

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV-2014-404-000680
[2016] NZHC 3018**

BETWEEN

ZIE ZHANG
Plaintiff

AND

KING DAVID INVESTMENTS LTD (IN
LIQUIDATION)
First Defendant

JINYUE YOUNG
Second Defendant

HSIANG-FEN YING
Interested Party

Hearing: 28 October and 17 November 2016

Appearances: F C Deliu for Plaintiff
D G Hurd for Second Defendant and Interested Party

Judgment: 13 December 2016

JUDGMENT OF PALMER J

*This judgment is delivered by me on 13 December 2016 at 2.30 pm
pursuant to r 11.5 of the High Court Rules.*

.....
Registrar / Deputy Registrar

Solicitors/Counsel:
Justitia Chambers, Auckland
Galbraiths Lawyers, Auckland
D G Hurd, Barrister, Auckland

Summary

[1] This case concerns punishment for contempt of court in disregarding court orders. King David Investments Ltd (King David), through its director Ms Hsiang-Fen Ying and her husband Mr Jinyue Young, settled High Court proceedings by agreeing to transfer a property to Ms Zie Zhang. The Court made consent orders accordingly. Instead of transferring the property as required by the consent orders, Ms Ying sold the property for a higher price to a third party. Ms Zhang seeks orders holding Ms Ying and Mr Young in contempt, imprisoning them and sequestering their property. King David and Mr Young apply for the consent orders to be set aside and interim freezing orders to be discharged.

[2] The rule of law in New Zealand involves honouring court orders in order to uphold and protect the administration of justice, not just to require compliance with an instrument of state coercion. I hold Ms Ying in contempt of court. Her second thoughts about the settlement to which she had agreed did not justify her blatant contravention of the Court orders. She also liquidated her company in order to avoid the consequences of dishonouring the orders. Ms Ying has demonstrated no understanding or acceptance of her transgression. She has come close to being imprisoned because of her attitude in further failing to observe my directions in addressing the Court. However, I consider a fine of \$10,000 would more effectively remind her of her obligations. If she does not pay within 10 working days she will be imprisoned and any further contempt is also likely to result in her imprisonment. Mr Young contributed to the contempt but did not, himself, act in contempt of court. However, he is a practising solicitor in New Zealand, specialising in conveyancing. His evidence to the Court was, explicitly, that he is not a prudent lawyer. I refer this judgment to the New Zealand Law Society for consideration.

[3] I decline the application to set aside the consent orders. I vary them to remove the obligation to transfer the property. I discharge a freezing order over a bank account by consent. I order the sum of \$506,000 plus interest to be paid to Ms Zhang from the sum paid into Court for this purpose in another proceeding.

Facts

A disputed property transaction

[4] Ms Ying and her husband, Mr Young, are from Taiwan. They have been in New Zealand since 1995. Ms Ying works as a medical laboratory scientist in Auckland. She was the shareholder and sole director of King David, a limited liability company now in liquidation. Mr Young has a law degree from Auckland University and, apparently, a doctorate in theology from Taiwan. He is a solicitor who has practiced law in New Zealand since 2014, specialising in conveyancing in an Auckland law firm.

[5] In March and April 2013 King David agreed to sell 48C Hoteo Avenue, Papatoetoe to Ms Zhang. The sale and purchase agreement was dated 13 April 2013 and recorded the sale price of \$399,000 and a settlement date of 28 May 2013. Ms Ying signed as Director of King David. Mr Young also appears to have signed it. Ms Zhang paid a \$30,000 deposit. There were disputes between the parties about when and whether Ms Ying then sought to withdraw the property from sale.

[6] Settlement did not occur. Ms Zhang had to pay for alternative accommodation. Ms Zhang lodged a caveat on the property and filed proceedings in the Auckland High Court. She sued King David in contract and Mr Young for tortious interference with contractual relations. She sought a declaration, transfer of the property by way of specific performance of the contract and damages.

