IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 5/2021
[2022] NZSC 76

BETWEEN	DONGLIN DENG Appellant
AND	LU ZHENG Respondent

Hearing:	17 August 2021
Court:	William Young, Glazebrook, O'Regan, Ellen France and Williams JJ
Counsel:	J D Turner and L X Huang for Appellant D Zhang and E Tie for Respondent J F Anderson QC, M Chen and Y Y Mortimer-Wang for New Zealand Law Society as Intervener
Judgment:	20 June 2022

JUDGMENT OF THE COURT

A The appeal is dismissed.

B Mr Deng must pay Mr Zheng costs of $25,000 plus usual disbursements (including travelling expenses for two counsel), to be fixed by the Registrar if necessary.

REASONS
(Given by William Young J)

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The appeal

[1] Messrs Donglin Deng, the appellant, and Lu Zheng, the respondent, had a working relationship which commenced in the late 1990s. In 2015, they agreed to end their association. Primarily in issue is the nature of their business relationship between 2010 and 2015. Mr Zheng says that from March 2010 he and Mr Deng were partners engaged in property development and construction projects which were conducted in the names of a number of companies. Mr Deng denies this and argues that there was no overarching partnership. Instead, he contends that the projects in which they engaged were carried out through companies in which the two men had interests that were reflected in their shareholdings and account balances.

[2] It is common ground that Messrs Deng and Zheng agreed on 31 May 2015 to end their business relationship (whatever it was). Attempts at a complete and amicable separation of their interests were unsuccessful and this litigation followed.

[3] In the High Court, Mr Deng was successful, with Downs J concluding (inter alia) that there was no partnership.[1] On appeal, the Court of Appeal concluded that the relationship had been a partnership and, on that footing, granted relief to Mr Zheng which included remitting the proceeding to the High Court for a taking of accounts.[2]

[4] In granting leave to appeal from the Court of Appeal judgment, this Court said:[3]

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1 *Zheng v Deng* [2019] NZHC 3236 [HC judgment].
2 *Zheng v Deng* [2020] NZCA 614 (Goddard, Duffy and Nation JJ) [CA judgment].
3 *Deng v Zheng* [2021] NZSC 43 (footnotes omitted).

> [1] The appeal raises potential issues about the interpretation of documents translated from Mandarin and the cultural setting in an arrangement between two Chinese parties whose business relationship appears to have been conducted in Mandarin. The Court of Appeal noted that it was conscious that language is used in a broader linguistic and cultural setting, by reference to background assumptions about personal and business relationships and the ways in which dealings are normally structured, that were shared by the parties, but which the Court may not be aware of or understand. The Court referred to the need to be sensitive to the social and cultural context and to be cautious about drawing inferences based on preconceptions about business dealings.
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> [2] It may be necessary for this Court to explore these factors in order to resolve the appeal. Accordingly, we invite the New Zealand Law Society | Te Kāhui Ture o Aotearoa (the Law Society) to consider intervening in this appeal, after consultation with NZ Asian Lawyers. We direct the Registrar to bring the appeal to the attention of the Law Society and NZ Asian Lawyers and provide them with a copy of this judgment.

[5] At the hearing of the appeal, we heard from the Law Society and the parties also made submissions about the cultural context to the case, albeit that neither suggested it was of decisive significance. As it happens, we are now satisfied that the case turns on inferences to be drawn from contemporaneous written material with the result that the cultural issues on which we heard submissions are not determinative. We will, however, discuss those issues briefly later in these reasons.

Background

[6] This section of our judgment is based substantially on the Court of Appeal judgment.

[7] For many years, Mr Zheng carried on business as a property developer. Mr Deng's background is as a project manager and land developer. They met in the late 1990s. Mr Deng was initially employed by Mr Zheng to work on property development and construction projects. In 2004 and subsequently, Mr Deng acquired ownership interests in some of the projects that Mr Zheng was involved in. These projects were carried out through companies. Individuals others than Messrs Zheng and Deng (including family members) were involved in these projects and the associated companies. These people have been referred to throughout the case as "the old group".

[8] The companies involved in this dispute included:

(a) Albany Apartments Ltd (AAL);

(b) D&R Holmes Ltd (DRHL);

(c) Eversolid Construction Ltd (ECL);

(d) New Concept Construction Ltd (NCCL);

(e) Orient Construction Group Ltd (OCGL);

(f) Orient Construction Ltd (OCL);

(g) Orient Homes Ltd (OHL); and

(h) Rosedale Apartments Ltd (RAL).

[9] In 2007, the old group decided to buy and develop 11 lots of land in Bella Vista Drive, Gulf Harbour, Whangaparāroa. This was referred to as the "Bella Vista Project". Ultimately, AAL purchased four lots and OCGL purchased the remaining seven.

[10] In 2008 the old group began to break-up as some members went their separate ways. As a result of this process, Messrs Zheng and Deng became the only members of the old group with a continuing involvement in the Bella Vista Project.

[11] Messrs Zheng and Deng needed funding to complete the Bella Vista Project. Mr Bin Jiang, an acquaintance of Mr Deng, agreed to contribute capital. A short agreement dated 27 April 2008 (the Bella Vista Agreement) was entered into. Its title was variously translated into English from the original Mandarin as "partnership agreement" or "cooperation agreement".[4] Mr Zheng and Mr Jiang both signed the Bella Vista Agreement. Mr Deng did not. He says he did not know about it, at least

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4 In the original Mandarin: 合作协议; or in Romanised script: hézuò xiéyì.

at the time it was entered into. Mr Zheng says he signed the Bella Vista Agreement on behalf of himself and Mr Deng.

[12] The Bella Vista Agreement provided that "Orient Construction Group (Orient Homes Limited and Albany Apartment Limited) occupies 60%" and "Bin Jiang occupies 40%". It went on to provide, among other matters, that:

(a) "Orient Company designates 6 pieces of [land] to be under the names of the companies under its umbrella" and Mr Jiang "designates 5 pieces of [land] to be under their company or (overseas or local) personal name".

(b) Both parties are "responsible for the safety of the persons whose names are designated and, in case of any accident, shall each take full responsibility".

(c) Various fees and costs, including loan interest "no matter under whose names", are "universally incorporated in the joint expenditure of the project". "Direct expenses are jointly shared by both parties." As well, "[b]oth parties" are to "jointly cover early stage preparation costs, drawing design, application for approval, etc".

(d) Upon the sale of each property, "account clearing (or division or re-investment) is carried out immediately".

