

## CHUNG FAI KNITWEAR FTY, LTD

**Subject:** CLOSURE OF CHUNG FAI KNITWEAR FTY, LTD.

**Legal Issue:** The owner of CHUNG FAI KNITWEAR FTY, LTD abandoned the factory without paying workers their entitlements and benefits under the Labor Law

### Legal Compensations Owned:

1. Payment in Lieu of Prior Notice
2. Indemnity of Dismissal
3. Payment of Damage
4. Payment of Last Wages (earning wage of June)
5. Payment in Lieu of Unused Annual Leave

- Reference:**
- Labor Law of the Kingdom of Cambodia (Articles 75, 77, 89, 91, 116, 124, 166, and 167)
  - Letter from Department of Dispute Resolution No. 904 រ៉ូប៊ី/អី រ៉ូប៊ី/អី, dated 07 July 2016
  - Arbitration Council Cases concerning Factory Closure:
    - i. Arbitral Award with case number 171/16 - Javelin Co., Ltd., dated 16 August 2016<sup>1</sup>
    - ii. Arbitral Award case number 177/16 - G H I Garments (Cambodia) Ltd., dated 18 August 2016<sup>2</sup>
    - iii. Arbitral Award case number 067/16 - Cambo Yon Xing Garment Co., Ltd., dated 21 April 2016<sup>3</sup>
    - iv. Arbitral Award case number 096/15 - Jiang Kai Printing Co., Ltd. dated 29 May 2015<sup>4</sup>

## BACKGROUND

### Company Profile

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1 The Arbitral Award can be found at [http://www.arbitrationcouncil.org/uploads/0fdb8-a\\_17116\\_k\\_javelin-co..ltd.pdf](http://www.arbitrationcouncil.org/uploads/0fdb8-a_17116_k_javelin-co..ltd.pdf)

2 The Arbitral Award can be found at [http://www.arbitrationcouncil.org/uploads/ab6a9-a\\_17716\\_k\\_ghi-garment-\(cambodia\)-ltd.pdf](http://www.arbitrationcouncil.org/uploads/ab6a9-a_17716_k_ghi-garment-(cambodia)-ltd.pdf)

3 The Arbitral Award can be found at [http://www.arbitrationcouncil.org/uploads/ec76f-a\\_06716\\_k\\_cambo-yon-xing-garment-co..ltd.pdf](http://www.arbitrationcouncil.org/uploads/ec76f-a_06716_k_cambo-yon-xing-garment-co..ltd.pdf)

4 The Arbitral Award can be found at [http://www.arbitrationcouncil.org/uploads/e7496-a\\_09615\\_k.pdf](http://www.arbitrationcouncil.org/uploads/e7496-a_09615_k.pdf)

Name: **CHUNG FAI KNITWEA FTY, LTD**

GMAC Member ID: 35

Address: National Road 2, Sangkat Chak Angre Krom, Khan Meanchey, Phnom Penh, Cambodia.

Opening: 12 March 1998

Company Representative: Mr. SUNG KIM HUNG, owner of the Company

Number of Workers: 208 workers

Production: Sweater, Sock (Knitted)

Buyers: **Nygård, M&S and Bonmarché**

### **Workers:**

There were 208 workers. 181 workers were on unlimited duration contract (UDC) and 28 workers were on fixed duration contract (FDC):

- 126 workers had worked for the Company for more than 10 years
- Nine workers had worked for the Company for 9 years
- Eight workers had worked for the Company for more than 5 years

### **Facts:**

#### **1. The closure**

On 27 June 2016, the CHUNG FAI KNITWEA FTY, LTD (here in after the “Chung Fai”) ceased its production without informing workers or workers’ representatives.

On 02 July 2016, Mr. Lim Pheng San, the Manager of the Chung Fai, called 30 workers in and informed them that the owner gave right to the workers to sell any remaining assets of the Company and they could divide the proceeds accordingly.

Chung Fai owner has never provided any reason regarding the closure. Chung Fai owner did not pay workers their earning wage for June 2016, which was supposed to be paid on 10 July 2016, nor has the factory ever paid workers their entitlements under the Labor Law.

The valuable assets had already been removed from Chung Fai before 02 July 2016, and there have been secret attempts to remove the air-conditioners on 01 July 2016, but it was prevented by the workers.

#### **2. Process outside the Court**

On 01 July 2016, workers began a 24-hour factory vigil to ensure that remaining equipment was not removed and assets sold in lieu of legal payment.

On 04 July 2016, the National Strike and Demonstration Committee of the Ministry of Labor and Vocational Training (MoLVT) came to Chung Fai to investigate the closure.

On 05 July 2016, workers filed complaint with Department of Labor Dispute Resolution of MoLVT. The workers also met with the National Strike and Demonstration Committee at the District (Khan) office and the Committee explained

to workers that there are two procedures for their resolution – (1) through court system or (2) outside court system. Outside court system means workers would sell the remaining assets and divide the proceeds, accordingly, and that would be it.

On 06 July 2016 workers came to American Center for International Labor Solidarity (ACILS) to seek assistance with them pursuing for resolution.

