parties outside the Group the Plaintiffs shall within 7 days restore such assets and transfer such shares back; (vi) convening meetings of the First Defendant or any of the Group or passing resolutions (vii) causing the First Defendant or any of the Group issuing or dealing with the shares in the First Defendant or the Group. Dealing is defined in the Summons in a very wide way (viii) communicating with banks, third party platforms, Amazon, suppliers or customers of the First Defendant or any of the Group (ix) communicating with registered agents, registered office service providers, company secretaries, intellectual property agents or any other agents of the First Defendant or any of the Group or any relevant government bodies or authorities including those in Hong Kong, the People’s Republic of China or any other jurisdiction or location in which the First Defendant or any of the Group conducts business and/or owns assets within (x) communicating with any employees, agents, contractors, suppliers or any other persons or entities in employment with or which provide services to the First



Defendant or any of the Group “either now, in the past or which may be under contemplation to do so in the future.” That on its face appears hopelessly wide. Orders need to be in precise and clear terms as a breach of an order may amount to a contempt of court.

12. It can be seen that the orders sought in this case are in extremely wide terms and purport to cover many entities and activities outside the Cayman Islands.
13. I have not been provided with a copy of the “standard form” the authors of the skeleton argument say they are “based on”.

#### **The evidence in support of the Summons**

14. I note also the evidence in support of the Summons. I note the factual background and the developments since the hearing on 19 October 2022. There is reference to alleged misappropriation of intellectual property rights (there is reference to discoveries during the period 2 – 7 November 2022), the alleged blocking of the First Defendant’s access to databases, Amazon stores and bank accounts (not apparently in Cayman) which are said to be all critical to the First Defendant’s business. These matters and more are covered in Mr Wang’s third affidavit at paragraphs 13 – 39. There are allegations of breach of the Plaintiffs’ duty of full and frank disclosure. There is reference to Ren I but a copy does not appear in the bundles presently before the court. There are allegations of interference with the Groups HK Companies Registry filings.
15. Mr Wang says that the First Defendant has serious concerns in respect of the First Plaintiff Ren Ci and these are set out in generalised terms at paragraph 42. The First Defendant says that without the intervention of the court Ren Ci:

“(a) will persist in his attempts to exert and obtain control over the Group, its business operations and assets, to the exclusion of its directors and investors;

(b) will continue to act contrary to and in breach of the same Transaction Documents he asks the Court to enforce in his favour;



- (c) will cause further assets of the Group to be transferred away and funds of the Group to be transferred away to cover his personal and legal expenses;
  - (d) will continue to frustrate and seek to defeat the investigations into his wrongdoing; and
  - (e) will continue to frustrate the legitimate attempts of the Company and its directors, and of Nebula HK and Nebula Beijing, to ensure the smooth and uninterrupted operation of the business, thereby protecting the interests of all stakeholders in the Company, including its investors, employees, counter-parties, contractors and service providers.”
16. Mr Wang at paragraph 43 says he exhibits correspondence between Harneys and Kobre & Kim since the hearing on 19 October 2022 at pages [49] to [63] of WY-3. Page 49 seems to be a letter from Harneys dated 11 October 2022 to Kobre & Kim, before the 19 October hearing. Mr Wang says that enquiries made of Ren Ci via his Cayman attorneys as to what Mr Wang describes as the Unauthorised Transaction, the Dilution Event and the Unauthorised Loan have been met with no response and that there has been no denial issued in respect of these matters. Mr Wang adds at paragraph 44 that the request for undertakings from Ren Ci that he cease and desist his actions has also been ignored.
17. I note the contents of Kobre & Kim’s letter dated 25 October 2022 to Harneys. They allege that the case of Harneys’ clients on the validity of, at least, the written resolutions dated 3 September 2022 is “hopeless”. They invite them to agree that those resolutions were not passed in accordance with the First Defendant’s constitution and are therefore invalid. They say Mr Ren Ci remains a director of the First Defendant. Harneys respond by letter dated 27 October 2022 and say that nothing raised requires “an urgent response.” Harneys complain about the goal of Kobre & Kim’s clients being to exert sole control over the operation of the First Defendant’s business to the exclusion of its investors and directors and contrary to proper corporate governance. Complaints are made in respect of interference with the business of the First Defendant including the operation of Nebula Beijing and reference is made to the request for undertakings. Harneys finish by stating



if the undertakings and steps sought in their letter of 11 October 2022 are not provided the First Defendant will “seek the assistance of the Court to ensure that the business operation of the Group is protected pending the determination of any disputes arising between the parties, whether before the Grand Court of the Cayman Islands or elsewhere. All of the Company’s rights are reserved, including the right to challenge the jurisdiction of the Court in favour of arbitration.”