Settlement and consent orders for specific performance

[7] On Sunday 3 July 2016 Ms Ying and Mr Young returned from a trip to China where they had attended their son's graduation. They say they were seriously jetlagged, suffering from diarrhoea and nausea and Mr Young took sleeping tablets. The trial commenced on Monday 4 July 2016. There is evidence of the terms on which Ms Ying instructed her solicitor she was willing to settle that evening.

[8] On the morning of Tuesday 5 July 2016 the parties agreed to settle the proceedings. The evidence is the negotiation occurred over about half an hour to an

hour. The final agreement did not reflect Ms Ying's proposed terms of the previous evening, but that is not unusual in settlement negotiations. The settlement agreement was drafted by Mr Deliu as counsel for Ms Zhang. It was signed by Ms Zhang, Ms Ying, and Mr Young. It provided:

- (a) King David would specifically perform the sale and purchase agreement by transferring the property by 13 September 2016;
- (b) King David would pay \$220,000 to Ms Zhang by way of a set off from the sale price on settlement; and
- (c) the proceedings against Mr Young would be discontinued and the costs would lie where they fell.

[9] By Minute on 5 July 2016, the same day, Duffy J made consent orders to that effect (the Consent Orders). The Minute also stated that "[l]eave is reserved to the parties to come back to court for any further issue in relation to this proceeding should the need to do so arise".

Challenging the Consent Orders

[10] Ms Ying and Mr Young say that on the Tuesday morning they were still tired and sick after their flight from China on the Sunday. Ms Ying's evidence is that she did not read the settlement agreement carefully at the time she signed it and she felt she had no choice but to accept her counsel's advice and sign it. Mr Young's written evidence was that he tried to read and understand the document but found it extremely difficult to focus. Under cross-examination he said he just glanced over it for a minute and had difficulty reading the handwriting. Extraordinarily, Mr Young also stated under cross-examination that he did not consider he was a prudent solicitor, which he understood to mean "careful". In response to a question from me he explained he said that because he sometimes has problems with his memory.

[11] Ms Ying and Mr Young say that when they read the settlement terms the following day they were stunned. They could not understand why they had to pay

\$220,000. They say the property they had agreed to sell for \$399,000 was subject to a mortgage of \$880,000.

[12] Late in the evening of Wednesday 6 July and in the morning on Thursday 7 July 2016 Mr Young sent two separate emails to the court registry. The first raised issues about his and Ms Ying's health and state of mind in consenting, about substantive issues in the case and sought to withdraw their consent and resume the hearing. The second complained about a number of the plaintiff's actions in the hearing, argued about the substance of the case and the plaintiff's interpreter and asked that the hearing resume. On 9 July 2016 Mr Young and Ms Ying both wrote to the court registry indicating they wished to withdraw their signatures to the Consent Orders for six reasons: that the settlement was not done of their own free will; acceptance of the original sale and purchase agreement had not been communicated; the figures in the consent orders were wrong; relevant facts were not disclosed; there was fraud, apparently by the plaintiff's counsel; and translation problems.

[13] The Court's Consent Orders, contained in the Minute, were emailed to Mr Young by at least 12 July 2016. Mr Young says he is not familiar with court orders. Extraordinarily, Mr Young stated under cross-examination that he understood Duffy J's reservation of leave for the parties to revert to the court meant the Consent Orders were not final but "pending" – in the way he understood a patent application is pending and not valid until after expiry of a period for objection. Apparently Mr Young had experience with patent applications in Taiwan. Ms Ying repeated the same belief. In fact, she implied in response to a question from me that she still thinks the Orders are pending. However, that professed belief did not prevent them from continuing to seek to overturn the Consent Orders.

[14] On 12 July 2016 the Chief Judge replied to Ms Ying and Mr Young, apparently to a letter from them asking him to withdraw their signatures and resume the hearing. He advised he was not able to do so and they should take legal advice.

[15] By 25 July 2016 Ms Ying was no longer represented by counsel. Mr Young had always represented himself. Mr Young drafted and emailed to the High Court a ten page application by both of them for leave to set aside the Consent Orders.

