HCAL000102/2003

CB(1) 18/03-04(02)

HCAL 102/2003

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST
NO.102 OF 2003

BETWEEN

SOCIETY FOR PROTECTION OF THE HARBOUR LTD	Applicant
AND	
CHIEF EXECUTIVE IN COUNCIL	1st Respondent
SECRETARY FOR HOUSING, PLANNING & LANDS	2nd Respondent
SECRETARY FOR ENVIRONMENT, TRANSPORT & WORKS	3rd Respondent

Coram: Hon Hartmann J in Court

Date of Hearing: 3 October 2003

Date of Ruling and Handing Down of Judgment: 6 October 2003

JUDGMENT

Introduction

1. On 25 September of this year, the applicant filed an application for leave to apply for judicial review. The subject of the application was a plan approved by the Chief Executive-in-Council on 17 December 2002 pursuant to s.9(1)(a) of the Town Planning Ordinance, Cap.131. The plan bears the formal title of the Central District (Extension) Outline Zoning Plan No.S/H24/6. I shall refer to it as the Central Reclamation Plan.

2. In terms of the plan, the 2nd and 3rd respondents are authorised to reclaim from the harbour a swathe of land along the waterfront of Hong Kong Island fronting the commercial district known as Central. The reclamation is to provide land for what the respondents say is essential transport infrastructure. The respondents say that the reclaimed land will at the same time provide an opportunity for a waterfront promenade and associated facilities.

3. At this juncture I should record that there is a dispute by way of calculation as to the physical extent of the reclamation work authorised by the Central Reclamation Plan. The applicant has calculated that it is 23.11 hectares in extent, the respondents say that it is less : some 18 hectares. But whatever its true extent, the applicant contends that it is nevertheless manifestly excessive and therefore unlawful. The applicant contends that it is unlawful because the extent of

the reclamation work contravenes s.3 of the Harbour Ordinance, Cap.531, a statute passed into law in 1997. S.3 reads :

> " (1) The harbour is to be protected and preserved as a special public asset and a natural heritage of Hong Kong people, and for that purpose there shall be a presumption against reclamation in the harbour.
>
> (2) All public officers and public bodies shall have regard to the principle stated in sub-s.(1) for guidance in the exercise of any powers vested in them.

4. The applicant has therefore sought various forms of relief, more particularly :

(i) a declaration that the plan is in contravention of s.3 of the Harbour Ordinance;

(ii) a declaration that the plan should be reviewed in accordance with the relevant provisions of the Town Planning Ordinance, and

(iii) an order of mandamus that the Chief Executive-in-Council must, in terms of the Town Planning Ordinance, either revoke the plan or refer the plan to the Town Planning Board for replacement or amendment.

5. On 26 September, on the papers only; that is, without hearing from the applicant or the respondents, I granted the applicant leave to apply for judicial review on the basis that the material presented to me, on further consideration, might demonstrate an arguable case for the relief sought.

6. However, in its papers filed on 25 September the applicant also sought orders for interim relief. In substance, it sought orders that, pending a determination of all relevant litigation, all work under the Central Reclamation Plan directly or indirectly connected to the reclamation of the harbour be stopped.

7. In order to determine that application for interim relief, I directed that there be an *inter partes* hearing. That hearing took place last Friday.

A consideration of legal principles

8. It is not disputed that, in terms of O.53, r.3(10), this Court has jurisdiction to make the interim orders sought even though this matter arises not in private law but in public law. The granting of interim injunctive relief by an administrative court preserves the *status quo*. It ensures that, so far as is possible, if an applicant is ultimately successful in its challenge, it will not be denied the benefit of its success. As Dyson LJ observed in **R(H) v. Ashworth Hospital Authority** [2003] 1 WLR 127, at 134 :

> " The Administrative Court routinely grants a stay to prevent the implementation of a decision that has been made but not yet carried into effect, *or fully carried into effect*. A good example is where a planning authority grants planning permission and an objector seeks permission to apply for judicial review. It is not, I believe, controversial that, if the court grants permission, it may order a stay of the carrying into effect of the planning permission." [my emphasis]

9. It should be recorded that for present purposes the respondents accept that there is a serious question to be tried as and when the substantive hearing of the application for judicial review takes place. That being the case, what principles should this Court apply in determining the application for interim relief?