18. It is interesting to note, in passing, that there is no response to the point raised in respect of the allegation to the effect that the written resolutions dated 3 September 2022 are invalid. Mr Wang now says that the reference to written resolutions was a mistake as the business was apparently transacted at a meeting. I note also that Mr Wang now says at footnote 1 of Wang 3 that what he said at paragraph [50] of Wang 1 in respect of the whereabouts of the chops was not accurate. Paragraph 50 referred to “possible forgery”. Those swearing affidavits need to take care to ensure that the contents are accurate. Despite the correction at footnote 1 of Wang 3 I note that Mr Wang at paragraph 52 (f) of Wang 3 refers to “the apparent willingness of Ren Ci to forge documents (as indicated by the forged chops found in this office ...” (my underlining). The reference to “this office” does not make sense. If it was intended to read “his office” that appears inconsistent with Mr Wang’s correction at footnote 1. Mr Wang must take care with the contents of his affidavits.
19. Suffice to say there are numerous allegations and counter allegations involving the parties and a hint of some jurisdictional issues also.
20. I should record that after 4pm on Thursday 24 November 2022 a large chunky file entitled “First Defendant’s Supplementary Hearing Bundle for hearing on 29 November 2022” was delivered to me and I note the contents.
21. It included what was described as an amended skeleton argument dated 24 November 2022 and the Second Affirmation of Geoffrey Gerald Fung affirmed on 24 November 2022 in Hong Kong SAR. It exhibited a fourth affidavit of Mr Wang. Mr Fung describes himself as a “Legal Manager of Harneys, the attorneys for the First Defendant.”





22. The amended skeleton argument included references to the hearing bundle and a few typographical error corrections. It did not add anything of substance. It had no section on the law or the arguments as to proceeding *ex parte* without notice.
23. Wang 4 does not contain a section justifying why it is appropriate to take the exceptional step of proceeding on an *ex parte* without notice basis.
24. Wang 4 has a heading “Further Actions Taken by Ren Ci against the Company and the Group since Wang 3.” Mr Wang refers to the incidents as including (i) Ren Ci’s continued attempts to transfer the ownership of the IP Rights of the Company (ii) Ren Ci’s continued attempts to obtain control of “important Amazon stores” and (iii) Ren Ci taking control of “another of Nebula HK’s third-party payment platform accounts on a platform called World First.”
25. Descending into some of the detail it appears from paragraph 25 that on 19 November 2022 Nebula HK sent an email to Simon Wei “who had helped Ren Ci to change control of the Amazon share accounts” as mentioned at paragraphs 28 and 29 of Wang 3 and as updated in Wang 4.
26. It is curious to note that the First Defendant is content to give notice of alleged irregularities to a “helper” of the First Plaintiff but does not appear content to give notice to the First Plaintiff of these proceedings which it wishes to progress on an *ex parte* without notice basis. Moreover it seems that the First Plaintiff is being open in respect of the assignments of the trademarks (see for example the letter from Kobre & Kim dated 10 November 2022 to the First Defendant’s US IP agent Dilworth IP, LLC).
27. Mr Wang in Wang 3 at paragraph 58 states: “As set out above, the Company [that is the First Defendant] does not consider that there is likely to be any prejudice or loss suffered by the Plaintiffs if the present application is granted.” That, of course, is not a ground for proceeding *ex parte* without notice and nor is it a ground for granting the relief requested in the Summons. In fairness to Mr Wang paragraph 58 is in a section headed “Undertaking”. Mr Smith however used this “no harm to the Plaintiff” card this morning. It is not a good reason for proceeding *ex parte* without notice.



28. I should also record that at 9:49am this morning Harneys “out of courtesy” sent an email attaching the third affirmation of Geoffrey Gerald Fung (of Harneys Hong Kong) which I read before coming into court. It does not assist me on the *ex parte* without notice issue.

