HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA

No. S46/2025

BETWEEN: **YAKUN SHAO**

Appellant

and

CROWN GLOBAL CAPITAL PTY LTD (IN PROV LIQ)

ACN 604 292 140

First Respondent

CROWN GROUP HOLDINGS PTY LTD (IN PROV LIQ)

Second Respondent

OUTLINE OF ORAL SUBMISSIONS OF THE RESPONDENT

PART I INTERNET PUBLICATION

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

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

2 ***Ardern*** *v Bank of New South Wales* [1956] VLR 569 (**Vol 3, Tab 13**) was a response to the unsatisfactory result in ***Brewer*** *v Westminster Bank Ltd* [1952] 2 All ER 650 (**Vol 3, Tab 16**): RS [20]. *Brewer* was wrongly decided, but not for the reason given by Goodhart (**Vol 4, Tab 35**). The reason is that given by Glanville Williams (**Vol 4, Tab 36**), namely, that *Brandon v Scott* did not prevent the innocent account holder from obtaining a declaration that the debit was wrongful: RS [21]-[24]. The Goodhart analysis assumes that *Brandon v Scott* prevents the innocent account holder from obtaining such a declaration.

3 The plaintiff in *Ardern* was offered an election between damages or the same declaration that had been denied in *Brewer*: RS [19]. That implicitly accepted that *Brandon v Scott* did not prevent the innocent account holder from claiming the true balance of the account. For so long as the true balance can be claimed, there is no loss.

4 The mandate in *Ardern* should not have been construed as containing the Goodhart several, negative promises. A reasonable businessperson would not have understood the bank to be promising not to pay away its own money. The several promises raise the prospect of inconsistent elections if there is more than one innocent account holder, for example, if the cheque is forged by a third party, or if there are more than two account holders. *Ardern* was wrongly decided insofar as the plaintiff was held to have a right to damages.

5 If *Ardern* is good law, it should not be expanded beyond the mandate cases: RS [27]-[32], [36]-[38]. The election in *Ardern* is explicable as ratification by the plaintiff of the bank's conduct as agent in paying on the cheque. *DAR International FEF Co v AON Limited* [2004] EQCA Civ 921 (**Vol 3, Tab 18**) was a case dealing with an obligation to pay from an identified fund, so that the question was not merely what characteristics a payment needed to have in order to give a good discharge: RS [39]-[40], [29]. In the present case, there was no promise to pay from a fund and no relationship of agency between the appellant and first respondent.

6 The appellant's argument rests heavily on the concept of "acceptance" (AS [19], [27], [29]-[33], [41], [49]). Acceptance is not a principle of law that stands separate from established principles such as election, ratification and estoppel. A principal ratifies the acts of his or her agent, not the acts of the third party. What the appellant labels as her "acceptance" was ratification by her of Mr Peng's actions. The appellant ratified Mr Peng's acceptance of the early redemption notice, his nomination of the account and his receipt of the repayment. It is irrelevant that the appellant intended, subjectively, to keep alive a claim against the respondents: RS [46].

7 The appellant's ratification extends to the whole of the transaction between Mr Peng and the first respondent, which was the first respondent's repayment of the debt in accordance with a nomination purportedly given by Mr Peng on behalf of himself and the appellant. If there was no authorised nomination, then the first respondent did not get a good discharge.

8 The adoption of part of a transaction operates as a ratification of the whole. The appellant cannot ratify some parts of the transaction but disaffirm the rest, because that would enable the appellant to effect a transaction into which the first respondent would never have entered: *Republic of Peru v Peruvian Guano Company* (1887) 36 Ch 489 at 499-500 (**Vol 3, Tab 25**). The appellant accepted the benefit of the repayment to Mr Peng, knowing that

that benefit flowed from Mr Peng's unauthorised nomination of the account: *Australian Blue Metal Ltd v Hughes* (1961) 79 WN (NSW) 498 at 515.

9 The appellant has ratified all those acts of Mr Peng which must necessarily have been authorised in order for the first respondent to obtain a valid discharge of the loan. That includes Mr Peng's nomination of the account. The appellant cannot ratify Mr Peng's acceptance of the repayment on her (and his) behalf and claim damages to compensate her for not being repaid.

Abuse of process (RS [9]-[11], [47]-[51])

10 The proceedings should in any event have been stayed as an abuse of process. The claim against the respondents ought to have been raised in the 2016 proceedings against Mr Peng, which arose from the same facts and in which the respondents were initially named as defendants (**ABFM 14, 19-20**). The appellant made a considered decision not to pursue the respondents at that time (**RBFM 6**) and instead seeks to make them underwriters of her costs of pursuing Mr Peng. In the result, the Court's processes have twice been invoked in respect of the same underlying subject matter, and the respondents have belatedly been put to the burden of defending these proceedings (see AS [15] and PJ [7]).

Date: 2 September 2025

Stuart Lawrance **Christine Ernst** **Sarah Bradbury**