(e) Orient Company was responsible for, among other matters, "compiling a project account settlement sheet and a project profit sheet after the sale of property is accomplished, and reporting to Bin Jiang … once every two months".

(f) Orient Group was responsible for the construction work.

[13] The references to "Orient Company" (or in some places, "Orient Group") in the translated versions appear as 东方公司 in the original Mandarin.[5] In the Court of Appeal, the term was translated into English as "Orient Firm" or "Orient Enterprise".[6] On Mr Zheng's case, the Orient Company (or Group) was a partnership between him and Mr Deng.

[14] DRHL was incorporated on 13 May 2008. Mr Jiang was its sole shareholder and director. It appears he used that company as a vehicle for holding some of the Bella Vista sections. This was consistent with the reference in the Bella Vista Agreement to him designating land to be under "their company".

[15] In 2011, Mr Tong Zhu, a friend of Mr Deng, provided funding of $500,000. This was in part to the newly formed ECL. Although Mr Zhu was the sole shareholder and director of ECL, he was not involved in its business and the benefits and risks of the projects it carried out were jointly shared by Mr Zheng and Mr Deng. As this indicates, Mr Zhu's investment of $500,000 was treated as a loan.

[16] Over the course of the Bella Vista Project, sections were transferred, some to third party buyers and others to relations and friends of one or other of Messrs Zheng, Deng and Jiang. The latter transactions typically involved financial support provided by one or more of the companies involved in the Bella Vista Project to the purchaser. Mr Zheng says that these related purchasers held the sections as nominees for him and Mr Deng in relation to their 60 per cent interest. Mortgage advances obtained by the related party purchasers were used for the Bella Vista Project. Despite these transfers, these properties continued to be developed and dealt with in the manner provided for in the Bella Vista Agreement.

[17] A central feature of the case is a set of internal accounts.

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5 In Romanised script: dōngfāng gōngsī.

6 Dictionary definitions were used by the Court of Appeal: CA judgment, above n 2, at [87]. This was challenged by counsel for Mr Deng before us. We will come back to this challenge but note that resort to dictionaries is permissible under s 128(2) of the Evidence Act 2006.

[18] The starting point for them is a document dated 31 March 2010. It is headed "Orient Construction Group 10th Reconciliation (Zheng Deng)". This document appears to have been signed by both Mr Zheng and Mr Deng. It records the winding up of the financial affairs of the old group.

[19] Internal accounts referable to Messrs Zheng and Deng were then usually prepared on a bi-monthly basis. They record the amalgamated asset position of what appears to be a single enterprise, a running account of the contributions each made to and their drawings against that amalgamated asset position and the expenses and revenue for all current projects. They generally included a line to the effect that the parties would decide whether to distribute or reinvest any profits at the end of each financial year. They were calculated on a basis which looked through the structure of the various companies and revealed an intention to share profits equally.

[20] Initially, the internal accounts were primarily the responsibility of Ms Ying Zheng, the sister of Mr Zheng. In November 2013, responsibility for the maintenance of these accounts shifted to Ms Xiao Feng Lin, the spouse of Mr Deng. On the evidence advanced on behalf of Mr Zheng and supported by contemporaneous documents, Ms Lin had been involved in their preparation from the outset, keeping records of the contributions and expenses of Mr Deng, which she had then made available to Ms Zheng to be incorporated in the internal accounts.

[21] Messrs Zheng, Deng and Jiang were involved in a venture known as Rosedale Apartments. This involved a development at 40 Rosedale Road which was carried out through RAL. The shareholders in this company changed over time. As at May 2015, when Messrs Zheng and Deng agreed to separate their affairs, the participants in this project were a Mr Chenggang Zhang, as to 60 per cent, Mr Zheng, as to 35 per cent, and Mr Deng as to 5 percent. On Mr Zheng's case, RAL lay outside of the partnership. However, OCL carried out work on this project. The internal accounts reflect this work but not the equity interests of Messrs Zheng and Deng in RAL and are thus consistent with Mr Zheng's case.

[22] By 2015, the business relationship between Mr Zheng and Mr Deng was under strain. The project at 40 Rosedale Road had not gone well. OCL had poured the

concrete without adequate reinforcing. The mistake was not found for some time and cost more than $100,000 to fix. There were related cashflow problems. Ultimately, Mr Deng decided, with Ms Lin's encouragement, that he and Mr Zheng should separate their business interests. In May 2015, Messrs Zheng and Deng agreed to do so.

[23] Negotiations followed about the financial consequences of this separation and how it should be implemented. In June 2015, Mr Zheng sent a document titled "Principles in Separation" to Mr Deng. Mr Deng annotated the document point by point in red type and returned it. Mr Zheng added further annotations in green type responding to Mr Deng's comments. Mr Deng then provided a further set of comments (again in red).

[24] Mr Deng says that the parties reached agreement on these principles as a result of further email exchanges and discussions, and the agreed approach to separation was largely implemented. Mr Zheng says they were not able to reach a final agreement and that what was agreed has only been implemented in part. He claims that final reconciliation of the parties' mutual dealings is required.

[25] The Principles in Separation document was prepared on a basis that, as with the internal accounts, looked through the various companies and sought to allocate equally to Messrs Zheng and Deng the benefits and burdens of the various projects.

The proceedings in the High Court

The competing claims

[26] Mr Zheng and OCL (of which Mr Zheng was by then sole director and shareholder) commenced proceedings in the High Court against Mr Deng and eight other defendants. The claim was amended on a number of occasions. The case went to trial on the basis of a second amended statement of claim.

[27] A number of issues which were the subject of the High Court proceedings have now fallen away, leaving for determination by us only Mr Zheng's claims that there was a partnership between him and Mr Deng or, alternatively, a joint venture, and for

orders for inquiries and the taking of accounts in connection with the business of the partnership/joint venture and the various corporate vehicles through which the partnership/joint venture was pursued.[7]

[28] On the issues we must determine, the case as pleaded in the second amended statement of claim was as follows:

(a) In 2004, Mr Zheng and Mr Deng entered into a partnership arrangement, which Mr Zheng referred to as the "Orient Partnership".

(b) The Bella Vista project was 60 per cent owned by the Orient Partnership and 40 per cent owned by Mr Jiang.

(c) Other companies were formed to carry out other projects, with OHL and ECL said to be companies used as vehicles to advance the Orient Partnership's business objectives.

(d) There was an agreement to separate their business interests on or about 31 May 2015.