10. In private law matters, the principles are well set. In **Wah Nam Holdings Co. Ltd & Others v. Excel Noble Development Ltd & Others** CA [2000] 3 HKC 118, Ribeiro J (as he then was) confirmed that, if there was a serious issue to be tried, the court looked to whether, instead of interim injunctive relief, damages would provide an adequate remedy and only if the court was in doubt as to the adequacy of the respective remedies of damages would it then consider where the balance of convenience lay. This would involve "a discretionary assessment of the effects of granting or witholding interlocutory relief, the court seeking to preserve the *status quo*."

11. In the present case, the applicant is in no position to provide an undertaking in damages sufficient to protect the respondents against loss if the reclamation work is ordered stopped. The losses potentially, albeit on a 'worse case' scenario, run into hundreds of millions of dollars. The respondents have pointed to the failure of the applicant to provide an undertaking in the present instance. But I am satisfied that in public law matters of this kind the adequacy of damages as an alternative remedy will invariably be less relevant and where, as in the present case, public works of great cost are being challenged, will effectively be irrelevant. As the authors of *de Smith, Woolf & Jowell's Principles of Judicial Review comment* (page 593, 15-022) :

> " ... in case involving the public interest, for example, where a party is a public body performing public duties, the decision to grant or withhold interim injunctive relief will usually be made not on the basis of the adequacy of damages but on the balance of convenience test."

The authors continue by citing **Smith v. Inner London Education Authority** [1878] 1 All ER 411 (at 422) per Browne LJ :

> " In such case, the balance of convenience must be looked at widely, taking into account the interests of the general public to whom the duties are owed."

12. A second academic work; namely, *Judicial Remedies in Public Law* by Clive Lewis (page 245, 8-030) says that-

> "The balance of convenience in public law cases must take account of the wider public interest and cannot be measured simply in terms of the financial consequences to the parties."

That does not mean, of course, that financial consequences are to be ignored entirely, simply that in public law cases they are not to be employed as the sole measure in assessing the balance of convenience.

13. It is clear therefore that in the present case the paramount consideration in determining the balance of convenience must be the wider public interest and how that interest is to be served if the orders sought are not granted or, if granted, is to be served during the continuance of those orders.

Does the applicant have a strong prima facie case?

14. Clearly, the first matter to be considered in looking to the wider public interest is the strength of the applicant's *prima facie* case. A strong *prima facie* case, in so far as it is possible to access it at this early stage, points to a greater likelihood of the applicant being successful in its application to have the Central Reclamation Plan either revoked or reviewed so that it is materially modified. A weak *prima facie* case points to the greater likelihood of the respondents successfully resisting the applicant's claim and the plan, as presently stated, remaining untouched. In looking to the strength of the applicant's *prima facie* case, it is necessary first to take account of certain historical matters.

15. The Central Reclamation Plan is the product of a number of feasibility studies commissioned by the Government as long ago as the early 1980s. Those studies recommended that extensive reclamation should take place along the Victoria Harbour waterfront of Hong Kong Island in the areas of Central and Wanchai in order to provide for infrastructural projects and to improve the existing waterfront for both commercial and recreational purposes.

16. It was recommended that reclamation work take place in five phases. Three of those phases have already been approved in terms of the Town Planning Ordinance and the relevant works completed. These three phases are :

(i) The Central Reclamation Phase I which *inter alia* accommodated the Hong Kong Station for the Airport Railway. This was completed in 1998;

(ii) The Central Reclamation Phase II which resulted in the reclamation of the Tamar Basin. This was completed in September 1997, and

(iii) The Wanchai Reclamation Phase I which allowed for the extension into the harbour of the Hong Kong Convention and Exhibition Centre. This was completed in July 1997.

17. This leaves just two phases. The first is the Central Reclamation Plan which is the subject of this judgment, work having only just commenced on this phase. The second is the Wanchai Reclamation Phase II in respect of which work has not yet commenced.

18. It is apparent that these two remaining phases are effectively extensions of each other. To that extent they are complementary, the one being of no value without the other. This is because the proposed reclamation works are intended to provide for what is known as the Central-Wanchai Bypass, a road which will divert traffic around the central business district as opposed to through it. This by-pass, largely in the form of tunnel beneath the reclaimed land, will traverse both the Central and Wanchai reclamation plans.