Much of the application is incoherent but it appears to include similar grounds to the 9 July letter: that the plaintiff's interpreter was incompetent; there was fraud or deception; there was abuse of process; they did not consent; and the penalty was wrong. The application was never properly filed with the Court so it did not proceed.

[16] On 26 July 2016 the company, King David, applied for Ms Zhang's caveat to lapse. The application was signed by Ms Ying. Since Ms Zhang took no steps to oppose that, the caveat lapsed. Ms Ying's evidence is that they thought Ms Zhang had decided not to proceed and they were free to market the property for sale.

[17] Inconsistently with that expressed belief, though, on 29 July 2016 Mr Young sought to appeal the Consent Orders to the Court of Appeal. On 29 August 2016 Randerson J of that Court issued a minute questioning whether the Court had jurisdiction to hear the application and inviting submissions. On 7 September 2016 the Court of Appeal issued a judgment dismissing the appeal, explaining it had no jurisdiction and the appropriate course was to apply to the High Court to set it aside.

Ignoring the Consent Orders

[18] On 30 August 2016, the day after the Court of Appeal issued its minute, Ms Ying agreed to sell the Hoteo Ave property to a third party, Topcut Property Ltd, for \$655,000.

[19] Mr Young's evidence in response to a question from me is that his understanding of the reason for sale was that Ms Ying had cancer and a huge loan and she thought they should sell it to release their debt burden and pay their litigation fees. He told me he told her that if they received a sealed order they would have no choice but to transfer the property to Ms Zhang. However, they didn't receive a sealed order until 22 September. The property sale settled on 12 September 2016. Ms Ying agreed, under cross-examination, that Mr Young told her not to sell the property because of the Consent Orders.¹ Her evidence was she went ahead because she wanted to solve the company's financial problems.² At one point in her evidence she acknowledged what she did probably wasn't right but at another she said she

¹ Notes of Evidence, 47/1-32.

² Notes of Evidence, 48/23-28.

knows she did the right thing and if she needs to be punished she will face the punishment.³

[20] On 6 September 2016 Mr Deliu, Ms Zhang's counsel, emailed Ms Ying noting settlement should proceed pursuant to the Consent Orders. He stated failure to comply would elicit an application to hold her in contempt pending compliance and an application for indemnity costs. Ms Ying said under cross-examination she just regarded that as another threatening letter from Mr Deliu and she doesn't take threats seriously.

[21] Settlement with Topcut Property occurred on 12 September 2016. The entire proceeds were applied to reduce King David's mortgage with HSBC. The parties agree that Topcut is a bona fide purchaser.

[22] On 19 July 2016 King David gifted another property, at 60 Wintere Road Papatoetoe, to the children of Ms Ying and Mr Young – Ta-Lo Young and Ta-Wei Young. That property has also now also been sold to another third party, with a settlement date of 10 October 2016.

Further proceedings

[23] On 21 September 2016, on a without notice basis, Ms Zhang applied to the High Court for:

- (a) arrest and imprisonment of Ms Ying and Mr Young for contempt of court until they disgorge the proceeds of the sale of the property;
- (b) a freezing order over another property at 31 Haseler Crescent, Howick, Auckland owned by the Ying and Young Trust.

[24] The application was directed to be served on the defendants. They failed to appear in Court on 26 September 2016. Instead, by shareholders' resolution, on 26 September 2016 Ms Ying applied to put King David into liquidation. Under cross-examination she stated that was because the company had not made a profit for

³ Notes of Evidence, 66/13 and 66/15-19.

many years and had lots of bills to pay. She felt she been waiting for too long and needed to sort it out. However, in an affidavit she and Mr Young swore on 26 September 2016, she states “I have applied to liquidate my company to stop legal proceedings under s 247 of the Company Act.” She denied she liquidated the company for that purpose in cross-examination. I don’t accept that. The timing was too coincidental and Ms Ying’s denial lacks credibility. I find the company was liquidated in order to avoid the consequences of dishonouring the Consent Orders.