**The submissions on the *ex parte* without notice issue**

29. Responding to questions from the bench this morning Mr Paul Smith of Harneys (who appears for the First Defendant) has made the following submissions on the fundamental *ex parte* without notice issue which has not been specifically covered in the evidence and which was not covered in the skeleton argument:

- (1) the actions complained about are taking place on a daily basis and are continuing. This is a campaign intended to destroy the First Defendant. This in itself justifies proceeding on an *ex parte* without notice basis and it is implicit in the evidence filed that it is necessary to proceed on an *ex parte* without notice basis. Mr Smith apologises for not covering this in his skeleton argument but in effect says that it was obvious that *ex parte* without notice relief was justified in the circumstances of this case as a whole;
- (2) if the relief is not granted today there will be very little if anything left of the First Defendant. Its business would collapse entirely;
- (3) there will be no significant harm to the Plaintiffs in proceeding without notice today;
- (4) this application is about holding the ring. There will be no company left if relief is not granted today;
- (5) there is no further evidence that could be presented. The evidence filed so far justifies the court proceeding on a without notice *ex parte* basis; and
- (6) the underlying facts of this case justify proceeding on an *ex parte* without notice basis.



30. I have carefully noted all that Mr Smith has had to say on behalf of the First Defendant.
31. It is interesting also to note Harney’s response to the Plaintiffs’ application for its summons to be heard *ex parte* on short notice last month. It is worth remembering that Harneys in their letter dated 14 October 2022 (not referred to in the evidence or the skeleton before the court for the present Harneys Summons) at paragraph 5 stated: “The Company strongly objects to the listing of the summons on an *ex parte* short notice basis ... Instead, the Company respectfully suggests that the Court order directions for the listing of the Summons in accordance with the proper procedure for lengthy interlocutory applications set out in paragraph B1.4 (c) of the Financial Services Division Guide (the FSD Guide).” At paragraph 12 of that letter Harneys state: “It is a basic principle of justice and fairness that a party should ordinarily be given an opportunity to be heard before relief is granted against that party. This is reflected in paragraph B1.2 (a) of the FSD Guide” which Harneys set out in their letter of 14 October 2022 but not in their skeleton for their Summons which they seek to be heard *ex parte* without notice. Harneys conclude their letter of 14 October 2022 as follows: “... the Company strongly objects to the listing of the Plaintiffs’ application on an *ex parte* short notice basis. This is a lengthy application for the purposes of the FSD Guide, and the Company should be afforded the opportunity to produce evidence in response, with the matter listed with a realistic time estimate for a full and proper hearing. The Company therefore respectfully requests that the Court should direct the matter to be listed in accordance with the procedural timetable set out in the FSD Guide.” Mr Smith this morning says that the circumstances of the Plaintiffs’ application and the circumstances of the First Defendant’s application are very different.

### **The Law**

32. The law in respect of *ex parte* without notice applications is, or should be, well known. See for example my judgment in *Cathay Capital Holdings, III L.P.* (FSD: judgment delivered 24 August 2021) another case where a Harneys represented litigant attempted to persuade the court to proceed *ex parte* without notice but was unsuccessful.
33. At paragraph 24 of my judgment in *Cathay Capital* I stated:



“24. Generally speaking, hearing matters without notice is an exceptional and serious step to take. There is almost always the potential for serious injustice and unfairness when courts are invited to make orders without hearing all sides of the case. Applicants for without notice orders have a duty to make full and frank disclosure of all material matters. Frequently, however, the picture painted at the inter partes/with notice stage is a very different picture to that painted at the ex parte/without notice stage. Applications should only be made without notice if absolutely necessary. Otherwise, a real risk of injustice and unfairness arises. Where such applications are made, the evidence in support of the application must state the reasons why notice is not being given.” (my underlining)

34. I referred at paragraph 19 to Lord Hoffmann’s well-known judgment in *National Commercial Bank of Jamaica Limited v Olint Corp* [2009] UKPC 16 at paragraph 13 and to *Gee on Commercial Injunctions* at paragraph 25 of my judgment. I also referred to the *FSD Guide*.
35. All these references should be well known to litigators.
36. In a different context (*ex parte* applications to appoint provisional liquidators) in *Position Mobile Ltd* (judgment 8 April 2022) I declined to proceed *ex parte* and referred to the relevant law. I referred at paragraph 30 to the disputes between the parties having been brewing for many months and precise recent dates of incidents not being provided. I commented that those on the receiving end of the proposed relief “already appear to be on notice as to the serious concerns of the Petitioner and have been so aware for some considerable time.”
37. I have also considered Kawaley J’s judgment in *Akinyanmi v Lekoil Limited* (14 April 2022) and my judgment in *Nam v Aurabeat Technology International* (8 June 2022).
38. In *Aurabeat* (which proceeded on notice) at paragraph 23 I in effect indicated that proceedings in respect of the Hong Kong subsidiaries would be better dealt with in Hong Kong. At paragraph 25 I referred to comity concerns and added “On balance I think it best for Philip to engage with the



Hong Kong Court in respect of his concerns over his position with the Hong Kong Subsidiaries.” The parties would do well to reflect upon those comments and the jurisdictional issues in this case.