[29] Mr Deng's defence was that his relationship with Mr Zheng was based on various corporate and contractual structures but with no overarching partnership or fiduciary elements.

High Court trial

[30] At trial, Mr Zheng's evidence focused not so much on a partnership commencing in 2004, as pleaded in the second amended statement of claim, but rather with the situation as it was from 2010. Mr Zheng called a number of witnesses including his two sisters, Ying and Mei Zheng and Ms Tina Payne, a forensic accountant who had, among other things, analysed the internal accounts.

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[7] Also conditionally in issue was a claim by Mr Zheng against Mr Deng for a particular sum of money but this claim was only pursued as an alternative to Mr Zheng's claim that there was a partnership. Given the conclusion which we reach on the partnership issue, there is no occasion to address this claim.

[31] For the defendants, Mr Deng gave evidence, as did his spouse Ms Lin. Mr Deng also called expert evidence from Mr Andrew McKay, a chartered accountant with expertise in forensic accounting.

The High Court judgment

[32] On the material issues, the Judge found for Mr Deng. His reasons for doing so involved or included:

(a) Placing considerable weight on the language used (often based on translations) in contemporaneous documents, in particular references to companies by name or the use of "company" as an adjective.[8]

(b) The external accounts of the companies (which gave no indication of an overarching partnership) and generally associated inconsistency between what Mr Zheng said was the true arrangement between him and Mr Deng and the way it was presented to outsiders.[9]

(c) A substantial rejection of the relevance of the internal accounts and an associated conclusion that much of the evidence of Ms Payne was inadmissible.[10] He considered that if the internal accounts revealed an intention to split profits and maintain equal investments, this did not necessarily establish the existence of a partnership.[11]

(d) Inconsistency between the partnership alleged and the "statutory landscape" in relation to companies.[12]

(e) A marked preference for the evidence of Mr Deng over that of Mr Zheng and his witnesses.[13]

[33] The last three of these considerations warrant some elaboration.

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8 See, for example, HC judgment, above n 1, at [69]–[70].
9 At [71]–[73] and [80].
10 At [68].
11 At [79] and [82].
12 At [84].
13 See, for example, at [136]: "I prefer Mr Deng's evidence (again)."

[34] The Judge used pejorative language in relation to the internal accounts. At the beginning of his judgment, he described them as a "set of impenetrable, internal business accounts".[14] He also said that:[15]

> An experienced forensic accountant said the internal accounts were "bizarre", "enigmatic", and a "moving feast of numbers", analysis of which would involve "throwing good money after bad".

We note in passing that these epithets originated with the Judge who put them to Mr McKay, who then agreed with them. Later in his judgment, the Judge said:

> [79] However, even if … the accounts do reveal intent to split profits and maintain equal investments, it does not necessarily follow partnerships existed. This introduces a series of concerns I raised at the end of trial, for, Mr Zheng and his lawyer, Mr Zhang, appeared to have assumed otherwise. Neither seemed to have given obvious thought to the countervailing corporate structure, absent fiduciary elements or statutory landscape. Both seemed to have been blinded by the internal accounts. And, mistaken possible evidence of partnership as conclusive.

In support of the proposition in the first sentence, there is a footnote reference to s 5(c) of the Partnership Act 1908 (the Partnership Act), which was then operative.[16] We return to that subsection later.

[35] In referring to the "statutory landscape", the Judge had in mind s 4 of the Partnership Act. This provides:

> **4 Definition of partnership**
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> (1) **Partnership** is the relation which subsists between persons carrying on a business in common with a view to profit.
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> (2) But the relation between members of any company or association registered as a company under the Companies Act 1993 … is not a partnership within the meaning of this Act.

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14 At [2].

15 At [3].

16 Schedule 1 cl 1 of the Partnership Law Act 2019 provides that "[t]his Act applies to every partnership regardless of when it was formed". The Act received assent on 21 October 2019 and commenced, in accordance with s 2, six months later. The High Court judgment was delivered on 10 December 2019, so the Partnership Act 1908 was the operative law. It is therefore the operative law for the purposes of this appeal. The 2019 Act does not make any significant changes.

[36] The Judge placed considerable weight on s 4(2):[17]

> Mr Zheng and Mr Deng cannot have been partners while each was a shareholder in the same company because s 4(2) of the Partnership Act precludes this … No partnership could encompass [OCL] between 23 July 2013 and 2 April 2016; [OCGL] for a nine-day period in October 2008; [AAL] for the same period; and [RAL] between 14 January 2014 and 8 September 2015 (albeit, as observed, Mr Zheng said [RAL] was not within any partnership). In each period, Mr Zheng and Mr Deng were members of the same company.

[37] As to the substantial rejection of the evidence of Mr Zheng, the Judge relied on some of the factors just mentioned (or their corollaries) and, as well:

(a) Mr Zheng having signed external accounts which were inconsistent with the internal accounts.[18]

(b) Indications of a relaxed attitude to illegality, for instance as to tax and what were said to be "fictitious" invoices.[19]

(c) What the Judge regarded as the lack of any good reason for RAL not being within the alleged partnership, as Mr Zheng contended.[20]

(d) His view that Mr Zheng had not discovered the Principles in Separation document.[21]

The judgment of the Court of Appeal

[38] In its judgment, the Court of Appeal began its analysis with a "note of caution":

> [86] One important feature of the case is that almost all the primary records, and the parties' correspondence, are in Mandarin. Mr Deng and a number of other witnesses gave their evidence in Mandarin, with the assistance of an interpreter. We are conscious that when referring to relevant documents, it is necessary to bear in mind that the Court is referring to English translations prepared by different people at different times, who may or may not have understood and taken into account the legal nuances of particular words and phrases that they have used. In some cases—for example, the

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17 HC judgment, above n 1, at [84].
18 At [71].
19 At [74].
20 At [76].
21 At [77].

> Bella Vista Agreement referred to above—different translators used different terms in their English translations of the same Mandarin terms. None of the translators gave evidence about why they used certain terms rather than others in particular documents. In these circumstances, a high degree of caution is required before attributing any significance to the precise terms that appear in the various English translations. There is a real risk of nuances in expression and context being lost in translation.

By way of example the Court noted that the heading of the Bella Vista Agreement could be translated as a "partnership" agreement or a "cooperation" agreement.[22] It went on:[23]

> And, critically, the Collins Chinese-English dictionary confirms that the term frequently used to refer to the parties' overall business association in documents and email correspondence—公司—can be variously translated as "company", "firm" or "enterprise". It would be wrong to attribute any legal significance to translations of this term without evidence specifically addressed to whether the term has, in its original language and original context, a corresponding significance.