[25] On 27 September 2016 Woodhouse J:

- (a) set down a hearing on 28 October 2016 with timetabling orders;
- (b) ordered Ms Ying and Mr Young to attend otherwise writs of arrest would issue unless the Court determined for any special reason they should not;
- (c) issued an interim freezing order over the Haseler Crescent property;
- (d) noted the liquidation of King David and stated “[a]n inference to be drawn from the evidence presently before the Court is that both defendants have taken other steps to seek to defeat the prima facie rights of the plaintiff pursuant to the orders of this Court”;
- (e) ordered discovery and noted the plaintiff could address the question of further examination of the defendant at the hearing if there were outstanding issues.

[26] On 29 September 2016 Woodhouse J also froze King David’s HSBC bank account pending further order of the Court.

[27] On 28 September 2016 Ms Zhang placed a caveat over the Wintere Rd property that had been transferred to the children. On 17 November 2016 Toogood J ordered, with the consent of the parties:

- (a) Ta-Lo Young and Ta-Wei Young shall procure that upon settlement of the sale and purchase, \$550,000 be paid into the High Court at Auckland to be held by the Registrar on an interest-bearing deposit pending further order of the Court;
- (b) the caveat shall not lapse until the earlier of either a further order of the Court or withdrawal by Ms Zhang which should occur on payment of the \$550,000 into the High Court.

[28] Ms Zhang's counsel has confirmed the \$550,000 was paid into Court on 23 November 2016. According to the terms of Toogood J's minute, Ms Zhang has presumably withdrawn the caveat.

[29] On 7 October 2016 Mr Young and Ms Ying applied to set aside the Consent Orders, applied for leave to withdraw their consent and to discharge the interim freezing order of 27 September 2016 over the Haseler Crescent property.

Hearings

[30] At the hearing on 28 October 2016 counsel for Ms Zhang applied to cross-examine Ms Ying and Mr Young. They consented. I granted the application. Their evidence, along with the evidence given by affidavit, is reflected above. The hearing was adjourned part-heard and there was some suggestion by counsel for the defendants that settlement might be possible. That did not occur.

[31] I also record that, at the second part of the hearing of 17 November 2016, Ms Ying and Mr Young sought to address the Court in person, after their counsel Mr Hurd had done so. I indicated I would hear them if what they had to say was in the nature of a personal explanation or apology but not if it was in the nature of further submissions. Mr Hurd explained that to them. He advised them against a suggestion inconsistent with that. I also explained what sort of statement I would hear from them. The exchange was as follows:

JUDGE: Just to be clear, it's unusual to hear from parties directly, including in criminal proceedings. On this occasion I am prepared to hear from the second defendant and the interested party a short personal statement, if it is

in the nature of an explanation or an apology. I am not interested in hearing further submissions on the law, or the facts, which have been the subject of your counsel's submissions. And if I consider that the statement is straying into those areas then it will end at that point. On that basis, if either or both of you would like to say something I'll hear that now.

MS YING: Yes, as your Honour suggests. If I do only apology to Jie Zhang then it's my formal apology now.

It's my formal apology to Jie Zhang, your client [addressing Mr Deliu] of my fault to sell the property. If she reply to our email or a phone call that we notify her we are able, willing to settle, then I definitely this case will not drag for 3 years and I also very really admiring your [Mr Deliu's] skill. You know how to play the law and manipulating the system to drag this case.

JUDGE: That's enough. You can stop now. It is not what I expected to hear. I will hear no more.

Issue 1: Should the Consent Orders be set aside?

[32] The parties agree the 5 July 2016 Consent Orders should be set aside but for very different reasons and with different implications.

Submissions

[33] Ms Ying and Mr Young apply to set aside or vary the Consent Orders to take up the leave reserved by Duffy J, under r 7.19 of the High Court Rules and the Court's inherent jurisdiction. The grounds for their application are their consent to the Consent Orders being obtained improperly because: they were unwell and exhausted; the settlement was contrary to their instructions to their counsel; they have good defences to the original suit; the manner in which the hearing was conducted was prejudicial to them due to their personal circumstances and alleged deficiencies in Ms Zhang's conduct of the proceedings, matters relating to Ms Zhang's interpreter and the court transcript.

