Federal Court of Australia

Fine China Capital Investment Limited v Qi (No 4) [2024] FCA 343

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| File number(s): | VID 560 of 2023 |
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| Judgment of: | **O’CALLAGHAN J** |
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| Date of judgment: | 8 April 2024 |
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| Catchwords: | **CORPORATIONS** **–** practice and procedure – application by applicant for order reinstating company pursuant to section 601AH of the *Corporations Act 2001* (Cth) and for leave to bring a derivative proceeding – whether applicant a “person aggrieved” within the meaning of s 601AH of the *Corporations Act 2001* (Cth) – where applicant did not produce original document when respondent disputed its authenticity – application to reinstate dismissed because applicant did not prove on the balance of probabilities that it was a person aggrieved – application by respondent to dismiss all or some claims as an abuse of process – consideration of “reflective loss” principle – application dismissed – application by applicant that certain paragraphs of respondent’s defence be struck out – respondent given leave to amend defence – application otherwise dismissed  |
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| Legislation: | *Corporations Act 2001* (Cth) ss 236, 237, 601AH, 601AH(2), 601AH(2)(a)(i), 601AH(3) |
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| Cases cited: | *Callegher v Australian Securities and Investments Commission* (2007) 218 FCR 81*Central Coast Council v Norcross Pictorial Calendars Pty Ltd* (2021) 391 ALR 157;[2021] NSWCA 75*Fine China Capital Investment Limited v Qi (No 3)* [2023] FCA 1405*Garner v Central Innovation Pty Ltd* [2022] FCAFC 64*Haigh v Department of Planning NSW* [2022] NSWSC 1434*Henry v Henry* (1996) 185 CLR 571*Mercedes Holdings Pty Ltd v Waters (No 3)* [2011] FCA 236*Michael Wilson & Partners Limited v Nicholls* (2011) 244 CLR 427*South Johnstone Mill Ltd v Dennis* (2007) 163 FCR 343*Tomlinson v Ramsey Food Processing Pty Limited* (2015) 256 CLR 507*Willams v Spautz* (1992) 174 CLR 509 |
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| Division: | General Division |
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| Registry: | Victoria |
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| National Practice Area: | Commercial and Corporations |
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| Sub-area: |  |
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| Number of paragraphs: | 65 |
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| Date of hearing: | 8 and 12 March 2024 |
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| Counsel for the Applicant: | L De Ferrari SC |
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| Solicitor for the Applicant: | AJH Lawyers |
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| Counsel for the Respondent: | NH Ferrett KC with BJ Parker |
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| Solicitor for the Respondent: | Carswell & Company |

ORDERS

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|  | VID 560 of 2023 |
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| BETWEEN: | FINE CHINA CAPITAL INVESTMENT LIMITED (COMPANY NO. 2039738)Applicant |
| AND: | TAO QIRespondent |

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| order made by: | O’CALLAGHAN J |
| DATE OF ORDER: | 8 April 2024 |

THE COURT ORDERS THAT:

1. The applicant’s interlocutory application dated 13 February 2024 seeking an order reinstating CSJH (Australia) Pty Ltd pursuant to section 601AH of the *Corporations Act 2001* (Cth) be dismissed.
2. The respondent be given leave to amend paragraph 14 of his defence dated 8 December 2023.
3. The applicant’s interlocutory application dated 13 February 2024 seeking an order that the defence be struck out otherwise be dismissed.
4. The respondent’s application dated 1 December 2023 seeking orders that the whole of the proceeding or part of it be dismissed as an abuse of process be dismissed.
5. The applicant file and serve a second further amended originating application and a second further amended statement of claim within 7 days.
6. The respondent file and serve an amended defence within 7 days of the service of the second further amended statement of claim.
7. The parties file submissions in relation to costs, not exceeding 5 pages, within 14 days.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

