



THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA

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HEBEI HUANENG INDUSTRIAL DEVELOPMENT CO LIMITED v DEMING SHI [2020] NZHC []

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 www.courtsofnz.govt.nz.

Introduction

A Chinese court has given judgment for Hebei Huaneng against Mr Shi for about \$23 million. Hebei Huaneng seeks to enforce this judgment in New Zealand. Mr Shi objects, submitting first that the relevant Chinese court was not a court as understood in New Zealand, and second that under Chinese law Hebei Huaneng needs to exhaust its remedies against Detai, another company, before going after him. The High Court finds that under the principles of the common law Chinese courts are courts and may be their judgments can be enforced in New Zealand, subject to specific defences.

Background

Hebei Huaneng runs power stations. Mr Shi’s company, Qinhuangdao Boen, contracted with Hebei Huaneng to source coal for power generation. Hebei Huaneng made an advance payment of about RMB 100 million, which is about NZD 23 million, to Qinhuangdao Boen, to be repaid by 31 January 2016. Mr Shi signed a guarantee of unlimited joint and several liability for his company’s repayment of that debt. Detai, Mr Shi’s father’s company, also gave a mortgage over its assets to Hebei Huaneng as security.

Qinhuangdao Boen did not repay the money. Accordingly, nearly two years later, Hebei Huaneng sued Qinhuangdao, Mr Shi, and Detai in China. In 2019, the Chinese court gave judgment against Qinhuangdao and Detai, but considered that the claim against Mr Shi was out of time. Hebei Huaneng appealed. The appeal court held that the claim was in time and gave judgment against Mr Shi. The appeal court did not say in what order the judgment should be enforced between the debtors.

Hebei Huaneng now seeks to enforce the judgment debt against Mr Shi in New Zealand. Enforcement of the judgment in China was unsuccessful. Mr Shi lodged a protest to jurisdiction in the New Zealand proceeding.

The High Court's decision

The High Court has set aside the protest to jurisdiction. The case can continue in New Zealand. The first issue was whether or not the Chinese courts are “courts” as understood in New Zealand. The High Court held that China does have courts as a separate organ of government. Instead whether a judgment of a Chinese court should be enforced in New Zealand will turn on the facts of the case, including whether the Chinese court breached natural justice. It is not enough to make a general case that the courts are politically influenced. No specific hostility or injustice was alleged or proved by Mr Shi. The High Court considered the expert evidence on how the Chinese legal system worked, and held that the relevant court was exercising a distinct judicial function. In the absence of any suggestion and demonstration of improper outside influence, Hebei Huaneng had a good arguable case that it was suing on the judgment of a court.

Mr Shi also argued that under Chinese law a creditor had to exhaust its rights under its securities before it could enforce its judgment against a personal guarantor. There was conflicting expert evidence on this point. The Chinese court did not comment on the matter. The High Court observed that Hebei Huaneng had successfully enforced the judgment in China without first enforcing its mortgage over Detai's assets. This suggests that Mr Shi's submissions were incorrect. Without fully resolving this point, the High Court observed that Hebei Huaneng had a good arguable case that it was permitted to enforce its judgment against Mr Shi.

Result

The Court set aside Mr Shi's appearance and allowed the application for summary judgment to continue.

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