

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
COMMON LAW DIVISION

McNAUGHTON J

THURSDAY 4 JULY 2024

**2020/00361953 - DONGHAO CAPITAL PTY LIMITED v SHAOYONG GUO**

**JUDGMENT**

HER HONOUR: This matter has come before me in the duty list today. A Notice of Motion was filed but, preceding that, the Plaintiffs, the Applicants on the Notice of Motion, have put before the Court evidence underpinning an application for the entry of consent judgment against the Defendant.

Before the matter started this morning, the Defendant was called outside three times and did not appear. There was also an affidavit of service prepared by the plaintiffs' instructing solicitor, William Mark Addison, of 3 July 2024 which indicates the efforts made which satisfy the Court that the Defendant was on notice of the matters today. That affidavit of service also indicates that the solicitors who previously acted for the Defendant were also on notice of what was to happen today, at least in relation to the matter, the subject of the Notice of Motion.

This matter, in short, arose out of a large commercial claim for over \$8 million for breach of a deed that related to a failed plan to acquire a large commercial office tower in Brisbane in 2016. The matter settled by way of a deed which is before me. A consent judgment was signed by both parties in the sum of \$7,995,000 for judgment for the Plaintiffs with no order as to costs - and I will come to that in a moment - and the deed that was signed in relation to the settling of the proceedings contemplated, as part of its terms, that it was conditional upon the Court vacating the hearing of the proceedings and

MZS:CAT

adjourning the proceedings to a date after 3 June 2024 to permit the first two instalments, which were set out in schedule 1 to the deed, to be paid by the Defendant to the Plaintiffs. Those two instalments added up to an amount of \$500,000.

As was set out in clause 4.2 of the deed, the deed permitted the Defendant to pay instalments by way of an electronic transfer into the Second Plaintiff's Australian or Chinese bank account or any bank account that he may establish in the United Arab Emirates.

The Plaintiffs before me contend today that neither the first nor the second instalments have been paid and they are therefore entitled to entry of the consent judgment under the deed and they refer to clause 4.3 of the deed which provides for that to occur on default.

In relation to the entry of the consent judgment, a number of affidavits were read and they are the affidavit of WM Addison of 27 June 2024; the affidavit of Donghao Li of 24 June 2024; the affidavit of Junfu Li of 24 June 2024; affidavit of a translator, Chenyang Yan of 24 June 2024, and; an affidavit of Nicholas E Barclay of 27 June 2024. The affidavit prepared by Mr Addison sets out his grave concerns regarding the legitimacy and standing of the purported entity describing itself as XCP Bank and Xirik Commercial and Private Bank and sets out a number of reasons which is supported by evidence exhibited to his affidavit. He notes that a search for the website for the Central Bank of the UAE, which describes itself as the supervisory and regulatory authority of the banking sector in the region disclosed that XCP is not registered as a bank as at 26 June 2024. The affidavit includes copies of the register upon which neither XCP nor Xirik Commercial and Private Bank

MZS:CAT

appear.

An email was sent to the enquiries page by the solicitor and it came back as "Recipient address rejected. Access denied." The purported CEO of XCP, Mark Harris, has a LinkedIn profile that does not include any reference to his involvement with XCP.

Affidavits of Donghao Li, who is the Second Plaintiff and the Second Applicant on the Notice of Motion, and his son, set out a series of events and discussions with the Defendant which can be summarised as an agreement for the Plaintiff to set up a bank account with XCP into which the Defendant would transfer the relevant money into the bank account set up by the Plaintiff. The Plaintiff's son went to Dubai at the instruction of his father and a bank account, purportedly with XCP bank in Dubai, was purportedly set up and amounts of money, interestingly, much more than the amount of the first two instalments to be paid, was purportedly paid into the son's account. The son, however, made it clear, and that reflected also what his father had made clear, that the funds were not to be regarded as paid until they could be accessed by the Plaintiff or the Plaintiff's son.

