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Application of *Re Guy Lam* to injunctions against foreign proceedings in favour of arbitration

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In *Hyalroute Communications*, the Hong Kong Court of Appeal dismissed an application for an interim anti-suit injunction to restrain a creditor from commencing Cayman winding-up proceedings in support of an HKIAC arbitration where there was no *bona fide* dispute as to the petitioning debt. This is the first appellate court decision confirming the applicability of principles in *Re Guy Lam* and *Re Simplicity* in the context of foreign winding-up proceedings.

Highlights of decision in *Hyalroute Communications*

Under *Re Guy Lam* winding-up proceedings will be stayed in favour of arbitration unless there are strong reasons not to do so, including the lack of a *bona fide* defence to the debt which may constitute an abuse of process.

In *Hyalroute Communications Group Limited v Industrial and Commercial Bank Of China (Asia) Limited* CACV 600/2025, [2025] HKCA 936, the defendant loaned money to debtors under a term loan guaranteed by the plaintiff, a Cayman company, and containing an HKIAC arbitration clause. After the debtors defaulted on the loan, the defendant served a statutory demand pursuant to Cayman laws on the plaintiff. In response, the plaintiff applied to the Hong Kong court for an interim anti-suit injunction (ASI) to restrain the defendant from commencing winding-up proceedings pending resolution of the dispute relating to the petitioning debit in an HKIAC arbitration. The application was dismissed in the first instance based primarily on contractual construction and the lack of merits of the plaintiff's defence. The defendant appealed and made a renewed application for an interim ASI to the Court of Appeal pending determination of its appeal.

The Court of Appeal opined that in light of *Re Guy Lam* and *Re Simplicity*, the law of Hong Kong is that an ASI would, in the court's discretion, normally be granted in respect of winding-up proceedings brought in breach of an arbitration agreement in the absence of strong reasons. The Court rejected the plaintiff's argument that the merits of the threatened foreign proceedings were irrelevant to its ASI application in favour of arbitration. Instead, the Court held that the lack of a *bona fide* defence to the underlying debt would constitute both a strong reason not to grant the injunction and an abuse of process, justifying a dismissal of the ASI application.

Based on the plaintiff's submissions, the Court held that the plaintiff's defence had no real prospect of success and declined to grant the interim ASI.

Commentary

Hyalroute Communications confirms the application of *Re Guy Lam* to injunctions against foreign winding-up proceedings in favour of arbitration. The result of this case indicates that while Hong Kong is generally considered a pro-arbitration jurisdiction, Hong Kong courts may still refuse to grant an ASI in favour of arbitration where the application amounts to a clear abuse of process.

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It is noted that the plaintiff in *Hyalroute Communications* presumably brought the application in Hong Kong instead of in the Cayman Islands hoping to avoid the higher threshold under the English *Sian Participation* test which would require proof of a *bona fide* defence on substantial grounds to oust the court's insolvency jurisdiction in favour of arbitration.

This case serves as a reminder that having an arbitration agreement may not save a company from an insolvent winding-up petition where there is no *bona fide* dispute as to the underlying indebtedness.

See also our earlier article on *Re Guy Kwok-Hung Lam* (2023) 26 HKCFAR 119 and *Re Simplicity & Vogue Retailing (HK) Co Ltd* [2024] 2 HKLRD 1064 regarding how Hong Kong courts handle winding-up petitions where the petitioning debt concerns an agreement subject to an exclusive jurisdiction clause or arbitration clause.

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