



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

Yakun Shao
Appellant

- and -

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Crown Global Capital Pty Ltd (in prov liq) ACN 604 292 140
First Respondent

Crown Group Holdings Pty Ltd (in prov liq)
Second Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

1. This outline is in a form suitable for publication on the internet.

Part II: Propositions to be advanced in oral argument

20 *Ground 1*

2. Despite CA [38] (CAB 59), Shao had the option of accepting that Crown's payment to Peng discharged Crown's debt to her and Peng, and seeking damages for Crown's breach of its obligation to repay the monies into a bank account nominated by both Shao and Peng: **AS [19]**; *Mackenzie v Albany Finance Limited* [2004] WASCA 301 [**JBA 3, Tab 23, 512-573**]; **AS [43]-[44]**; *Hardie v Shadbolt* [2004] WASCA 175 [**JBA 3, Tab 19, 437-458**]; *Hungerfords v Walker* (1989) 171 CLR 125.
3. There is no reason to treat a defect in the time of payment any differently to a defect in the place of payment: **AS [45]-[47]**.

4. A joint creditor is entitled to claim damages from a debtor in circumstances where a debt has been repaid to the other joint creditor in breach of the contractually prescribed payment method: **AS [20]-[41]**; *Ardern v Bank of New South Wales* [1956] VLR 569 [JBA 3, Tab 13, 365-370]; *Catlin v Cyprus Finance Corp (London) Limited* [1983] QB 759 [JBA 3, Tab 17, 413-426]; *DAR International FEF Co v AON Limited* [2004] EWCA Civ 921 at [31]-[32] & [35] [JBA 3, Tab 18, 434-435].
5. Despite RS [17]-[32], the decision in *Catlin v Cyprus Finance Corp (London) Limited* [1983] QB 759 at 770-771 [JBA 3, Tab 17, 424-425] did not rely upon an implied term, but rather an express term: **Reply [3]-[5]**; *Boreland v Docker* (2007) Aust Contract Reports ¶90-256 at [110]-[111] [JBA 3, Tab 15, 401]; *Realestate.com.au Pty Ltd v Hardingham* (2022) 227 CLR 115 at [103] & [105] [JBA 2, Tab 8, 227-228]; *Rankin Investments (Qld) Pty Ltd v CMC Property Pty Ltd* [2021] QCA 156 at [29] & [81]-[82].
6. Despite RS [31]-[32], it is not the case that a debtor either repays a debt in conformity with the contract or the debtor has not performed the contract at all. It is possible for a creditor to accept repayment of a debt paid in breach of contract, and then claim damages from the debtor: **AS [43]-[44] & Reply [10]-[13]**; *Mackenzie v Albany Finance Limited* at [106] [JBA 3, Tab 23, 556].
7. When a party to a contract purports to perform the contract in a way that is non-compliant with the contract, the other party may, short of terminating for fundamental breach:
 - (i) reject performance (to the extent that it is able to) and require the other party to re-perform its primary obligation under the contract; or
 - (ii) accept/retain the purported but defective performance and seek damages for any loss that flows from the defect(s): **Reply [11]**; *Albright & Wilson UK Limited v Biachem Limited* [2001] 2 All ER (Comm) 537 [JBA 3, Tab 12, 349-364].

Ground 2

8. As illustrated by *Ardern*, *Catlin* and *DAR*, Shao's acceptance (in her suit against Peng) that Crown's debt to her and Peng had been discharged, did not constitute either:

- (a) an acceptance by Shao that Crown had complied with the payment method prescribed in the Facility Agreement; or
- (b) a ratification by Shao of Peng's unauthorised instruction to Crown to repay the loan into his bank account: **AS[29]-[33], [37], [39] & [49]**.

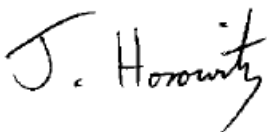
9. Where a principal sues an agent, the principal is taken to have ratified the agent's conduct only to the minimum extent necessary to maintain the cause of action: **AS [53]-[54]**; *Harrisons & Crossfield Limited v London North Western Railway Company* [1917] 2 KB 755 at 759 **[JBA 3, Tab 20, 463]**.

Respondents' Notice of Contention

- 10 10. There was no abuse of process in this case because:
- (a) Crown was not vexed at all in the 2016 Proceedings, never having been served;
 - (b) Shao had good reason not to proceed against Crown in 2016 – namely, so that she could obtain expedition of the proceedings against Peng:
 - (i) in the hope that he would repay her quickly (as he had done in 2015), so that she would not need to run a far more complex case against Crown; and
 - (ii) in circumstances where Shao had obtained a freezing order against Peng and had given an undertaking as to damages; and
 - (c) the 2016 Proceedings and Shao's subsequent case against Crown were not the staged conduct of what is factually one dispute: **AS [57]-[58], Reply [15]-[16]**; *UBS AG v Tyne* (2018) 265 CLR 77.

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Dated: 2 September 2025



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