[39] The Court also referred to cultural considerations:

> [88] We are also conscious that language is used in a broader linguistic and cultural setting, by reference to background assumptions about personal and business relationships and the ways in which dealings are normally structured, that the parties will have shared but that the Court may not be aware of or understand. For example, as the author of a recent report explains:[24]
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> > 307 *Guanxi* often governs the Chinese way of doing business, and is in part the reason why Chinese people are less likely to conduct business by using a formal contract and more likely to do so via a "handshake." As Dr Ruiping Ye notes:
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> > > As written contracts are perceived as evidence for transactions, and requiring evidence for agreements with one's family or friends would appear to be distrusting, many harmony-loving Chinese will find it difficult to ask for a written contract with family, friends or close acquaintances. In cases of close relationship, it is honour that binds the parties, rather than the written contract. Nevertheless, each party would

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22 At [87].

23 At [87].

24 Mai Chen *Culturally and Linguistically Diverse Parties in the Courts: A Chinese Case Study* (Superdiversity Institute for Law, Policy and Business, November 2019) (footnotes omitted). See also the article from which this report quotes: Ruiping Ye "Chinese in New Zealand: Contract, Property and Litigation" (2019) 25 CLJP/JDCP 141 at 157–158. See also the report at [700]–[727] for a discussion on the reasons why there may be a lack of contemporaneous documentary evidence in such cases.

> believe that a binding contract exists between them if the terms of the agreement have been discussed and words of confirmation have been spoken unequivocally.
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> 308 Dr Ye notes that where contracts are drafted, they are generally brief. Dr Ye says that this was "sufficient when the society operated on the basis of mutual trust and was governed by social pressure" but that it is "increasingly becoming insufficient as modern life becomes more complicated" and that "parties who are not assisted by competent lawyers do not necessarily turn their minds towards complex or ambiguous matters." This concern, and the challenge that this creates in ensuring the courts are adequately equipped to provide Chinese parties with equal access to justice, is reflected in some of the cases in our case review, and also in our interviews with judges and lawyers.

> [89] In this case there was no expert evidence about relevant cultural factors to assist the Court. We have done the best we can to be sensitive to the importance of social and cultural context and, in particular, to be cautious about drawing inferences based on our preconceptions about "normal" or "appropriate" ways of structuring and recording business dealings. Rather, we focus on the substance of the parties' arrangements as revealed by their conduct over time.

[40] The Court considered that the High Court Judge had misunderstood the effect of s 4(2) of the Partnership Act:

> [96] The Judge also appears to have proceeded on the basis of a misapprehension about the effect of s 4(2) of the Partnership Act. That provision does no more than establish that persons who are shareholders in a company are not by reason of that relationship alone partners for the purposes of the Partnership Act. But, importantly, it does not provide that two individuals who are shareholders in the same company cannot also be partners, whether generally or in respect of the ownership of that company. It is not uncommon for a partnership to own shares in one or more companies, in connection with the partnership business. Sometimes those shares are held in the same proportions as the partners' stake in the partnership itself. But that alignment is not necessary. Shares may be held by one partner, or by a subset of the partners, on trust for the firm as a whole. And even if they are held by all partners, the shares may be held by each partner on trust for the firm as a whole.

[41] The Court concluded that the evidence established that Messrs Zheng and Deng were carrying on a property development and construction business in common with a view to profit:

> [97] … The business comprised a number of projects, in relation to which they were equal contributors, with an entitlement to an equal share of any

> profits and a responsibility to bear an equal share of any losses. Those projects were carried out through a number of corporate vehicles including OCGL, AAL, OCL and ECL. Although shareholdings in these entities differed, from March 2010 at the latest the parties proceeded on the basis that they were equal stakeholders in the projects regardless of the company through which they were carried out.
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> [98] RAL was an exception. The stakes of Mr Zheng and Mr Deng in this particular investment vehicle were not equal. Rather, their respective interests were aligned with their shareholding in RAL …

[42] In reaching this conclusion, the Court placed heavy reliance on the internal accounts which it saw as aimed at ensuring "equal contributions to the capital of the overall venture, and an equal sharing of benefits and burdens from the venture and the various projects it undertook".[25] The Court noted that:[26]

> The time-consuming exercise of creating and maintaining these accounts would not have been necessary if the parties' relationship had been confined to their respective shareholdings and current accounts with the various companies, as Mr Deng contended.
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> … [T]hose internal accounts provide strong evidence in support of the existence of an underlying relationship between the two men embracing the various corporate vehicles, and the projects conducted through them, which was not confined to their respective shareholdings and current accounts with the companies.

[43] The Court was, as well, of the view that "conclusive evidence that there was a partnership in this case is provided by the Principles in Separation document to which both men contributed".[27] As to this, it commented:[28]

> (a) The principles that they are discussing look through the relevant corporate vehicles to allocate the benefits and burdens of each of the projects and of the relevant underlying assets and liabilities.
>
> (b) An equal sharing approach is adopted in relation to projects carried out by the companies, identified by Mr Zheng as falling within the scope of the partnership, including companies in which one or other was the sole shareholder, and ECL (in respect of which neither was a shareholder). In relation to ECL, for example, it was agreed as follows:

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25 CA judgment, above n 2, at [99].
26 At [99]–[100].
27 At [102].
28 At [102] (footnote omitted). Parts of this text were coloured in red or green to indicate their author but we have removed these colours.

[Mr Zheng's proposal]

ECL shall belong to Deng. The taxes in the 2014-2015 financial year shall be jointly covered by both parties. Those in the 2015-2016 financial year and afterwards shall be covered by Deng personally.

[Mr Deng's response]

As the 103 and 50 projects are not finished, they should be jointly covered. ECL shall not be closed until the projects are finished.

[Mr Zheng's response]

Agree.

(c) The parties agreed that certain unfinished projects would be "jointly owned by both parties". This only makes sense against a backdrop of prior joint ownership of all projects, with these nearly completed projects to remain jointly owned until completion, after which the profit would be "split up".

(d) The sharing of liabilities is reflected in the proposal made by Mr Zheng that OHL (100 per cent of the shares in which were held in Mr Deng's name) would close immediately, with all of its taxes and responsibilities (including repairs to properties) jointly covered by both parties. This confirms a "common business" overlay on top of the corporate structure.

