



HIGH COURT OF AUSTRALIA

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Details of Filing

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**IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY**

No. S26 of 2021

BETWEEN:

**Deputy Commissioner of Taxation
Applicant**

and

**Changran Huang
Respondent**

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RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

1. These submissions are in a form suitable for publication on the internet.

Part II: Outline of propositions

Proper construction of the judgment being appealed from

- 20 2. The Full Court did not impose a jurisdictional precondition to the making of worldwide freezing orders (RS [6]).
3. The Full Court dealt only with the correct test to be met in order to satisfy r 7.32 and r 7.35 of the *Federal Court Rules 2011* (Cth). The Full Court held that the primary judge applied the incorrect test (FCJ [32]-[34], [40], [43]). FCJ [47], [49] correctly state the test that must be satisfied in order to satisfy r 7.35(4) (RS [7]-[8], [10]).
4. The Full Court did not hold that the orders made by the primary judge exceeded the jurisdictional limits of the Federal Court of Australia. It did not read down r 7.32 or r 7.35 but only clarified the test suggested in the words "unsatisfied because any of the following might occur" as they appear in the chapeau of r 7.35(4) (RS [9]).

30 *The findings of fact*

5. No challenge is made to the Full Court's finding at FCJ [62] that there is no realistic possibility that the Deputy Commissioner's judgment would be enforceable in the People's Republic of China (**PRC**) or Hong Kong. This Court should not now make

findings as to whether or not there exists any other lawful process available in or recognised by the PRC or Hong Kong that could assist the Deputy Commissioner or any receiver appointed to the assets of the Respondent (RS [25]-[28]). In any event, those asserted processes were not relied on either before the primary judge or in the Full Court.

The relationship between r 7.32 and r 7.35

6. Rule 7.32 and r 7.35 do not confer alternative independent bases upon which the Federal Court of Australia may make freezing orders (contra Deputy Commissioner's Reply dated 3 June 2021 (AR) [3]-[4]). Were it otherwise the criterion conditioning when the Court may make a freezing order expressed in r 7.35(4) and r 7.35(5) fall away as mere surplusage. Rule 7.32 is subject to r 7.35: *Anthony Hordern & Sons Ltd v Amalgamated Clothing & Allied Trades Union of Australia* (1932) 47 CLR 1 at 7 per Gavan Duffy CJ and Dixon J.

The causation requirement in r 7.35

7. The danger that a judgment would be unsatisfied must be "because any of [subparagraph (a) or (b)] might occur": r 7.35(4). If by reason of some privilege, immunity or disability there is no lawful process by which certain assets can be made to satisfy a debt then any judgment obtained by the Deputy Commissioner will remain unsatisfied because of that privilege, immunity or disability. The non-satisfaction of that judgment does not arise because of any of r 7.35(a) (debtor absconds) or r 7.35(b) (removal, disposition, dealing or diminution). Whether or not the debtor engages in any of the activities in subparagraph (a) or (b) has no causative effect on the Deputy Commissioner's ability to obtain satisfaction of her judgment by having recourse to those assets by any process available to her (RS [10]).
8. The absence of any lawful execution process available to the Deputy Commissioner will also deprive any freezing order made in those circumstances of the purpose of "preventing the frustration or inhibition of the Court's process": r 7.32. The freezing order does not have the effect of preserving assets so that they may later become liable to a process where no effective process has been found to exist (RS [12]).

The authorities

9. *Ballabil Holdings Pty Ltd v Hospital Products Ltd* (1985) 1 NSWLR 155, *Derby & Co v Weldon (Nos 3 and 4)* [1990] Ch 65, *Derby & Co Ltd v Weldon (No 6)* [1990] 1 WLR 1139 and *Masri v Consolidated Contractors International (UK) Ltd (No 2)* [2009] QB 450 stand only for the proposition that a Court of competent jurisdiction has jurisdiction to make in personam freezing orders (RS [15]-[24]). They do not expressly or by necessary implication dispense with a requirement that the judgment creditor seeking freezing orders over foreign assets must show a realistic possibility that they could enforce their judgment in that foreign jurisdiction.

10 *The proper purpose of a freezing order*

10. A freezing order functions to preserve the status quo and not to change it in favour of the Deputy Commissioner: *Cardile v LED Builders Pty Ltd* (1999) 198 CLR 380 at 404 [51] per Gaudron, McHugh, Gummow and Callinan JJ. The existence of assets not liable to execution by any process available to the Deputy Commissioner to satisfy her judgment represents the status quo.

11. Any litigant applying for an ex parte freezing order who knows that they are subject to an impediment under private international law should satisfy the Court that any freezing order made despite that impediment satisfies the purpose described in r 7.32.

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