

BETWEEN:

XINGYOU KONG

Plaintiff

- and -

TST PARTNERS GROUP PTY LTD
(ACN 615 101 025)

Defendant

GENERAL FORM OF ORDER

ASSOCIATE
JUDGE:

The Honourable Associate Justice Lansdowne

DATE MADE:

3 April 2019

ORIGINATING
PROCESS:

Originating motion filed 8 March 2019

HOW OBTAINED:

On return of the plaintiff's summons filed 8 March 2019

ATTENDANCE:

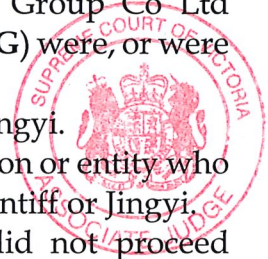
Mr J D Catlin, counsel for the plaintiff
Dr G Boas, counsel for the defendant

OTHER MATTERS:

The orders reflect the following matters.

Claim

1. The plaintiff seeks that funds paid into Court in the sum of \$2,685,891.49 (**Remaining Funds**) together with any interest thereon be paid out to him. The Funds are what remains of the balance of almost \$5M (**Original Funds**) paid to the defendant (or a related entity) in connection with a proposed public offering of shares in JYG Australia Ltd (**JYG**), a company in which Jingyi Group Co Ltd (**Jingyi**) and YSG Investments Pty Ltd (**YSG**) were, or were proposed to be, large shareholders.
2. The plaintiff is, or was, the controller of Jingyi.
3. There are questions as to whether the person or entity who advanced the Original Funds was the plaintiff or Jingyi.
4. The public offering of shares in JYG did not proceed

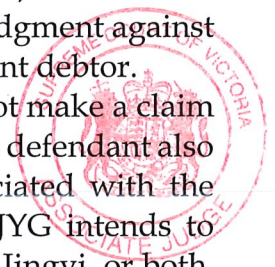


because the plaintiff was arrested in China for misappropriation, possibly of monies including the Original Funds.

5. The evidence does not establish with certainty the current position in relation to any such charges, or whether there is any legal impediment to the plaintiff bringing this proceeding, such as a confiscation order.
6. Some evidence suggests that Jingyi may also have been charged for this conduct, or be insolvent due to the plaintiff's arrest. The evidence does not show whether there is any legal impediment to Jingyi making a claim to the Remaining Funds, if it is the proper plaintiff.
7. Further, the evidence in support of the proceeding is given not by the plaintiff, but by a Mr Chao Ding, who claims to be the attorney for the plaintiff. Counsel for the plaintiff concedes that the copy of the power of attorney in Mandarin exhibited to Mr Ding's affidavit is not in fact the power of attorney translated in the copy translation exhibited to that affidavit. A copy of the correct original power of attorney in Mandarin is produced and marked Exhibit A. A copy of the translation on which the plaintiff relies is marked Exhibit B.
8. There remain questions in relation to the power of attorney including as to the accuracy of its translation and whether it extends to the prosecution of this litigation and, if so, for whom.

Other claimants

9. The Remaining Funds were paid into Court by a law firm related to the defendant in view of competing claims to them. At that time, it was envisaged that there may be claims to the Remaining Funds by JYG, YSG and/or potentially the law firm, as well as by the plaintiff and/or Jingyi.
10. The Court informs the parties that the Court would ordinarily only pay out funds in Court to the person or persons with a proprietary interest in those funds. A person who has no such proprietary interest, but has a claim against the person who does own the funds, must first obtain judgment against that person, and then a charging order or similar to enforce that judgment against the funds in court belonging to the judgment debtor.
11. The defendant informs the Court it does not make a claim for the Funds. The solicitors who act for the defendant also act for JYG, YSG and the law firm associated with the defendant. They inform the Court that JYG intends to bring a proceeding against the plaintiff, or Jingyi, or both,



for loss of opportunity and other damages. If successful in that proceeding, JYG may seek to enforce that judgment against the Funds if they remain in Court. YSG and the law firm do not make any claim for the Funds.

12. Mr Ding deposes that the Original Funds were raised from multiple investors in China and that the plaintiff has an obligation to repay them. The Court does not at this stage direct that notification be given to those investors, as it is likely that they did not have a direct proprietary interest in the Original Funds, and so do not have such an interest in the Remaining Funds. Their claim, if any, is likely to be against the plaintiff, or Jingyi, or both.

Progress of the application

13. Although the defendant is not an opposing claimant to the Funds, the Court would be assisted by a contradictor given the complexity of this application and the need to consider Chinese law. The defendant indicates that it, or another person, may be prepared to play that role.

THE COURT ORDERS THAT:

1. By 10 April 2019 the plaintiff provided to the Court the original of Exhibit A and a fresh translation of Exhibit A into English by a Melbourne based NAATI translator.
2. By 17 April 2019 the defendant may inspect and copy those documents by arrangement with the associate to Associate Justice Lansdowne.
3. By 15 May 2019 the plaintiff file and serve an affidavit or affidavits deposing to at least the following:
 - (a) Whether the plaintiff seeks to remain a plaintiff;
 - (b) Whether the plaintiff seeks to have Jingyi added or substituted as a plaintiff;
 - (c) The current position of any criminal charges against the plaintiff or Jingyi;
 - (d) Whether that position presents any legal impediment to either being a plaintiff (to be supported by expert evidence on Chinese law);



- (e) Whether Jingyi remains in existence and solvent;
 - (f) If no to either alternative within the preceding paragraph, and Jingyi is sought to be substituted or added as a plaintiff, who, if anyone, may bring a claim to the Funds in Court on behalf of Jingyi (to be supported by expert evidence on Chinese law);
 - (g) Any further evidence to support the contention that Mr Ding is authorised to bring this proceeding, and, if so, for whom;
 - (h) The identity and contact details of all investors known to the plaintiff or Mr Ding as referred to in Mr Ding's affidavit sworn 6 March 2019 at [26] or [29]; and
 - (i) The nature of the obligation owed by the plaintiff to investors as referred to in Mr Ding's affidavit at [26].
4. By 22 May 2019 the defendant file and serve an affidavit or affidavits deposing to at least the following:
- (a) Whether it, or its representative, wishes to remain as a contradictor, but not a claimant; and
 - (b) If not, any proposed other contradictor.
5. The proceeding is adjourned to 29 May 2019 at 10.30am in Court 2, 436 Lonsdale Street, Melbourne for further directions.
6. The parties' costs be reserved.

DATE AUTHENTICATED: 4 April 2019


THE HON. ASSOCIATE JUSTICE LANSDOWNE