39. In *Joy Union Holdings Limited v Orient TM Parent Limited* (judgment 27 July 2022) I dismissed, on the particular facts and circumstances of that case, an *ex parte* short notice application for the appointment of joint provisional liquidators or to grant injunctive relief with costs awarded against the Petitioners on an indemnity basis. At paragraph 29 I referred to *Olint* and also to *Cathay Capital* and stated that: “I wish to discourage tactical games and late notice.” At paragraph 33 I stated: “I do not consider that there is any genuine urgency and in any event do not think it appropriate to proceed without proper notice.”

40. At paragraph 36 I added:

“Again I have concluded that it is not appropriate for the court to deal with the applications for injunctions without proper notice. This is not one of those rare and exceptional cases when the court should proceed on an *ex parte* short notice basis. The law in this respect is well known ...”

### **Determination**

41. I now come to my determination as to whether the First Defendant has jumped the first fundamental hurdle of persuading the court that it is appropriate to deal with the Summons on an *ex parte* without notice basis. I am not so satisfied.

42. I am not persuaded that there are good reasons for proceeding on an *ex parte* without notice basis. I find the oral submissions put forward by Mr Smith unpersuasive.

43. Indeed, I am of the view, in the context of this particular long running dispute, that there are good reasons why notice should be given. This dispute between the parties has been running for some time. Both sides have sought to gain the upper hand by way of interlocutory skirmishes. Frankly I have not been impressed by the conduct of either side in the ways in which they have tried to obtain interlocutory relief from this court.



44. In respect of the latest attempt in justice and in fairness I am of the view that the Plaintiffs should be given adequate notice and a reasonable opportunity to respond to the Summons which seeks, at an interlocutory stage, wide ranging relief against the Plaintiffs. This, ironically, is consistent with the points raised by Harneys in their letter dated 14 October 2022. If the First Defendant wishes to proceed with its Summons rather than withdraw it, I issue the following directions; and I am conscious that we are fast approaching the Christmas and New Year period:
- (1) the Summons and connected documentation should be served on the Plaintiffs forthwith and they should be notified of the existence of these proceedings and these directions immediately – you can do that notification in a telephone call or an email to the Plaintiffs’ attorneys on the court record as soon as possible;
  - (2) the Plaintiffs are to file and serve any evidence in answer by 3pm on 23 December 2022;
  - (3) the First Defendant is to file and serve any evidence in reply by 3pm on 13 January 2023;
  - (4) the parties are to file agreed duly paginated hearing bundles by 3pm on 18 January 2023 including an agreed chronology and dramatis personae;
  - (5) the parties are to file with the court and exchange concise skeleton arguments (cross-referenced to the paginated pages in the bundles) and authorities by 3pm 25 January 2023; and
  - (6) if still active the Summons to be heard at 10am on 8 February 2023 with one day allocated.
45. I say “if still active” because I think all sides need to give careful thought in respect of the future of the proceedings in Cayman. I note the First Defendant may be progressing an application for a stay of the Cayman proceedings pursuant to section 4 of the Foreign Arbitral Awards Enforcement Act 1997 and a declaration that this court has no jurisdiction over the claims made by the Plaintiffs against the Defendants. That summons is not presently before me and I say no more other than that there appear to be jurisdictional issues arising in these proceedings.

46. As an aside I do not think that I have not been provided with all the bundles which were before the court last month and if the Summons proceeds to a hearing those bundles should also be included in the bundles provided to the court for the February hearing. A transcript of the 19 October 2022 hearing and of today's hearing would also be useful.
47. That is my judgment in respect of the Summons. Mr Smith please let me have a draft Order for approval. Please email it to my PA and the FSD team as soon as possible and in any event before 11am tomorrow morning. Thank you.

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**THE HON. JUSTICE DAVID DOYLE**  
**JUDGE OF THE GRAND COURT**