19. As I said at the beginning of this judgment, the Central Reclamation Plan was approved by the Chief Executive-in-Council on 17 December 2002, having undergone all necessary procedures mandated by the Town Planning Ordinance. As leading counsel for the respondents, Ms Teresa Cheng SC, has emphasised, at this time therefore the plan is an entirely lawful one and remains effective until and unless it is set aside by court order. In this regard, see the dicta of Sir John Donaldson M.R. in **R v. Panel on Take-Overs and Mergers, ex parte Datafin Plc & Others** [1987] 1 QB 815, at

840 :

> " I think that it is important that all who are concerned ... should have well in mind a very special feature of public law decisions, ... namely that however wrong they may be, however lacking in jurisdiction they may be, they subsist and remain fully effective unless and until they are set aside by a court of competent jurisdiction. Furthermore, the court has an ultimate discretion whether to set them aside and may refuse to do so in the public interest, notwithstanding that it holds and declares the decision to have been made ultra vires ..."

20. The applicant, however, contends that its challenge to the lawfulness of the Central Reclamation Plan is marked by one special feature; namely, that it has already, at first instance at least, successfully challenged the lawfulness of the Wanchai Reclamation plan on the basis that, in approving that plan, the Town Planning Board failed to apply the principles enshrined in s.3 of the Harbour Ordinance, in accordance with law.

21. In a judgment handed down on 8 July of this year, just three months ago **Society for Protection of the Harbour Ltd v. Town Planning Board** [2003] 2 HKLRD 787), Chu J rejected the submission of the Town Planning Board that the protections enshrined in s.3 of the Harbour Ordinance were no more than one of the material considerations to be taken into account by public planning bodies and held that in order to comply with s.3 of the Ordinance three tests had to be satisfied :

(a) there had to be a compelling, overriding and present public need which clearly outweighed the public need to protect the harbour;

(b) there had to be no other alternative to implement the undertaking for which it was proposed, and

(c) that any invasion of the harbour should be restricted to the minimum impairment necessary to implement the undertaking.

22. It is plain, contends the applicant, that the Central Reclamation Plan, being approved *before* the Wanchai plan, must have been approved on the principles then applied by the Town Planning Board; that is, on the basis that the protection of the harbour was just one of the material considerations to be taken into account, rather than in compliance with the far stricter criteria laid down by Chu J in her July judgment. That being the case, as the law presently stands, it follows that the Central Reclamation Plan must have been approved on a basis wrong in law.

23. In my judgment, in so far as it goes, the applicant's contention is difficult to refute. But the fact that the Central Reclamation Plan, in conjunction with the Wanchai plan, was approved on a misconceived basis according to the law as it now stands does not of itself mean that the Central Reclamation Plan must offend the Harbour Ordinance.

24. It was not been possible for me at this early stage to compare the Wanchai plan with the Central plan. While they are complementary plans, it may be that the Wanchai plan has been more indulgent in the land reclaimed while the Central plan has been more spare in this regard. For me to find either way would be speculation.

25. Evidence has been placed before me by the respondents that, after the handing down of Chu J's judgment, a review was initiated to assess whether the Central Reclamation Plan, whatever the basis upon which it was approved, did in fact meet the criteria laid down in that judgment. In this regard, in an affirmation dated 2 October 2003, Mr Cheung Tai Yan of the Territory Development Department, an officer overseeing the Central Reclamation Plan, said the following :

> " In light of the outcome of [the judgment], the Government has initiated a review of [the Central Reclamation Plan] with a view to ascertaining whether it meets the three tests laid down by Madam Justice Chu in her Judgment dated 8 July 2003.
>
> I have been advised by the Respondents' legal advisors and believe that the Outline Zoning Plan in respect of [the Central Reclamation Plan] remains legal and valid. The authorisation for the reclamation works to proceed remains lawful."

26. The wording, perhaps understandably, is somewhat ambiguous. After all, the judgment of Chu J has been appealed. But, on the basis of observations made by leading counsel for the respondents which amplified the affirmation of Mr Cheung, I understand the respondent's case to be that, even on the basis of the criteria set by Chu J, they are satisfied that the Central Reclamation Plan remains lawful; without mincing words, that it meets those criteria even if they are disputed criteria.

