

Hong Kong Court Imposes “Hadkinson Order” for Persistent Breach of Disclosure Order – a lesson from *La Dolce Vita Fine Dining Co Ltd v. Zhang Lan and Others* [2020] HKCFI 622

May 13, 2020

Failure to comply with court orders can have grave consequences. One punishment the court can impose on delinquent litigants is by way of “*Hadkinson Orders*” (named after an English case, *Hadkinson v. Hadkinson* [1952] 2 All ER 567), which could bar a party who has ignored a court order (and is thus in contempt of court) from being heard by the court until the party purges himself of the contempt.

A recent example of a “*Hadkinson Order*” being made can be found in the case of *La Dolce Vita Fine Dining Co Ltd v. Zhang Lan and Others* [2020] HKCFI 622, in which the Hong Kong court refused to hear Madam Zhang Lan, the first respondent in the proceedings, on her application to set aside the court’s leave given to the applicant to enforce a CIETAC arbitral award in Hong Kong, unless she complied with an outstanding asset disclosure order.

In this case, the applicant had obtained an interim injunction against Zhang in aid of a CIETAC arbitration in Mainland China arising out of a dispute over the acquisition of the South Beauty Group. The injunction contained an asset disclosure order which obliged Zhang to disclose all of her assets worldwide of an individual value of HK\$500,000 or more. To this, Zhang only disclosed in an affirmation her personal assets in Hong Kong, with no elaboration on the value or details of the location of the other assets in Hong Kong, and no disclosure of any assets outside Hong Kong. This resulted in the court finding her to be in contempt and, following committal proceedings, she was committed to prison for 12 months.

Subsequently, an arbitral award in favour of the applicant was handed down in the CIETAC arbitration, and the applicant obtained leave of the Hong Kong court to enforce the award in Hong Kong. The respondents (including Zhang) made an application to set aside the enforcement order or alternatively sought to stay the enforcement order pending determination by the Mainland court of their application to set aside the award. The applicant, in turn, applied for a “*Hadkinson Order*” against Zhang and for security to be provided by the other respondents (which are corporate vehicles owned and controlled by Zhang) as a condition for the orders they sought.

Madam Justice Mimmie Chan, having considered the principles laid down in *CWG v. MH* [2014] 4 HKLRD 141<sup>1</sup>, held that imposing a “*Hadkinson Order*” on Madam Zhang was appropriate and proportionate as the judge was satisfied that:

- Zhang’s contempt was wilful and serious;
- Zhang was not able to refer to other effective means of securing her compliance with the disclosure order; and
- Zhang’s refusal to comply with the disclosure order impeded the course of justice. In particular, the judge noted that the information sought in the disclosure order was uniquely within Zhang’s knowledge, and the applicant had been unable to police the injunction order and to prevent the dissipation of assets within Zhang’s control. Zhang’s refusal also meant the court was unable to ascertain the location and value of her assets in Hong Kong, in order to decide whether it would be just and necessary to order security to be furnished by Zhang and the respondents as a condition for the stay of the application to set aside the enforcement orders.

It is noteworthy that the court made the “*Hadkinson Order*” notwithstanding the fact that the other respondents will be heard in any event. In this regard, the judge, citing the decision in *CWG v. MH* with approval, emphasised that “a party cannot get away with non-compliance with the court’s orders simply by taking advantage of the fact that there is another party with allied interests.”

This case serves as a reminder that substantial and deliberate breaches of court orders can lead to serious repercussions. In appropriate cases, not only can a non-complying party face a custodial sentence, but that party can also be denied the right to be heard, despite the right of access to justice being expressly guaranteed by the Basic Law. There are strong policy reasons for the court to take such steps as are necessary to ensure that its administration of justice is duly respected.

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1. The principles laid down in *CWG v. MH* [2014] 4 HKLRD 141 require the Court to consider the following questions in determining whether a “*Hadkinson Order*” should be made:
    - (1) Is the party against whom the order is sought in contempt?
    - (2) Is there an impediment to the course of justice?
    - (3) Is there any other effective means of securing compliance with the court’s orders?
    - (4) Should the court exercise its discretion to impose conditions having regard to that question?
    - (5) Is the contempt wilful (is it contumacious and continuing)?
    - (6) If so, what conditions would be proportionate? ↩

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