O’CALLAGHAN J

# Introduction

1. I have before me a number of interlocutory applications.
2. The proceeding has been tentatively listed for hearing on 9 September 2024, on an estimate of 15 days, and the outcome of the interlocutory applications will affect the course of the trial. So it is important to deal with them with minimal delay.
3. Fine China Capital Investment Limited, the applicant (**Fine China**), by way of an interlocutory application dated 13 February 2024 seeks:
4. an order reinstating CSJH (Australia) Pty Ltd (**CSJH**) pursuant to section 601AH of the *Corporations Act 2001* (Cth);
5. in consequence of that, orders:
	1. joining CSJH as a respondent;
	2. for leave to file and serve a second further amended statement of claim;
	3. for leave pursuant to s 237 of the Corporations Act “to bring proceedings, or intervene in these proceedings to which CSJH is a party, on behalf of CSJH”; and
6. an order striking out the defence of Mr Tao Qi, the respondent (**Mr Qi**).
7. For reasons set out below, the application to reinstate CSJH will be refused. It follows that proposed orders (2)(a), (b) and (c) above will also be refused.
8. As I indicated during oral argument, Fine China has a point about paragraph 14 of Mr Qi’s defence, and he will be given leave to replead it.
9. The respondent, Mr Qi, by way of an interlocutory application dated 1 December 2023, seeks an order:
10. dismissing the whole proceeding on the basis that it is an abuse of process; or
11. dismissing certain of the claims identified in the further amended originating application on the ground that they are bound to fail.
12. For reasons set out below, Mr Qi’s application is to be dismissed.

# The case pleaded by Fine China

1. Fine China’s case is in substance the following:
2. CSJH was incorporated by Mr Qi in 2017;
3. Mr Qi was a director of and the sole shareholder in CSJH from about that time, and was so until CSJH was deregistered in May 2023;
4. On 24 March 2021, Mr Qi and Fine China both executed the CSJH Trust Deed, by which the CSJH Trust was created;
5. According to the terms of the CSJH Trust:
	1. Mr Qi held his shares in CSJH on trust for Fine China;
	2. Mr Qi was bound to exercise his rights as shareholder and director in Fine China’s interests;
6. in breach of duties he owed as trustee of the CSJH Trust to Fine China, Mr Qi on 5 August 2022, misappropriated $19,747,000 (the **Transferred Sum**) from CSJH’s bank account; paid it away to other companies he controlled; and wrongly caused CSJH to be deregistered.
7. Mr Qi denies all the substantive allegations made against him. He claims, among other things, that the signature on the CSJH Trust Deed that purports to be his signature is not his signature, and that he is thus not bound by it (so that the whole of the pleaded case against him founded on the terms of the deed must fail).
8. On 24 July 2024, Moshinsky J made a freezing order in relation to Mr Qi’s assets. Mr Qi subsequently paid into court the sum of $19,510,000, and the freezing orders were discharged by an order made on 20 October 2023.

# Fine China’s application to reinstate CSJH

1. Section 601AH of the Corporations Act relevantly provides:

(2) The Court may make an order that ASIC reinstate the registration of a company if:

(a) an application for reinstatement is made to the Court by:

(i) a person aggrieved by the deregistration; or

(ii) a former liquidator of the company; and

(b) the Court is satisfied that it is just that the company’s registration be reinstated.

1. Pursuant to s 601AH(3), if the Court makes an order under s 601AH(2), it may validate anything done between the deregistration of the company and its reinstatement; and make any other order it considers appropriate.
2. So the question to be addressed is whether Fine China is “a person aggrieved by the deregistration” of CSJH?
3. A shareholder may be a person aggrieved because reinstatement may mean that the shareholder might benefit from the outcome of a proceeding brought by the deregistered company. Compare *Callegher v Australian Securities and Investments Commission* (2007) 218 FCR 81 at 90 [50] (Lander J) (“Although the expression ‘person aggrieved’ is not defined in the *Corporations Act*, the term is understood in a different sense to its literal meaning. A person aggrieved is not someone who is merely dissatisfied by an event. A person aggrieved must be a person who has been damaged or injured in a legal sense: a person who has a legal grievance …”)
4. Here, Fine China wishes to reinstate CSJH so that it can bring, in the alternative to the claim Fine China brings, a derivative action against Mr Qi.
5. In order for Fine China to have standing to bring such a derivative proceeding on behalf of CSJH, it must prove on the balance of probabilities that it is “entitled to be registered as a member” of CSJH. See s 236 of the Corporations Act (“A person may bring proceedings on behalf of a company … (a) if the person is: (i) … entitled to be registered as a member …of the company …”)
6. Fine China asserts that it is entitled to be registered as a member of CSJH. It says that although it is not, and never was, a shareholder of CSJH, it had a beneficial interest in its shares pursuant to the CSJH Trust Deed. And because of what Mr Qi is alleged to have done (misappropriated its money and caused CSJH to be deregistered), Fine China contends it is entitled to compel transfer of the shares to it, pursuant to pleaded terms of the deed.
7. Fine China has been on notice for a considerable period of time that Mr Qi says (although not in as many words) that the CSJH Trust Deed is a forgery.
8. For reasons best known to itself, Fine China did not produce the original trust deed, despite the fact that, as the correspondence in evidence showed, it knew that Mr Qi denied the authenticity of it and that his solicitors had asked for it to be produced for analysis by a handwriting expert.
9. Fine China relied instead on expert evidence from Mr John Ganas, who is the principal examiner and Director of QD Forensics Pty Ltd, a private company providing forensic document examination and digital examination services. He opined that “there are indications that the questioned Tao Qi signature[] appearing on the [CSJH Trust Deed] …[is] genuine, and [was] written by the writer of the Tao Qi signature specimens …”, although, as he put it, “[t]he examination was limited by the non-original nature of the documents”.
10. Ms De Ferrari SC, who appeared for Fine China, submitted:

Your Honour has to find on the balance of probabilit[ies] that my client is entitled to be registered as a member for the purposes of making an order allowing the leave to bring the action. That doesn’t mean that someone later on can’t come along and disprove that by destroying, for example, the validity of the deed.

1. That proposition cannot be accepted. The application to reinstate is probably an interlocutory one, but the burden to prove the (disputed) authenticity of the CSJH Trust Deed is the same as it would be at a final hearing. There can be no “interim” finding about such a matter in circumstances where it is necessary to prove that Fine China “is … entitled to be registered as a member” of CSJH. It is either entitled or it is not.
2. For those reasons, where the evidence about the authenticity of the trust deed is uncertain, I cannot be satisfied on the balance of probabilities that Fine China is entitled to be registered as a member of CSJH. Compare *South Johnstone Mill Ltd v Dennis* (2007) 163 FCR 343 at 347 [19] (Middleton J).
3. It follows that the application to reinstate CSJH must be refused, because Fine China has not established that it is a “person aggrieved” within the meaning of s 601AH(2)(a)(i) of the Corporations Act. Fine China’s application for orders consequent upon CSJH’s reinstatement must also necessarily be refused.

# fine china’s application to strike out mr qi’s defence

1. Paragraph 14 of Fine China’s further amended statement of claim filed on 21 November 2023 pleads that Fine China and Mr Qi executed the CSJH Trust Deed (along with two other deeds) on 24 March 2021.
2. In response, paragraph 14 of Mr Qi’s defence filed on 8 December 2023 pleads:

As to paragraph 14 of the statement of claim, Mr Qi:

(a) denies the allegations in that paragraph; and

(b) says that he cannot read or speak English.

1. I made clear my (with respect, unsurprising) views about the paragraph 14 of the defence during the hearing, as follows:

MR FERRETT: I do know all that, but the allegation is that he executed the deed and he denies that. I mean, he has grappled with the underlying allegation. The question then becomes what else might he say by way of particularity? “Someone else signed it in my place.” How does he make that assumption and why isn’t it implicit in what he says in denying it himself? “Someone else contrived somehow to sign it for me.” How is he supposed to give those particulars?

HIS HONOUR: I suppose you said, well, you have to read that correspondence. What was that letter you took me to?

MR FERRETT: In the 6 March affidavit.

HIS HONOUR: Mr Richards. Have your instructors said in terms that it’s not [Mr Qi’s] signature?

MR FERRETT: Do you mean in correspondence have they said as much? I would have to check. I don’t know off the top of my head, sorry.

HIS HONOUR: Are those your instructions?

MR FERRETT: They are my instructions, yes. I’m quite happy to assure the court that we’ve got instructions that he did not execute the document.

HIS HONOUR: Well, I would have thought you have to plead that.

1. Paragraph 14 of the defence must be repleaded so as to expressly state that Mr Qi did not sign the deed.
2. Although Fine China’s interlocutory application sought an order that Mr Qi’s entire defence be struck out, other than paragraph 14, its complaint was in fact limited to the pleas to paragraphs 18–20, and 21–25.
3. As for the complaints about 18–20, they concern the deed, and if the plea to paragraph 14 is amended squarely to raise the point that Mr Qi did not sign the deed, bare denials would follow.
4. In the other pleas, Mr Qi has chosen to make bare denials or to say that he “does not know and therefore cannot admit” what is alleged about what happened to the money that Fine China says Mr Qi misappropriated. It was contended by Fine China that those pleas were liable to be struck out, but, in my view, Mr Qi is entitled to plead that way, if he chooses to. Whatever consequences of choosing to do so which may follow at trial are a matter for him.

