

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2009-404-003620

BETWEEN	XUE YING ZHU Plaintiff
AND	HUA CHEN First Defendant
AND	ALI MOHAMMED PARKAR (A BANKRUPT) Second Defendant
AND	CHERIE LOUISE PARKAR (A BANKRUPT) Third Defendant
AND	THE HAT FACTORY 2006 LTD (IN LIQUIDATION) Fourth Defendant
AND	CLASSIC LIVING LTD (IN LIQUIDATION) Fifth Defendant
AND	JIAN HUA LIAO Sixth Defendant
AND	HUA CHEN AND JIAN HUA LIAO (AS TRUSTEES OF THE H CHEN FAMILY TRUST) Seventh Defendant

Hearing: 12 April 2010

Appearances: F C Deliu for the Plaintiff
B Cunningham for the Sixth Defendant

Judgment: 12 April 2010

**ORAL JUDGMENT OF
ASSOCIATE JUDGE CHRISTIANSEN**

Solicitors/Counsel

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FC Deliu/Heval Hylan, Amicus Chambers, Auckland – fdeliu@amicuslawyers.co.nz

B M Cunningham, Auckland – brettcunningham@xtra.co.nz

[1] This matter was set down before me today to hear the sixth defendant's strikeout application. In advance of hearing this application no submissions were filed on behalf of the sixth defendant. Instead by application filed on 7 April 2010 the sixth defendant's solicitor applied for an order declaring that the solicitor had ceased to be the solicitor on the record for all defendants, including the sixth defendant. When the matter was called Mr Cunningham appeared, on instructions from the solicitors for the sixth defendant to seek leave to withdraw. In the absence of any opposition by the plaintiff to that application, I granted leave for the sixth defendant's solicitor to withdraw and thereafter excused Mr Cunningham from any further appearance.

[2] In that outcome the sixth defendant remained with an interpreter to explain that she was not a party to any of the arrangements made for the payment by the plaintiff of funds intended for use by sixth defendant's husband (the first defendant) for business purposes.

[3] In support of their strikeout application the sixth defendant swore an affidavit which explained that the funds paid by the plaintiff were paid into the joint banking account of the first and sixth defendants and from there were transferred to business accounts of the first defendant. The sixth defendant claims and it is not otherwise pleaded by the plaintiff that she had no connection with the plaintiff's payments other than as a joint owner of the bank account into which the plaintiff's funds were initially paid. I am satisfied that the sixth defendant has provided sufficient evidence to show that those funds, initially receipted to her joint bank account were subsequently on-paid to the business accounts of other entities. The sixth defendant claimed she had no part of those arrangements which remained solely with the authority of her husband.

[4] Those facts notwithstanding I was persuaded that a Court could not in the absence of hearing oral evidence of the parties, conclusively conclude that the sixth defendant had not participated in the described banking arrangements and I directed therefore that the strikeout application should be dismissed.

[5] In that outcome I advised Mr Deliu that I was not prepared to fix costs at this time but rather that costs should be determined in the outcome of the plaintiff's proceeding.

[6] Mr Deliu informed me that a defendants' application concerning the plaintiff's freezing orders was set for hearing before a Duty Judge later this month. Upon receipt of that advice I informed the sixth defendant through her interpreter that considerable hurdles would be faced by the defendants concerned if they were not assisted by counsel.

[7] On behalf of the sixth defendant I was advised that her application for legal aid had been refused. Also, that from tomorrow the mortgagee of the property owned by the first and sixth defendants' family trust was entitled to take possession of their property. Apparently that property, presently the subject of the plaintiff's freezing orders, is likely to be the only asset available to meet the plaintiff's claims. The second and third defendants have been adjudicated bankrupt. The fourth and fifth defendants have been placed into liquidation.

[8] At the conclusion of my hearing of this matter this morning I directed that a judicial settlement conference be convened. I now fix the date of hearing for that conference at 5 August 2010 at 10:00am, for half a day. A copy of this Court's standard conference practice requirements is attached.

Associate Judge Christiansen