

THE INCORPORATED OWNER OF ONE BEACON HILL
and
MATCH POWER INVESTMENT LIMITED

NOTE

1. We understand from Instructing Solicitors that there is a problem with the future funding of this action.

2. The two procedural 'events' on the imminent horizon are :
 - (i) the Case Management Conference ("CMC") to be held before Au J. on 14 August 2012; and

 - (ii) the hearing of Match Power's appeal against the decision of Reyes J. before the Court of Appeal on 14 September 2012 ("the Appeal").

3. If Instructing Solicitors are not put in funds by the provision of a reasonable sum of money to cover the costs and disbursements of the CMC and the Appeal then Instructing Solicitors will be obliged to cease acting for I.O. and will have to make an application to the Court to come off the record:- see generally O.67, rule 6 of the High Court Rules.

4. A continuing failure to fund the costs and disbursements of the Appeal is very likely to be financially disastrous for the I.O. and, whatever the internal problems of the I.O. may be (upon which we express no comment) those responsible for the decision not to provide further funding also need to be made fully aware of the nature and extent of that potential disaster.

5. If the I.O. is not represented on the Appeal, whilst it is not necessarily a foregone conclusion, there is every reason to suppose that the Court of Appeal will allow the appeal with the consequence that the I.O.'s entire action against Match Power will be struck out. The costs consequences of such an outcome are, in summary, as follows namely that the I.O. will be liable to pay:-
 - (i) Match Power's costs of the Appeal;
 - (ii) Match Power's costs of the hearing before Reyes J.;
 - (iii) Match Power's costs of the whole actionwhich we believe will amount to several millions of HK dollars. In addition, of course, the I.O. will have to bear all its own costs incurred to date, without the prospect to any future recovery of those costs.
6. In the circumstances, we would strongly urge the I.O. to reconsider its decision not to fund (at least) the CMC and the Appeal and, given the imminence of those hearings, very urgent steps need to be taken to facilitate that reconsideration.
7. Instructing Solicitors will be in a better position to calculate how much funding is required for the CMC and the Appeal and will no doubt advise the I.O. in this regard.
8. With regard to the underlying merits of the action our view, based on our long involvement with this matter, but without having carried out a detailed analysis of all the issues raised in the pleadings or reconsidered all the currently available documentary and expert evidence, is that the I.O. has reasonable prospects of success in the action. This was our view at the outset of the proceedings and that view has not changed.

9. As to the Appeal, although we have not yet had the opportunity of revisiting all the arguments and legal authorities, on the assumption that the I.O. is represented, and whilst the rival contentions are of some complexity, we believe that Reyes J reached the right result and we are, therefore, of the view that there are good prospects of defeating Match Power's appeal.

Ian Pennicott QC
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