# Mr Qi’s abuse of process application

1. Mr Qi alleged that Fine China’s conduct before and during the proceeding provides a basis for inferring that it is not pursuing the litigation for a legitimate purpose and therefore must be pursuing the litigation for a collateral purpose.
2. Alternatively, the abuse case was put on the basis that pursuit of the proceeding is likely to bring the administration of justice into disrepute.
3. The principles governing applications of this sort were not in dispute.
4. In *Tomlinson v Ramsey Food Processing Pty Limited* (2015) 256 CLR 507, French CJ, Bell, Gageler and Keane JJ said at [25] 518–519:

Abuse of process, which may be invoked in areas in which estoppels also apply, is inherently broader and more flexible than estoppel. Although insusceptible of a formulation which comprises closed categories, abuse of process is capable of application in any circumstances in which the use of a court’s procedures would be unjustifiably oppressive to a party or would bring the administration of justice into disrepute. It can for that reason be available to relieve against injustice to a party or impairment to the system of administration of justice which might otherwise be occasioned in circumstances where a party to a subsequent proceeding is not bound by an estoppel.

(Footnotes omitted).

1. Categories of abuse of process include pursuit of a proceeding for a collateral purpose; conduct bringing the administration of justice into disrepute; and litigation of the same issues in separate or multiple proceedings. See *Willams v Spautz* (1992) 174 CLR 509 at 518–521 (Mason CJ, Dawson, Toohey and McHugh JJ); *Henry v Henry* (1996) 185 CLR 571 at 591 (Dawson, Gaudron, McHugh and Gummow JJ); *Michael Wilson & Partners Limited v Nicholls* (2011) 244 CLR 427 at [88]–[90] 452 (Gummow ACJ, Hayne, Crennan and Bell JJ).
2. In this case, Mr Qi submitted that I should conclude that Fine China’s “real purpose has been to obtain discovery in respect of [his] business activities … and of companies in which he is involved such as CSJH, in circumstances where it has not troubled to articulate any rational cause which would support the right to such discovery …”
3. It was submitted that I should draw that inference because Fine China has:
	1. persisted in prosecuting claims that are plainly precluded by the reflective loss principle;
	2. done that while failing to prosecute the application to reinstate in any effective sense, including, at one point, resiling from joining CSJH as an applicant and suggesting that it could be joined instead as a respondent;
	3. alleged that Mr Qi has improperly benefitted through use of the monies alleged to have been misappropriated without any proper basis, that being the inference properly to be drawn from the facts that: (i) Fine China has been challenged as to whether it had a proper factual basis for making such an allegation; and (ii) its response has been to say that it has not pleaded “the details of the actual benefit” because it “has yet to obtain the necessary documents to properly plead the improper benefit”;
	4. pursued fishing expeditions;
	5. pursued the same factual allegations in this proceeding and in other proceedings; and
	6. stood back from protecting its own rights, preferring to let a Ms Sophie Qinghui Wang prosecute an earlier proceeding against Mr Qi in the Supreme Court of Queensland until it fell apart under the threat that Ms Wang’s evidence would be tested under cross-examination.
4. It was also submitted that:

Those same facts, particularly given the lackadaisical approach that has been taken in the litigation, provide the basis for characterising Fine China’s conduct in this court as likely to bring the administration of justice into disrepute. Failure to prioritise key threshold issues, subordinating those to plainly-doomed attempts at preliminary discovery, and duplicating issues in separate proceedings in separate countries, along with the attendant costs is plainly oppressive to Mr Qi.