27. While, during the course of the hearing, I was shown certain diagrams, drawings, posters and the like, it has not been possible to come to even a provisional assessment of whether the land to be reclaimed in terms of the Central

Reclamation Plan does or does not meet the criteria of Chu J. That will be a matter for the substantive judicial review hearing. How much reclaimed land will the Central-Wanchai Bypass demand? I am unable, without hearing expert evidence, to begin to make an assessment. It is not as if the plans speak for themselves in that regard; for example, by showing manifestly unnecessary parkland extending out in the harbour.

28. It appears not to be disputed that the public need for the bypass demands that there be at least some reclamation. In his affirmation of 2 October 2003, Mr Cheung Tai Yan made the following observation :

> " Mr Winston Chu, Director of the Applicant, has on many occasions confirmed that he does not in principle object to the construction of the Bypass (which links up the Rumsey Street Flyover and the Island Eastern Corridor) and the waterfront promenade. Both parties accept that it is inevitable that reclamation works will be required."

29. In the circumstances, while clearly the applicant's application for judicial review presents serious issues for trial, at this time I am unable to say whether the applicant has a strong *prima facie* case or not. Similarly, I am unable to say whether the respondents have a strong *prima facie* defence or not.

30. What then of the other issues raised which must be considered in the wider public interest?

Irreparable and irreversible harm

31. In his affirmation of 25 September 2003, Mr Winston Ka Sun Chu, for the applicant, said the following in respect of the reclamation work that has already been commenced :

> "I verily believe that the scale and extent of the proposed reclamation works is so horrendous that, if they are allowed to continue, by the time the present dispute is resolved in the Law Courts, the damage caused to the Harbour will be irreparable and irreversible. Once the 23.11 hectares of land is formed which will only take a matter of months, it will be impossible to dig it up again. This has happened on previous occasions when even the Board which questioned the West Kowloon Reclamation and the Central Reclamation had to accept the situation after the event as a 'fait accompli'."

32. On behalf of the respondents, Ms Cheng has said that this statement contains three material errors :

(a) the Central Reclamation Plan encompasses the reclamation of 18 not 23.11 hectares;

(b) it will not take only "a matter of months" to complete the reclamation work, it will take considerably longer : some two years, and

(c) the reclamation work is not irreversible. As an engineering work, it is perfectly feasible to cut back on or entirely remove any reclamation work that is carried out.

33. In short, the respondents say that by the time the courts have determined the substantive issues, if not finally at least to the extent that clear guidance is given, the progress of the reclamation will not have advanced to the stage where it is simply irreversible. If necessary, say the respondents, the reclamation work can be undone and, while it is impossible to give figures concerning the anticipated costs, they are clearly of the view that the financial losses at risk if work is stopped now, allied to delay, must outweigh the financial losses, allied to delay, that may have to be incurred if at a later stage the reclamation work has to be scaled back or removed entirely.

34. To understand the submissions of the respondents, some background must be given.

35. First, say the respondents, it is not as if the whole area demarcated for reclamation is to be reclaimed in one exercise. The work is to take place in stages, one area at a time. The first area, where work is presently taking place, is known as 'IRAW'. It is an area adjacent to the piers recently constructed in front of the airport railway terminus. This work must be done, it is said, so that the Star Ferry piers may be moved. No exact measurement for that area has been given but on the 'reclamation sequence' plan it appears to be a little over two hectares. Work on the second area, known as '1RAE' is only to commence in January 2004 with dredging work. The area of '1RAE' looks to be at least double the size of '1RAW', perhaps six hectares in extent. This area abuts the waterfront in front of the development once known as HMS Tamar.

36. Second, say the applicants, the nature of the engineering works makes it feasible to undo work done. As I understand it, the work begins with extensive dredging work to remove the polluted silt layer on the sea bed. Thereafter channels are dug and impacted with hard fill so that prefabricated sea walls may be dropped in place in those channels. Only then is the enclosed area filled with sand. It is suggested that the sand can be excavated and the sea walls moved without it necessarily constituting a body of work of daunting complexity.

37. Third, say the respondents, the reclamation work, it is estimated, will take approximately two years to complete not just a matter of months.

38. Accordingly, say the respondents, within the relatively short time span contemplated before definitive guidance is obtained from the courts, the reclamation work will not have advanced to the advanced or even completed state alleged by the applicant. The reclamation work will still be in its relatively early stages and therefore, for all practical purposes, capable of being reversed to the extent demanded by law.