On 07 July 2016, the Director of Department of Labor Dispute Resolution issued a letter to the court regarding the closure and informing the court what workers shall be entitled to under the Labor Law, which are (1) Payment in Lieu of Prior Notice, (2) Indemnity of Dismissal, (3) Payment of Damage, (4) Payment of Last Wages (earning wage of June) and (5) Payment in Lieu of Unused Annual Leave.

From February 2017 until July 2017, workers have had several formal and in formal meetings with the landlord party, with the presence of and through coordination by competence authorities regarding the removal of the assets, demanded by the landlord.

On 25 May 2017, workers filed a complaint with competence authority against burglar(s) who broke into the factory.

### **3. Process under the Court**

#### **Workers' claim**

On 18 July 2016, workers filed for an injunction order to protect the assets from being further removed.

On 26 July 2016, the Phnom Penh Municipal Court of First Instance issued an injunction order to temporary freeze the assets and all the properties were inventoried and sealed on 19 August 2016. From then on, workers did not need to guard the assets, and no one can remove the assets unless it is allowed by the court.

On 06 February 2017 workers filed principal claim for the amount of **USD 550,000** to cover 208 workers' last salary and years of severance.

On 24 February 2017, workers received a ruling, exempting workers from paying the tax for their principal claim application.

On 21 March 2017, workers went for preparatory proceeding for oral argument for their principal claim at Phnom Penh Municipal Court of First Instance. A summary of the result:

The court could not hold the preparatory proceeding because the factory was closed and the owner could not be allocated to accept the court order or to send the court order to. Thus, to continue their case the plaintiffs (workers) shall search for the address of the respondent (owner of the factory) to the best they can. If workers still cannot allocate the owner, the last option will be public announcement.

#### **Third parties' complaint**

On 05 September 2016, Dignity Knitter Limited filed a complaint with the court requesting for a return of a van. The van was among the frozen assets that were on Chung Fai's property. Dignity claimed that the van belongs to Dignity, not Chung Fai, so the van should be returned to Dignity.

On 31 August 2016, Chung Fai landlord filed a complaint with the court asking for a permission to remove the frozen assets so that the landlord can use it for other purposes.

On 11 May 2017, four workers' representatives received a criminal complaint against them by Strike and Demonstration Committee because in one of their protests, workers were humiliated by commuters, so they briefly blocked the road, without workers representatives' knowledge.

#### **4. Process to Nygård, M&S and Bonmarché**

##### **M&S**

On 23 September 2016, workers' representatives sent an email requesting intervention from M&S.

On 24 September 2016, M&S denied having contractual relationship with Chung Fai. In the sequences of communication, M&S requested further information and evidence and wanted to be in touch with workers' representatives directly, but did not agree to meet with the workers' representatives.

From 07 to 13 February 2017, workers gathered in front of Phnom Penh Tower, where the local M&S office is, to demand resolution.

On 14 February 2017, M&S sent an email to workers' representatives, saying that "We ... dispute the validity of the proof provided by you in the form of photographs of care labels as the unique product codes and other data do not match the delivery addresses and are invalid."

On 15 February 2017, M&S met with four workers' representatives, accompanied by an ACILS' legal officer as assistance on the case and a consultant of WRC as an observer. During the meeting, M&S denied its contractual relationship with Chung Fai. and M&S's responsibility to contribute to the resolution of the case, and claimed the brand had done what is appropriate. Also, M&S continued to dispute that the M&S labels that workers have are not valid in their system.

On 02 July 2017, Labour Behind the Label sent a letter to M&S to notify about planned public campaign and request for action from M&S.

On 06 July M&S replied repeating that the brand never sourced from Chung Fai. M&S stated that all its products have a product code, and that the labels found at Chung Fai by Chung Fai workers do not correspond with M&S's «unique product codes».

On 10 July 2017, Labour Behind the Label sent a letter to M&S reminding the brand that the labels found in Chung Fai by Chung Fai workers bore the name of M&S. Also M&S was asked to provide concrete proof of how the company had reached the conclusion the labels are invalid.

##### **Bonmarché**

On 23 September 2016, workers' representatives sent an email requesting intervention from Bonmarché.

On 13 October 2016, Bonmarché responded asking for more information after a follow up email. For the follow up communication with workers' representatives, Bonmarché denied any relationship with Chung Fai, but would discuss the matter with its supplier in Hong Kong.

Bonmarché informed Labour Behind the Label that their supplier acknowledged that unauthorized subcontract happened, but it was for only around 1,600 pieces of its garment. Bonmarché informed their supplier that existing orders would be honoured but no further orders would be put in place until the case was resolved.

On 02 July 2017, Labour Behind the Label sent a letter to Bonmarché to notify about planned public campaign and request for action from Bonmarché.

### **Nygård**

On 13 October 2016, workers' representatives sent an email requesting intervention from Nygård.

On 7 November 2016, after a follow up, Nygård responded that "We do not have any contractual relations with this company."

Subsequent communication with Nygård received the same responses.

On 26 June 2017, Workers United sent a letter to Nygård to notify about planned public campaign and request for action from Nygård.

### **5. Others**

In addition to many court visits and meetings with relevant people outside court system, workers have also held countless of protests to appeal to brands and relevant ministries to help them find resolution, and to the court to speed up their legal process, such as the issuance of the injunction order, and waive the requirement to pay tax for their principal claim.