



HIGH COURT OF AUSTRALIA

5 November 2025

SHAO v CROWN GLOBAL CAPITAL PTY LTD (IN PROV LIQ) ACN 604 292 140 & ANOR
[2025] HCA 43

Today, the High Court unanimously allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales. The appeal concerned a term of a contract between a borrower and two lenders that required repayment of the loan into an account nominated by both lenders.

Under a note facility agreement, the appellant, Ms Shao, and her then husband, Mr Peng, lent money to the first respondent, Crown Global Capital Pty Ltd ("Crown Global"), with a guarantee by the second respondent, Crown Group Holdings Pty Ltd (collectively, "the Crown respondents"). A term of the note facility agreement provided that money payable by Crown Global to Ms Shao and Mr Peng could be repaid by deposit to an account nominated by both Ms Shao and Mr Peng ("the Account Nomination Term").

Contrary to the Account Nomination Term, Crown Global repaid the money into an account nominated only by Mr Peng. Mr Peng transferred the money to his parents in China. Ms Shao brought proceedings against Mr Peng, bankrupted him and obtained recovery of a small part of the funds Mr Peng had received. Ms Shao then claimed damages against Crown Global, including for its breach of the Account Nomination Term.

The Crown respondents' defences were that: (i) the Account Nomination Term operated only as a condition precedent to discharge of the debt; (ii) by prosecuting the action against Mr Peng, and recovering in his bankruptcy, Ms Shao had affirmed the discharge of the debt and thereby ratified Mr Peng's nomination of his bank account and, in effect, waived any breach of the Account Nomination Term by Crown Global; and (iii) it was an abuse of process for Ms Shao to proceed against the Crown respondents having not done so in the earlier proceedings against Mr Peng.

The trial judge in the Supreme Court of New South Wales and the Court of Appeal concluded, in effect, that Ms Shao had waived the breach of contract by Crown Global by her actions which affirmed the discharge of the debt owed by Crown Global.

The High Court held that this conclusion was incorrect. The note facility agreement relevantly contained two separate obligations: (i) an obligation to repay the debt owed to Ms Shao and Mr Peng jointly; and (ii) the Account Nomination Term, concerning the manner in which the debt was to be discharged, which was owed to Ms Shao and Mr Peng jointly and severally. It was open to Ms Shao to accept that the debt had been discharged but to proceed against the Crown respondents for the breach of the Account Nomination Term by Crown Global. Further, it was not an abuse of process for Ms Shao to seek first to recover from Mr Peng before proceeding against the Crown respondents. Amongst other things, the proceedings against the Crown respondents were for remedies which were cumulative, not alternative, to those sought against Mr Peng; no choice was required between them.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.