1. Mr Qi’s counsel relied on a document in support of his application to dismiss the proceeding on the ground that it is an abuse of process entitled “Particulars of abuse of process.” It runs to 16 pages, and makes many cross references to a large body of evidence that was before me. The particulars were then supplemented by a longer “aide memoire” document, handed up by Mr Qi’s counsel during the hearing, which set out the cross-references to the evidence in further detail.
2. The particulars make allegations under the following rubrics, which follow on from 3 pages of “background” materials, including the following:
* Maintaining claims that are bound to fail.
* Failure effectively to prosecute the application to reinstate CSJH.
* Making a serious allegation without sufficient basis.
* Pursuing fishing expeditions.
* Duplicity of proceedings.
* Standing by while Qld Proceeding was prosecuted.
1. I do not propose to trawl through the particulars and all the evidence to which they are cross-referenced. To do so would mean that these reasons would be of inordinate length, serving no purpose – because it seems to me quite plain that the evidence falls far short of showing that the instigation or pursuit of the proceeding is an abuse of process.
2. The points raised by Mr Qi’s counsel can be dealt with in short order.
3. Mr Qi contended that Fine China “has known, or should have known that it has not alleged any basis upon which it, as distinct from CSJH, might be able to recover the Alleged Transfer Loss” (being the $19,747,000 removed from CSJH’s bank account), because of the principle that a shareholder cannot recover reflective loss in share value where the company has a cause of action to recover its corresponding loss.
4. But, at least by the time of the hearing, senior counsel for Mr Qi accepted that Fine China’s case – that Mr Qi breached his duties as an agent of Fine China and a trustee for the benefit of Fine China of all the shares of CSJH when he misappropriated at least $16.4 million by closing CSJH’s bank account, transferring the sum to a newly created company of his own, and then deregistering CSJH – arguably does not infringe the rule about the non-recoverability of so-called “reflective losses.” In that regard, I refer to what Mr Ferrett KC said at page 20, lines 21–22 of the transcript of the first day of the hearing (8 March 2024).
5. In that circumstance, it is not necessary to consider in detail the cases about the reflective loss principle. It is sufficient to note what the Full Court said in *Garner v Central Innovation Pty Ltd* [2022] FCAFC 64 at [123]–[124]:

First, if a company suffers loss by reason of the breach of duty owed to it or a breach of a contract to which it is a party, a shareholder has no standing to sue to seek to make good any diminution in the value of its shareholding, even in circumstances in which the company has determined not to pursue any action to seek to recover the loss it has suffered …

Second, where a company has suffered loss but has no cause of action that would permit it to recover that loss, a shareholder in the company may sue in respect of such loss, provided it has a cause of action in its own right to do so, even if the loss is a diminution in the value of its shareholding …

(Citations omitted).

1. Mr Qi submitted in his written submissions that:

Fine China does not identify any loss it has suffered, or gain that Mr Qi has made, that is not (on Fine China’s conception of the facts) recoverable by CSJH. On Fine China’s case, it must be that CJSH would be entitled (electing where required) to:

(a) recover the Transferred Sum from Mr Qi as compensation for breach of fiduciary duty (and perhaps breach of trust);

(b) trace the Transferred Sum (if it can) into the hands of the eventual recipient and seek disgorgement;

(c) recover from any equitable wrongdoer any benefit obtained from use of the Transferred Sum.