(e) Item 9 contemplates a "last reconciliation of accounts" with money owed to each other by the two parties being cleared by the end of 2015. Mr Zheng made reference to clearance in cash as soon as possible "[no] matter who owes whom as a result of the division".

(f) One exception to equal sharing is reflected in item 10, which provides for independent calculation of the RAL investment and sale of Mr Deng's shares as soon as possible. That is consistent with this entity sitting outside the partnership, but the parties needing to deal with that unequally owned joint investment in order to separate all their interests. Other references to the Rosedale Apartments Project in this document (at item 4) relate to construction work carried on at that site by OCL, not the underlying property investment. The parties did have an equal interest in the construction work.

[44] The Court of Appeal then discussed the reasons given by the Judge for rejecting Mr Zheng's case.

[45] It considered "that the Judge gave too much weight to the use of particular language—or the absence of particular language—in the dealings between the

parties".[29] "[T]he pervasive references to '公司' [could] be read as references to a firm/partnership rather than to a company with separate legal personality".[30] It saw the absence of a formal written partnership agreement as of no materiality, as was the absence of separate bank accounts and GST registration for the partnership.[31] It considered that the Judge was wrong to see "inconsistency, or any element of impropriety, in a partnership owning one or more companies that deal with the outside world".[32] It also saw little significance in the difficulty of reconciling the internal accounts with the external accounts; this given that "the internal accounts were intended to keep track of the underlying joint interests of the two participants in the various projects, regardless of shareholding in particular companies".[33]

[46] As to what the Judge had described as "likely impropriety",[34] the Court commented:[35]

> The account given by Mr Zheng of the way in which funds were transferred and used by the various companies was consistent with the evidence of Mr McKay about the manner in which the finances of the projects operated. We accept Mr Zhang's submission that frank acknowledgement of the informal manner in which the Group operated does not affect the credibility of Mr Zheng's evidence. Nor was it suggested that any possible illegality rose to a level where Mr Zheng's claim should not be entertained by the Courts. This is in our view something of a red herring, in the context of these proceedings. It seems likely that there were breaches of the two men's duties as directors of the various companies. Some of the dealings disclosed by the evidence may have had tax consequences: but that is a matter for the Inland Revenue Department to address. This does not mean that Mr Zheng is disentitled from seeking relief in respect of the partnership. Still less does it cast doubt on his credibility.

[47] Two other reasons given by the Judge for not accepting the case for Mr Zheng were also dismissed:

(a) The Court of Appeal was satisfied that there was a straightforward reason why RAL, as a venture, had been excluded from the partnership

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29 At [105].
30 At [105].
31 At [108]–[109].
32 At [111].
33 At [112].
34 HC judgment, above n 1, at [75].
35 CA judgment, above n 2, at [114].

and that the references to RAL in the some of the documentation, including the internal accounts, were consistent with Mr Zheng's version of events.[36]

(b) The Judge's understanding that Mr Zheng had not discovered the Principles in Separation document was simply wrong. This is because the parties ultimately confirmed to the Court of Appeal that he had indeed discovered the document.[37]

[48] The Court dealt in some detail with the Bella Vista Project. It thought it was "clear" that the transfers of sections to family members were not "arm's length absolute sales".[38] It also noted that:[39]

> … the Principles of Separation document proceeds on the basis that eight sections are still owned by the Bella Vista Partnership, with Mr Zheng and Mr Deng each having an equal share in their 60 per cent interest in that venture.

On this basis, the document evidenced "a common understanding that beneficial ownership of the eight sections remained with the Bella Vista Partnership" (that is a partnership between Mr Jiang as to 40 per cent and Messrs Zheng and Deng as to 60 per cent).[40]

The basis of Mr Deng's appeal

[49] Counsel for Mr Deng challenged the judgment of the Court of Appeal on the following grounds:

(a) The Court of Appeal's approach to s 4(2) of the Partnership Act was wrong in that the subsection created a presumption, not rebutted by Mr Zheng, that the relationship between the two men from 2004 on was based solely on their status as directors, shareholders and current account holders of the relevant companies.

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36 At [98] and [115].
37 At [68] and [116].
38 At [123].
39 At [123].
40 At [123].

(b) Errors of fact by, or in the factual approach of, the Court of Appeal:

(i) The Court of Appeal erroneously placed no significance on Mr Zheng having alleged the partnership started in 2004 and a partnership commencing in March 2010 not being pleaded.

(ii) The Court of Appeal misunderstood the nature and effect of the Bella Vista Agreement.

(iii) The Court of Appeal was wrong to place the weight it did on dictionary definitions of expressions written in Mandarin.

(iv) Mr Deng was not a party to the internal accounts.

(v) If there was a partnership between Messrs Zheng and Deng, it ended in June 2013 when they set up OCL.

(vi) The Principles in Separation document is not conclusive evidence of a partnership.

(vii) The Court of Appeal erred in diminishing the relevance of the companies (including RAL) in whose names various projects were carried on.

[50] We see two of these points ((iii) and (v)) as not warranting substantial response. First, the Court of Appeal was entitled to look to Chinese-English dictionaries in relation to the meanings of some of the expressions used in the original documents. This is consistent with s 128(2) of the Evidence Act 2006. It was also unobjectionable as there is no indication that the translations produced in the High Court in which the word "company" (or like expressions) appear represented a considered and contextually-based rejection of alternative meanings such as "firm" or "enterprise".[41]

[41] Section 135 of the Evidence Act provides that, subject to certain preconditions being satisfied, translations offered in evidence are presumed to be accurate in the absence of evidence to the contrary. We are not sure whether the preconditions were satisfied but, in any event, under s 128 of the Evidence Act, the dictionary definitions were evidence and, as explained, we cannot infer from the translations an exclusion of the alternative meanings referred to by the Court of Appeal.

Secondly, given the continued preparation of internal accounts until 2015 and the care which went into the Principles in Separation document, which presupposed a May 2015 separation date, we see no basis for a conclusion that the partnership ended in June 2013.

[51] The other arguments advanced are dealt with in general terms in the discussion which follows.

Evaluation

Our primary conclusions on the key facts

[52] In what is a factually complex case, we think it best to start with issues in respect of which findings of fact can be made with reasonable confidence. They are:

(a) the Bella Vista Agreement;

(b) the internal accounts; and

(c) the Principles in Separation document.