The Plaintiff's son's affidavit, that is, the affidavit of Junfu Li, indicates that, on his visit to Dubai, after the money was purportedly transferred, he met with the Defendant at a bar at his request. He appeared to be drunk - that is, the Defendant - and Mr Junfu Li recalled Mr Guo saying, "I'll repay the money. This won't be my first payment to you. I'll be receiving a lot in commissions soon." Mr Junfu Li also indicates that since returning home to Australia, he has not been able to access or transfer the purported funds in the purported bank account.

MZS:CAT

There are also various other signs pointed to by the Plaintiff's evidence indicating that the purported bank into which the defendant purportedly paid money may well be a sham and there is a letter, for example, purported to be from the bank which, at one point says that "This week we will finally have access to the funds to pay for Swift and release the BIC code" but at another point in the letter, it says:

"We were invited to a meeting with the Central Bank and the UAE approximately one month ago. They invited us to apply for recognition status as a bank which would allow us to work with the local banks within the UAE".

And there's another point in the letter which says:

"Next week we will sit with the bank and start the integration process. This will take a maximum of one month to complete."

So there are various indicators in that letter that the purported bank is not a bank.

There were also enquiries made by Mr Barclay, a deponent to one of the affidavits, who is a partner of a law firm in the UK and conducts his practice in Dubai. He undertook various searches and could not find either of the relevant entities registered as a bank in the UAE. He also went to check the address on the website and that did not appear to be an address that had anything to do with being a bank but appeared to belong to another business entirely.

The Plaintiffs or the Applicants on the Notice of Motion, have made, in the Court's assessment, a real effort to comply with their obligations as parties who are not opposed in this matter before the duty list and have put before the Court all relevant material so far as the Court can see to indicate that the Defendant appears not to have complied with his obligations under the deed. I

MZS:CAT

note that included in the material are messages from the defendant to the effect that he is permanently now based in Dubai and does not intend to return to Australia.

In all the circumstances, I am satisfied that it is in the interests of justice to enter the consent judgment for the Plaintiff in the terms which appear in the exhibit at page 18 and the terms are:

1. Judgment for the Plaintiffs against the Defendant in the sum of \$7,995,000.
2. No order as to costs with the intent that all previous costs orders are vacated and that each party shall bear their own costs of these proceedings.

Having entered that judgment, I now turn to the Notice of Motion.

The Notice of Motion filed on 24 June 2024 was supported by an affidavit of Mr Addison of 24 June 2024 and it, in essence, relates to an application for the release of funds held as security for costs in favour of the Defendant. It is in a St George Bank account and it is in the joint names of the current solicitor, Keypoint Law Pty Limited for the Plaintiffs, and the previous solicitors for the Defendants, Deutsch Partners.

I mentioned before that I am satisfied by the affidavit of service that Deutsch Partners are on notice of the orders being sought today and I am told that they have not responded. I take it from that they have no opposition.

The amount of money in the relevant account is \$103,643.91 and a copy of the statement in relation to that account has been placed before the Court as an annexure to the affidavit.

The Plaintiffs seek those funds be transferred from the controlled money

MZS:CAT

account to their solicitor's trust account with the Commonwealth Bank of Australia and the basis for the application is, as I have indicated, that that matter has settled and now consent judgment has been entered.

The Defendant has had ample notice of the application today. I am of the view that it is in the interests of justice to make the orders sought in the Notice of Motion and I therefore make the following orders:

1. The Court notes that:

(a) on 12 October 2021, orders were made for the payment by the Plaintiffs of \$100,000 into a controlled money account to be held in the joint names of the Plaintiffs' and the Defendant's solicitors as security for the Defendant's costs of the proceedings to be released in accordance with orders of the Court, and;

(b) the proceedings have settled.

2. The Court orders that the sum of \$100,000 referred to in paragraph 1(a) above plus any accrued interest thereon be paid from the controlled money account held in the joint names of Keypoint Law Pty Limited and Deutsch Partners with St George Bank BSB: 332 027; Account Number: 555831801 to the Plaintiff's solicitors trust account with Commonwealth Bank of Australia BSB: 062 236; account number: 10244537 forthwith.

3. The Defendant to pay the Plaintiffs' costs of the Notice of Motion as agreed or assessed.

oOo