1. It is well established that the reflective loss principle does not prevent shareholders from suing for a loss suffered from a breach of duty owed to him or her where the loss is separate and distinct from the loss suffered by the company. See *Haigh v Department of Planning NSW* [2022] NSWSC 1434 at [112] (Harrison AsJ); *Central Coast Council v Norcross Pictorial Calendars Pty Ltd* (2021) 391 ALR 157;[2021] NSWCA 75 at 175–176 [104] (Bathurst CJ, Macfarlan and Gleeson JJA agreeing); and *Mercedes Holdings Pty Ltd v Waters (No 3)* [2011] FCA 236 at [33] (Perram J).
2. And in any event, Fine China is not, and never was, a shareholder of CSJH. There seem to be no cases directly on point, but in my view, even if the reflective loss principle applies to Fine China, it is reasonably arguable that the breaches of fiduciary duty currently pleaded by Fine China against Mr Qi under the deed are also, relevantly, separate and distinct from the loss suffered by CSJH.
3. So that is sufficient to deal with the first point about abuse of process.
4. The second point was that Fine China has failed “effectively to prosecute the application to reinstate CSJH”.
5. I agree that the application ought to have been made earlier. And, as I have explained, I propose to dismiss it (for want of proof). But the late making of an application that fails, even for that reason, is hardly something that would warrant dismissing the entire proceeding, or certain claims made in it, as an abuse of process.
6. The third point concerns Fine China’s plea that by reason of breaches of duty, Mr Qi has improperly obtained a profit or benefit for himself, which Mr Qi dubbed the “Improper Profit Conclusion”. It was said that “Fine China has not pleaded any factual basis for the Improper Profit Conclusion”. That may (or may not) be the case, but, again, failure to provide particulars of such allegations in a case where, as Mr Qi’s counsel recognises, “[t]he fundamental allegation in this case [that Mr Qi took money from a bank account to which he was not entitled] is simple”, is not a basis to dismiss it as an abuse of process.
7. The fourth point is that Fine China has pursued fishing expeditions. That is a reference to two things. First, Fine China pressed Mr Qi to affirm an affidavit setting out, so far as he was able, the details of his assets located in Australia, despite the fact that he had already paid into court the whole sum the subject of the dispute. Secondly, Fine China pressed, before me, subpoenas issued to five different banks requiring that they produce bank account statements for any bank accounts in respect of some or all of CSJH, Mr Qi, and other companies controlled by him (Sunshine Scenery (Australia) Pty Ltd, MAWF Australia Pty Ltd and Sunshine Glory Australia Pty Ltd), in circumstances where senior counsel for Fine China conceded in oral argument that the subpoenas were sought for the purpose of obtaining discovery. See *Fine China Capital Investment Limited v Qi (No 3)* [2023] FCA 1405 at [14] (O’Callaghan J).
8. I agree that both those matters do not reflect well on Fine China and why the applications were pursued is puzzling. But the making of them does not rise to the level of an abuse of process warranting the dismissal of all, or part of, the proceeding.
9. The fifth and sixth points deal with a so-called “duplicity of proceedings” – one in Hong Kong, the other in Queensland. Much of the circumstances surrounding the proceedings remain a mystery, involving, as they do, various other parties and entities, about which I know next to nothing. But it is clear that the Hong Kong proceeding involves claims to other monies, as well as part of the sum claimed here. And the Queensland proceeding has been discontinued. It is alleged that “a reasonable litigant in the position of Fine China would not have stood by whilst the applicants in the [Queensland] Proceeding prosecuted that case, but instead would have intervened to ensure that its rights as it perceived them were vindicated”. But I have no evidentiary basis for making such a finding, and I decline to make it.
10. Mr Qi’s contention that the proceeding is an abuse of process is founded on the cumulative effect of each of the individual matters pointed to. But, in my view, whether viewed cumulatively or separately, they do not constitute conduct of a type that would prevent Fine China from continuing its efforts to recoup the large sum of money that it says Mr Qi misappropriated.
11. For those reasons, Mr Qi’s abuse of process application will be dismissed.

# Mr Qi’s application for summary judgment in respect of particular claims

1. Mr Qi seeks summary judgment on the claims articulated in paragraphs 1–4 of the further amended statement of claim on the basis that each claim is bound to fail because:
2. the claim for damages in paragraph 1 is a claim for damages for breach of obligations arising from the CSJH Trust Deed and, because of that, is bound to fail because of the reflective loss argument;
3. the claims for the taking of accounts in paragraph 2 relates to the Transferred Sum which, if it is recoverable, is only recoverable at the suit of CSJH;
4. the claim for tracing in paragraph 3 relates to tracing of the Transferred Sum in which Fine China has no arguable interest; and tracing of money which, on the allegations in the further amended statement of claim, was paid to CSJH by third parties so that CSJH has no arguable interest;
5. the claim for declarations in paragraph 4, insofar as it relates to Mr Qi, is based on the proposition that Fine China had an equitable interest in the two amounts just mentioned, which it did not.
6. I decline to grant judgment in respect of those claims.
7. I repeat what I said earlier about the reflective loss point. In my view, each of those claims for relief, which are founded on the cause of action I have concluded is reasonably arguable, should be left for determination at trial.

# one final matter

1. On 23 October 2023, I granted leave to Fine China to file and serve a further amended originating application and a further amended statement of claim.
2. No mention was made about the possible joinder of an additional respondent.
3. The documents that were filed on 21 November 2023 pursuant to the leave granted purported to add MAWF Australia Pty Ltd as a second respondent (it seems because that is allegedly where the monies ended up).
4. This was plainly not sufficient to join a further respondent to the proceeding. Fine China must file an application and statement of claim that complies with the 23 October order, and I will make an order accordingly. If it wishes to add a party to the proceeding, it should do so in the ordinary way.

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| I certify that the preceding sixty-five (65) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice O’Callaghan. |

Associate:

Dated: 8 April 2024