[53] The Bella Vista Agreement is in the form of an agreement between Mr Jiang and Orient Construction Group, which is defined as consisting of OHL and AAL. On Mr Zheng's case, he and Mr Deng each had half of Orient Construction Group's 60 per cent interest and that they, as a collective, were in partnership with Mr Jiang.

[54] Mr Deng did not sign the Bella Vista Agreement and at trial he maintained that he only learnt of the Bella Vista Agreement in 2014 after his partner found a copy in a cabinet. He also asserted that transfers of Bella Vista sections to associates and family members were pursuant to bona fide sales.

[55] Mr Deng's position in respect of all of this is undermined in a number of ways:

(a) He was acquainted with Mr Jiang. This supports Mr Zheng's evidence that Mr Deng brought in Mr Jiang on the Bella Vista Project which in

turn provides some support for the view that Mr Deng understood what was involved in the venture.

(b) He acknowledged in evidence that in 2008 he was aware of the venture and he had a 30 per cent interest in it.

(c) His contention, maintained at trial, that the "sales" of sections to family members and associates were bona fide, is flatly inconsistent with the way these sections are recorded in the internal accounts. It is likewise flatly inconsistent with the proposals for how the sections should be dealt with in the Principles of Separation document.

[56] The common understanding of Messrs Zheng and Deng as to their participation in the development cannot be reconciled as coming only via their interests in the two companies (AAL and OHL) named in the agreement. The evidence as to how the Bella Vista Project operated is explicable only on the basis that that they were participating personally as partners with those companies acting effectively as their nominees. This evidence shows that the participants, including Messrs Zheng and Deng, dealt with each other on a basis under which their shared understanding of how the project was structured as between themselves differed substantially from the way in which ownership interests were recorded.

[57] On their most natural reading, the 31 March 2010 reconciliation and the subsequent bi-monthly accounts signify a transition to a new partnership taking over as from 1 April 2010, with the ventures (including the 60 per cent interest in the Bella Vista Project) recorded in these accounts. Indeed, it is difficult to read them in any other way.

[58] At trial, Mr Deng implied that his initials on the 31 March 2010 reconciliation may have been a forgery. This was without any forewarning; this despite Mr Zheng having placed substantial reliance on the 31 March 2010 reconciliation in his brief of evidence. No circumstantial detail supporting this apparent allegation of forgery was provided. Nor was there evidence from a handwriting expert. A motive for someone (presumably Mr Zheng) to forge Mr Deng's signature on this document (and

apparently this document alone) is not entirely easy to discern. This issue was referred to by the High Court Judge but not determined and likewise not explicitly determined by the Court of Appeal.

[59] Mr Deng also alleged that he had no input into the internal accounts. This is implausible to say the least given his spouse's role in their preparation. It will be recalled that she was primarily responsible for their preparation from November 2013 and, on the evidence, had earlier supplied figures to be included in them.

[60] For the reasons just given, along with what is apparent from the Principles in Separation document, to which we will come shortly, we are satisfied that the internal accounts are authentic; that is, they record on a running basis the state of affairs between Messrs Zheng and Deng and reflect the nature of their relationship. As to this, we note that *Lindley & Banks on Partnership* observes that accounts are frequently relied upon to prove the existence of an alleged partnership and might therefore be termed "'usual' evidence" of such a relationship.[42] In this instance, there was "usual evidence" in abundance.

[61] As explained, the Principles in Separation document, as produced in evidence, records what in a sense is a dialogue between Messrs Zheng and Deng. Given the way in which it was developed, with input from both men, there can be no question as to its authenticity. And, as the Court of Appeal recognised,[43] the document evidences an underlying business relationship which is not constrained or defined by the structure of the corporate entities involved. It is entirely consistent with the internal accounts.

Was there a partnership?

[62] Under s 4 of the Partnership Act, a partnership is the relationship "which subsists between persons carrying on a business in common with a view to profit". Section 5 provides that "[i]n determining whether a partnership does or does not exist regard shall be had" to rules which are listed in that section. Of these, the most material for present purposes is:

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42 Roderick I'Anson Banks *Lindley & Banks on Partnership* (20th ed, Sweet & Maxwell, London, 2017) at [7-23].

43 CA judgment, above n 2, at [102].

> (c) the receipt by a person of a share of the profits of a business is prima facie evidence that he or she is a partner in the business …

[63] As we noted, the trial Judge recognised that the internal accounts might "reveal intent to split profits and maintain equal investments" but he then went on to say "it does not necessarily follow partnerships existed".[44] As we also explained earlier, in apparent support of this latter proposition the Judge referred to s 5(c). It is true that there are exceptions to the "prima facie evidence" principle which are listed under the chapeau of s 5(c). But the Judge did not identify which, if any, of these exceptions applied and the reality is that none of them did.

[64] The effect of s 4(2) of the Partnership Act is that where a business is carried out by a company, the anticipated profits are intended to be derived by that company and any subsequent sharing of gains is to occur through the structure of the company (by way of dividends or remuneration), there is no partnership. In this sense, s 4(2) makes explicit something which is reasonably obvious. As the Court of Appeal explained,[45] it is conceptually possible for a partnership to be conducted using company structures, with the partners' interests in those companies (in the form of shares or advances) being themselves partnership assets.

[65] We did not understand counsel for Mr Deng to dispute the general approach just outlined, namely that a partnership can exist despite the involvement of companies. Rather the argument seemed to be that, it being common ground that in its early stages the relationship between Messrs Zheng and Deng was not one of partnership, there should be an assumption, or perhaps a presumption, that there was no supervening partnership. The contention was that this assumption or presumption could only be rebutted by clear evidence to the contrary. Associated with this were a number of related arguments advanced by counsel for Mr Deng directed to what was said to be the inability of Mr Zheng to point to a firm point of transition to the new partnership.

[66] It is an apparently odd feature of Mr Zheng's case that despite the relevant statement of claim alleging a partnership commencing in 2004, his evidence focused

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44 HC judgment, above n 1, at [79]. See also at [82].
45 CA judgment, above n 2, at [111].

primarily on the relationship as it was from 1 April 2010. It is this aspect of Mr Zheng's case which was much relied on by counsel for Mr Deng.

[67] Some of this apparent oddness falls away once it is recognised that Mr Zheng's original 2004 start date was taken from the point when Mr Deng acquired an equity involvement in the business ventures conducted by the old group. The essence of the relationship (or relationships) between members of the old group (of which Mr Deng was a member from 2004) was not the subject of substantial evidence or consideration. If the 31 March 2010 reconciliation is any guide, it would not be safe to conclude that relationships between the members of the old group (and thus as between Messrs Zheng and Deng from 2004) were solely mediated through, and in accordance with, the corporate structures involved.

