



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

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20 June 2022

**MEDIA RELEASE**

DENG v ZHENG

(SC 5/2021) [2022] NZSC 76

**PRESS SUMMARY**

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).

**Background**

Messrs Zheng and Deng had a working relationship which commenced in the late 1990s. Mr Zheng is a property developer and Mr Deng’s background is as a project manager and land developer. In 2004, Mr Deng acquired ownership interests in some projects carried out through companies with which Mr Zheng was involved. These projects initially involved individuals other than Messrs Zheng and Deng (collectively known as the old group) but in 2008 the old group began to break-up. One of the old group’s projects had been the acquisition and development of 11 sections in Bella Vista Drive. With the old group in the process of breaking up, Messrs Zheng and Deng brought into this venture a Mr Jiang and the arrangements associated with this were recorded in what was referred to as the Bella Vista Agreement, entered into in April 2008. This document was written in Mandarin and the parties named were (a) “Orient Construction Group” (comprising companies associated with Messrs Zheng and Deng) with a 60 per cent stake in the venture and (b) Mr Jiang with a 40 per cent stake. On Mr Zheng’s case, he and Mr Deng were partners with each other and collectively with Mr Jiang in this venture; this notwithstanding the references in the document to companies.

A central feature of the case was a set of internal accounts. The starting point was a document dated 31 March 2010 which recorded a winding up of the financial affairs of the old group. From then, internal accounts referable to the business activities of Messrs Zheng and Deng were usually prepared on a bi-monthly basis.

By 2015, Messrs Zheng and Deng's business relationship was strained. In May, the parties agreed to separate their business interests. Negotiations about the separation were recorded in a document titled "Principles in Separation".

Primarily at issue was the nature of Messrs Zheng and Deng's business relationship between 2010 and 2015. Mr Zheng said that from March 2010 he and Mr Deng were partners engaged in property development and construction projects which were conducted in the names of companies. Mr Deng argued that there was no overarching partnership and contended that the projects were carried out through these companies with the interests of the two men in them reflected in their shareholdings and account balances.

### **Lower Court judgments**

In the High Court, Mr Deng was successful, with Downs J concluding (among other matters) that there was no partnership. The Court of Appeal overturned the High Court, holding that the relationship had been a partnership. The evidence established that Messrs Zheng and Deng were carrying on a property development and construction business together, with a view to a profit. In reaching this conclusion, the Court placed significant weight on the internal accounts and the Principles in Separation document.

### **Supreme Court**

The Supreme Court granted Mr Deng leave to appeal. The approved question was whether the Court of Appeal was correct to make a declaration that there was a partnership between Messrs Zheng and Mr Deng in which they were equal partners and to make orders that were consequential on that finding. The Court also noted that it might be necessary to consider issues about the "the cultural setting in an arrangement between two Chinese parties". The New Zealand Law Society | Te Kāhui Ture o Aotearoa was invited to intervene in the appeal, and did intervene, after consultation with NZ Asian Lawyers.

The Supreme Court has unanimously dismissed the appeal.

The evidence as to how the Bella Vista Project operated was explicable only on the basis that Messrs Deng and Zheng were participating personally as partners with the relevant companies effectively acting as their nominees. The 31 March 2010 document evidenced a transition from the old group to a partnership consisting of Messrs Zheng and Deng with effect from 1 April 2010. The bi-monthly accounts were prepared on a basis which looked through the companies involved and revealed an arrangement under which profits were to be shared equally. The Principles in Separation document recorded a dialogue between Messrs Deng and Zheng which similarly evidenced an underlying business relationship not constrained or defined by the companies involved.

From April 2008 there was a partnership between Messrs Zheng and Deng in relation to their 60 per cent interest in the Bella Vista Project. With effect from 1 April 2010, the partnership relationship extended to all projects in which the two parties were or came to be involved, other than in respect of one project which was accounted for differently. The Court recognised the advantages that a trial judge has over an appellate court in assessing evidence but was satisfied that the critical factual findings of the trial Judge in this case were wrong.

The cultural issue on which submissions were made which was of primary importance was the significance of 关系 (guānxi), which can refer to interpersonal connections. The material provided to the Court as to guānxi provided some support for Mr Zheng's case. But the Court was satisfied that the strength of the inferences to be drawn from the contemporaneous documents was such that the case could be decided in favour of Mr Zheng without reliance on this material.

The Court made some general observations about cases in which one or more of the parties have a cultural background which differs from that of the judge and the judgment provides guidelines for cases where it is appropriate for a judge to receive evidence of material bearing on the social and cultural framework within which protagonists in a case may have been operating.

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