39. During the course of the hearing, I raised the concern with Ms Cheng, counsel for the respondents, that, while in engineering terms the work may be capable of removal, would not an 'absurdity factor' become relevant, a factor arising from the public being forced to witness its money spent on extensive reclamation and then yet more spent on removing it all. In answer, Ms Cheng spoke of the limited time frame before definitive judicial guidance is obtained and, among other arguments, said that within that time frame reclamation work would not advance to the stage where, for all practical purposes, it would become a *fait accompli.*

The time frame

40. What then is the contemplated time frame? I am told that the Court of Final Appeal will hear the appeal from the judgment of Chu J on 9 December of this year. The matter is set down for six days. It would be presumptious of me to say when the Court of Final Appeal will hand down its judgment. But estimating (for the purposes of these proceedings) that it is handed down by mid-January 2004, it will mean that within approximately three months of today both the applicant and the respondents will have received final and definitive guidance on how the principles contained in the Harbour Ordinance must be applied. That may well decide the issue. And, as Ms Cheng for the respondents, has pointed out, by that time work will only have just commenced, on the second area, '1RAE', that work consisting at that time only of removal of polluted silt, hardly labour intended to damage the harbour.

41. But what if the Court of Final Appeal judgment (which concerns the Wanchai reclamation plan) does not determine the dispute in respect of the Central Reclamation Plan? If that is the case, in my judgment, there need not be too great a delay. If necessary, I am prepared to set a provisional hearing date within the next day or so for February 2004. None of the parties want delay, this Court will not allow it. If after judgment in that case say by the end of February or early March 2004 - the respondents are told, in line with guidelines set earlier by the Court of Final Appeal, that the Central Reclamation Plan offends the Harbour Ordinance then obviously immediate steps of a profound nature would have to be considered : I would imagine a cessation of reclamation work forthwith and perhaps even the beginning of work to scale back on or remove entirely the reclamation work already done. Certainly *at that time*, if the respondents determine to proceed, looking to relief by way of appeal, they will be far more vunerable to the exact same claim now being made, one for an interim injunction in order to protect the wider public interest.

42. The respondents are aware of the risks. To employ a poor pun, it seems that to a degree they already find themselves caught between the devil and the deep blue sea. After the Chief Executive-in-Council approved the Central Reclamation Plan, a contract to carry out reclamation work was awarded on 10 February 2003, the contract price being some HK$3,790 million, the work to be completed in October 2007. The contract was therefore awarded some 17 days before the applicant commenced judicial review proceedings in respect of the Wanchai plan, those proceedings resulting in the judgment of Chu J handed down on 8 July of this year. It cannot therefore be said that the Government committed itself imprudently in the knowledge of an impending legal challenge to an adjacent and entirely complementary scheme.

43. As I have indicated, after the judgment of Chu J was handed down, an assessment was made whether the Central Reclamation Plan remained lawful and advice was received that it was lawful.

44. As I understand it, therefore, what is being said by the respondents is that the balance of convenience *at this time* must favour them because-

(a) the reclamation works are only at an early stage and will not, within the next four to five months, have advanced to the stage where they cannot be scaled back or undone;

(b) the works are quite capable, at this relatively early stage, of being physically scaled back or removed without an 'absurd' expenditure of public funds;

(c) however, if the works are stopped now material delay will be occasioned in proceeding with the Central-Wanchai Bypass, a roadwork that the applicant itself accepts is needed in the greater public interest;

(d) in addition, if the works are stopped now, contractual claims would be sanguine, running perhaps into hundreds of the millions of dollars.

The financial implications

45. Mr Ronny Tong S.C., leading counsel for the applicant, strongly criticised the estimated financial losses put forward by the respondents if work is stopped now as being grossly exaggerated. Government, he said, was under an obligation to take whatever steps were necessary to minimise losses and many avenues were open to it to do so. For example, if the contract was ended entirely, the contractor, he said, would not be entitled on the applicable principles of frustration to compensation for loss of profits and that alone would reduce the Government's purported potential losses by a figure of some HK$400 million.

46. I accept, of course, that the figures put forward by the respondents are, when they speak of a potential loss of some HK$600 million, very much an articulation of a 'worse case' scenario.

47. I further accept that the respondents cannot, even on an interim basis, escape the consequences of their actions simply and only because the financial implications are so far-reaching. The greater public interest for this and following generations must not result in the courts being effectively intimated by the size of touted figures. Higher principles of deep value to the community are at stake. But that being said, it would also be wrong, in my view, to entirely ignore the financial consequences as if they are of no consequence. They are public moneys to be utilised for the benefit of the public.