[68] We consider it clear that from April 2008, there was a partnership between Messrs Zheng and Deng in relation to the Bella Vista Project. This is because the internal accounts and the Principles in Separation document reflected a shared understanding as to the nature of the business relationship in relation to that development. This reveals a personal relationship between the two men in which the companies involved were their nominees.

[69] A similar shared understanding as to the nature of the business is also revealed by the 31 March 2010 reconciliation document for the old group and the subsequent bi-monthly internal accounts. With effect from 1 April 2010, the partnership relationship plainly extended to all projects in which the two men were or came to be involved, other than in respect of Rosedale Apartments which is dealt with in the internal accounts and Principles in Separation document in ways that are consistent with Mr Zheng's case, namely that RAL lay outside the partnership but that the building work for it was carried out by the partnership.

The significance of the High Court Judge's findings of fact

[70] A notable feature of the case is the contrast between the findings of fact of the High Court Judge (which were firmly in favour of Mr Deng) and those of the Court of Appeal (which were equally firmly expressed but went the other way).

[71] The judgment of this Court in *Austin, Nichols & Co Inc v StichtingLodestar* emphasises the significance of an appeal to the Court of Appeal from the High Court being by way of rehearing.[46] It marked a shift away from the considerable deference which had, in many instances in the past, been paid to the factual findings of first instance judges. When considering whether to depart from findings of fact made at trial, an appellate court must, of course, recognise and allow for the advantages that a trial judge has in assessing oral evidence. But, if after allowing for those advantages the appellate court is of the view that the factual findings were wrong, it must decide the appeal in accordance with its own view of the facts.

[72] In the present case, the evidence of the principal protagonists fell to be assessed against a large number of contemporaneous documents. As will be apparent, many of these documents were inconsistent with Mr Deng's evidence. This aspect of the case was not the subject of detailed consideration by the High Court Judge. In part this was because he was so critical of the internal accounts. As well, perhaps because of his mistaken view that the Principles in Separation document had not been discovered by Mr Zheng, he did not test Mr Deng's evidence against what was apparent from that document. Instead, he primarily assessed the case on the basis of his strict view of s 4(2) of the Partnership Act and using his understanding of usual New Zealand commercial practice as a template against which to assess the plausibility of the evidence of Messrs Zheng and Deng.

[73] The Judge's credibility finding against Mr Zheng was in part based on his mistaken belief that Mr Zheng had not discovered the Principles in Separation document. It was also influenced by the Judge's assessment of the likely illegality of aspects of the way in which the new group operated (in terms of tax for instance). In the particular circumstances of this case, this last consideration is of limited, if any, moment. It was not argued, and could not credibly be suggested, that irregularities of this sort were sufficient to justify withholding relief on public policy grounds.[47] As well, given that Mr Deng was also involved in these irregularities, there was no good reason to bring them into account against Mr Zheng alone, which is effectively what the Judge did. And most significantly, these irregularities did not detract from the

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46 *Austin, Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141 at [13].
47 See *Horsfall v Potter* [2017] NZSC 196, [2018] 1 NZLR 638 at [44]–[60].

significance of the clear picture provided by the contemporaneous documents, most particularly the internal accounts and the Principles in Separation document.

[74] Recognising, as we do, the advantages a trial judge has over an appellate court in assessing evidence, we are satisfied that the critical factual findings of the trial Judge in this case were wrong.

Cultural considerations

[75] The Court of Appeal judgment referred to two issues which are related to the background of Messrs Zheng and Deng.[48] The first arises out of their use of Mandarin in their interactions and business documents and most particularly whether the meaning to be ascribed to 公司 goes beyond "company" and can extend to "firm" or "enterprise"; the second is the significance of 关系 (guānxi).[49] The first of these issues is of little moment; this because it is clear, and indeed it is no longer disputed, that the Court of Appeal was entitled to have regard to a Chinese-English dictionary and we are not persuaded that it placed inappropriate weight on that dictionary. The second, however, is of more potential relevance.

[76] Guānxi is a complex term with multi-faceted meanings. Guānxi may be understood as "interpersonal connections", "social capital",[50] or the "set of personal connections which an individual may draw upon to secure resources or advantage when doing business or in the course of social life".[51] Important bases of guānxi for an individual include kinship and co-working.[52] As will be apparent from our reasons, the relationship between Messrs Zheng and Deng (and those they worked with) is consistent with these concepts: in particular, the apparent significance to them of

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48 CA judgment, above n 2, at [86]–[89].

49 In Romanised script: guānxi. We use guānxi rather than 关系 subsequently in our judgment because the former is a term that has achieved common parlance.

50 Hal Movius and others "Tailoring the Mutual Gains Approach for Negotiations with Partners in Japan, China, and Korea" (2006) 22 Negotiation Journal 389 at 409.

51 Howard Davies and others "*Guanxi* and Business Practices in the People's Republic of China" in Ilan Alon (ed) *Chinese Culture, Organizational Behaviour, and International Business Management* (Praeger Publishers, Connecticut, 2003) 41 at 42 citing Howard Davies "Interpreting '*Guanxi*': The Role of Personal Connections in a High Context Transitional Economy" in Howard Davies (ed) *China Business: Context and Issues* (Longman Asia, Hong Kong, 1995) 155.

52 Davies and others, above n 51, at 43.

family relationships and pre-existing friendships in terms of whom they did business with and the relative dearth of formal agreements. For this reason, an understanding of guānxi provides some support for Mr Zheng's case.

[77] At trial there was very little, if any, evidence about guānxi[53] and it was not referred to by the High Court Judge in his judgment. In terms of what we must determine, this is not of critical importance as we consider that the nature of the relationship between Messrs Zheng and Deng emerges with sufficient clarity from the contemporaneous documents. In other cases, however, the social and cultural framework within which one or more of the protagonists operated may be of greater significance. For this reason, we offer brief comments as to how the relevant information can be brought to the attention of the court. These comments are influenced and in part derived from the very helpful submissions made to us by the Law Society. Our comments do not address tikanga which we see as raising special legal and historical issues.

[78] First, some general observations:

(a) Cases in which one or more of the parties have a cultural background which differs from that of the judge are common in New Zealand courts and are likely to become more common in the future.[54]

(b) Judges should approach such cases with caution. This has been well explained by Emilios Kyrou, writing extra-judicially, in his advice to judges to develop:[55]

> … a mental red-flag cultural alert system which gives them a sense of when a cultural dimension may be present so that they may actively consider what, if anything, is to be done about it.

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53 Mr McKay, the chartered accountant who gave evidence for Mr Deng, referred to some features of litigation involving Chinese parties in which he had been involved that could be seen to be manifestations of guānxi. He did not, however, refer specifically to guānxi.

54 See generally Stats NZ | Tatauranga Aotearoa "Population projected to become more ethnically diverse" (28 May 2021) <www.stats.govt.nz>.

55 Emilios Kyrou "Judging in a Multicultural Society" (2015) 24 JJA 223 at 226.

(c) A key to dealing with such cases successfully is for the judge to recognise that some of the usual rules of thumb they use for assessing credibility may have no or limited utility. For instance, assessing credibility and plausibility on the basis of judicial assumptions as to normal practice will be unsafe, if that practice is specific to a culture that is not shared by the parties.[56]

(d) Most of the usual ways that judges assess credibility remain available: consistency of a narrative over time and with other evidence (particularly contemporaneous documents) and general plausibility; or, as the Court of Appeal put it, by focusing "on the substance of the parties' arrangements as revealed by their conduct over time".[57] It is critical that judges and counsel maintain a sense of proportionality and recognise that many, perhaps most, cases, in which the parties operate within a social and cultural framework that differs from that of the judge, can be dealt with in the in the manner just outlined. As Emilios Kyrou has put it: "[i]n many cases, managing a cultural dimension in evidence may require no more than the most basic of all tools in a judge's toolkit, namely, context and common sense."[58] For this reason, we do not wish to be taken as suggesting that in all cases with a "cultural dimension", the parties should feel obliged to call social and cultural framework evidence (and incur the costs of doing so).

[79] In cases where it is appropriate that the judge receive information as to social and cultural framework:

(a) It is open to witnesses to explain their own conduct by reference to their own social and cultural background. It would thus have been open to either of Messrs Zheng or Deng to have referred to guānxi by way of explanation for their own actions.

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56 The New Zealand Law Society | Te Kāhui Ture o Aotearoa submitted that "expert evidence may assist the Court in assessing the credibility of the witness".

57 CA judgment, above n 2, at [89].

58 Kyrou, above n 55, at 226.

(b) Where parties have been in a relationship (business or otherwise), they may explain the way in which the relationship played out by reference to the social and cultural framework in which they operated. By way of example, and coming back to this case, Mr Zheng could have referred to guānxi by way of explanation for the way in which his relationship with Mr Deng operated.

(c) In the circumstances just mentioned, there can be no objection to such evidence being supported by expert evidence or by resort to ss 128 and 129 of the Evidence Act. These sections allow judges to have regard to sources of information of unquestionable accuracy and admit reliable published documents in relation to matters of public history, literature, science or art.[59]

(d) Rather more difficulty may arise where a litigant wishes to introduce social and cultural framework information to explain not their own or joint conduct but rather that of another party. In this situation, the information as to cultural background is likely to be best provided by an expert or under ss 128 and/or 129.

[80] In all of this, judges need to take care to employ general evidence about social and cultural framework to assist in, rather than replace, a careful assessment of the case specific evidence. Assuming, without case-specific evidence, that the parties have behaved in ways said to be characteristic of that ethnicity or culture is as inappropriate as assuming that they will behave according to Western norms of behaviour.

[81] When a witness explains their own or joint conduct by reference to their cultural background, there will be little risk of stereotyping; this because the evidence is necessarily specific to that witness. Where, however, the evidence comes from an expert or there is reliance on s 129, some care is required. There are two aspects to this:

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[59] Discussed above at [50], n 41 and below at [82].

(a) First, people who share a particular ethnic or cultural background should not be treated as a homogeneous group. By way of example, that guānxi is important for some people of Chinese ethnicity does not mean that it important for everyone of Chinese ethnicity and, still less, that it was necessarily of controlling significance to the conduct of the parties in relation to the issue in dispute. The more generalised the evidence or information, and the less it is tied to the details of what happened, the greater the risk of stereotyping.

(b) Secondly, and with particular reference to guānxi, it will not be safe to conclude that its importance to litigants means that a relationship between them was necessarily one of partnership or a joint venture or had fiduciary elements. For instance, guānxi may have been in a factor in two people engaging together in a business, but if they have chosen to do so through a company, guānxi is not in itself a reason for concluding that they were in fact partners. Still less should guānxi be treated as imposing a fiduciary or similar overlay in relation to arms-length transactions such as contracts for the supply of goods and services.

[82] As we have foreshadowed, we consider that it may be open to courts to rely on ss 128 and 129 of the Evidence Act. It is well-known that guānxi often governs the way Chinese people do business and that there is an associated tendency for Chinese people to rely on personal relationships, mutual trust and honour more than on written contracts. There is for example much literature as to Chinese communication in negotiations, almost all of which refer to guānxi.[60] We have no doubt that the Court of Appeal was entitled to refer to guānxi in the way in which it did. But, to reiterate a point we have already made, while guānxi influences the behaviour of some Chinese people, it should not be assumed that this is so with all Chinese people. As well, it is important to recognise that this is not a particularly complex case. While the materiality of guānxi to an assessment of what happened here is relatively

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[60] For a sample of the literature, see Ilan Alon (ed) *Chinese Culture, Organizational Behaviour, and International Business Management* (Praeger Publishers, Connecticut, 2003); and Rajesh Kumar and Verner Worm *International Negotiation in China and India: A Comparison of the Emerging Business Giants* (Palgrave Macmillan, New York, 2011).

straightforward, this may not be so in other cases. In such cases, the necessarily generalised information which can be taken into account under s 129 may be of little assistance.

[83] We note the ability of courts to appoint an expert under r 9.36 of the High Court Rules 2016 and r 9.27 of the District Court Rules 2014, a mechanism which may, in some circumstances, be helpful in relation to cultural context.

[84] Finally, we observe that judges can usually leave it to the parties to put relevant information before the court. Judges can, of course, inquire of the parties if they consider that they would be assisted by additional information as to social and cultural context. In many instances, such information will be able to be supplied by submission, relying, if necessary, on s 129.

Disposition

[85] The appeal is dismissed. Mr Deng must pay Mr Zheng costs of $25,000 plus usual disbursements (including travelling expenses for two counsel), to be fixed by the Registrar if necessary.

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