48. As such, in my opinion, I am entitled to take into account the fact that if work is stopped now, before the Court of Final Appeal has had an opportunity in the reasonably near future to consider the principles that flow from the Harbour Ordinance, the Government will certainly suffer material financial loss and runs a real risk of grave loss.

The issue of environmental impact

49. I come finally to the concern expressed by Mr Tong on behalf of the applicant, that the reclamation works may have an adverse effect on the ecology of the harbour which cannot be undone even if the reclamation work itself can be removed. As Mr Tong expressed it, the harbour has already been assailed. Must it needlessly be subjected to further degradation?

50. However, the question of the ecological impact of the reclamation work has not been ignored by the respondents. In this regard, in his affirmation of 2 October 2003, Mr Cheung Tai Yan, said the following :

> " An ecological review indicated that poor water and sediment conditions and a lack of natural coastline in Victoria Harbour have led to ecologically degraded habitats that support only those species which are adapted to polluted conditions and can colonise unnatural substrata such as wharf piles, concrete walls and embankments. Field surveys showed that within the proposed reclamation area the soft seabed was anoxic and supported no macrofauna. The Harbour is utilised by resident and migratory birds, however urban development has reduced the number of natural, shore-side perching sites and habitats are continually disturbed by marine traffic. The reclamation area is not considered an important habitat for these birds."

As to the marine impact, Mr Cheung said :

> " The Second Feasibility Study contained a marine impact assessment which concluded that there would be no unacceptable impact to marine traffic, and that with the adoption of wave absorbing seawalls, the reclamation would have minimal impact on wave conditions in the harbour."

51. Mr Cheung further confirmed in his affirmation that an environmental permit, required in terms of schedule two of the Environmental Impact Assessment Ordinance, Cap.499, was issued on 7 March 2002 by the Director of Environmental Protection on the basis that the reclamation works will have no adverse long-term environmental implications.

52. While, in my judgment, it would be entirely myopic to hold that the reclamation work will not have some degrading effect on the harbour and that any removal of reclamation work, however limited, will compound that degradation, I am of the view that the respondents have demonstrated that no doubt sadly because over the years the harbour has already been so assailed the adverse ecological effect feared by the applicant will be minimal.

Conclusion

53. I confess that I have found it profoundly difficult attempting in the wider public interest to ascertain where *at this time* the balance of convenience must lie, whether in favour of an immediate cessation of work or whether to allow it to continue. However, the more I have considered the matter, the more I have been drawn to the conclusion that the applicant's assertion that a continuance of the work, even on an interim basis, will result in 'irreparable and irreversible' damage to the harbour is not supported by the available evidence. I am persuaded by the evidence of the respondents that

work is at a very early stage and that it is not scheduled to proceed at the all-enveloping speed anticipated by the applicant. I am persuaded that, bearing in mind the relatively tight time frame before the courts are able to pronounce substantively on the contested issues, the reclamation work that has been done can, if necessary, be undone, either entirely or to the degree demanded by law. Importantly, within this context, I am satisfied that ecological damage to our already degraded waters will be minimal.

54. At this early stage, therefore, I am satisfied that the balance of convenience in the wider public interest must favour the respondents and allow for a continuance of the work.

55. But, as I have said in the body of this judgment, the respondents know the risks. If the courts rule against them on the relevant substantive issues, if the extent of the reclamation, or the reclamation at all, is found to be unlawful then, as with any unlawful work, it will no doubt have to be removed.

56. Accordingly, the application for interim injunctive relief is dismissed.

57. As to costs, bearing in mind the public importance of the matter and the meritorious submissions made by both parties, I am inclined to make an order that costs be in the cause. Of course, I have not had the benefit of hearing from counsel and my order in that regard is therefore an order nisi to be made final if no application is made within 21 days to argue the matter.

(M.J. Hartmann)
Judge of the Court of First Instance,
High Court

Representation:

Mr Ronny Tong, SC leading Mr Jin Pao, instructed by Messrs Winston Chu & Co., for the Applicant

Ms Teresa Cheng, SC leading Mr Nicholas Cooney, instructed by Department of Justice, for the 1st, 2nd and 3rd Respondents

(month=10-2003)