[34] Ms Zhang submits the jurisdiction to set aside a consent order is limited, and none of the grounds argued here are sustainable. But she submits the Consent Orders do require variation since the property transfer they order cannot now be fulfilled.

Law

[35] Variation or revocation of consent orders can be achieved by way of the leave reserved by Duffy J or under the Court's inherent jurisdiction.⁴ In *Waitemata City Council v Mackenzie* the Court of Appeal held the Court has inherent jurisdiction to set aside a sealed consent order obtained without authority or as a result of a mistake if the interests of justice require it.⁵ That was held to extend to situations where counsel acted unilaterally.⁶ It may also extend to situations where there was mistake or unconscionability but, where setting aside a consent order involves setting aside an underlying agreement, Cooke P has observed that is open to doubt.⁷ Thomas J found in *Stead v The Ship "Ocean Quest of Arne"* "the Court can assume jurisdiction to revoke or vary a consent order in the interests of justice, notwithstanding that no ground exists on which the underlying contract might be vitiated".⁸ In *Kain v Hutton* the Court of Appeal has more recently affirmed *Stead* and *Waitemata City Council*, noting consent orders "are not easily disturbed" and it must be demonstrated that it is in the interests of justice to do so.⁹

Decision

[36] I do not consider any of the defendants' grounds for setting aside the Consent Orders are sustainable, because:

- (a) There is no independent evidence of the ill-health and exhaustion of Ms Ying and Mr Young and I do not regard their credibility as a safe basis on which to find they were sufficiently incapacitated to set aside the Consent Orders.
- (b) There is no evidence that Ms Ying and Mr Young believed the character of what they were signing was different to what it was. Rather they appear to have been recklessly casual in signing it without

⁴ *Waitemata City Council v MacKenzie* [1988] 2 NZLR 242.

⁵ At 249.

⁶ At 250.

⁷ *Phillips v Phillips* [1993] 3 NZLR 159.

⁸ *Stead v The Ship "Ocean Quest of Arne"* [1995] 3 NZLR 415 at 421.

⁹ *Kain v Hutton* [2007] 3 NZLR 349 (CA) at [230].

ensuring they read it carefully or fully understood it. There is no evidence of duress, undue influence or unconscionability.

- (c) Their potential defences to the original suit do not get around the fact that they agreed to the settlement, signed it and put it to the court as the basis for Consent Orders.
- (d) The complaints about the proceeding are not material and do not affect the validity of the Consent Orders.
- (e) The alleged deficiencies in Ms Zhang's conduct of the proceedings, her interpreter and the court transcript are not sufficient grounds to overturn Consent Orders.

[37] Based on their own accounts, I consider Ms Ying's and Mr Young's actions in entering into the settlement agreement and requesting orders from the Court were casual to the point of recklessness. That is particularly so of Mr Young who is currently admitted to practice law in New Zealand. But that was their choice. They both need to understand that they cannot escape from binding legal obligations to which they have formally sought the Court's agreement just because they subsequently decide they don't like them.

[38] However, it is clear the Consent Orders must be varied in light of the fact that they cannot now be carried out. I return to this below.

Issue 2: Are Mr Young and Ms Ying in contempt of court?

Law of contempt

[39] The rule of law in New Zealand involves honouring court orders in order to uphold and protect the administration of justice, not just to require compliance with an instrument of state coercion. The law of contempt of court supports that wider purpose. There is no difference between the parties about the law of contempt. They agree that the current law is accurately summarised by the Law Commission in its

2014 Issues Paper, *Contempt in Modern New Zealand*.¹⁰ Based on that, I summarise the law as follows:

- (a) for civil contempt, several elements must be proved beyond reasonable doubt:¹¹
 - (i) the terms of the order were clear and unambiguous, were binding on the defendant and the defendant had knowledge, or proper notice, of the terms of the order;¹²
 - (ii) the defendant has acted in breach of the terms of the order and;
 - (iii) the defendant's conduct was deliberate in the sense that he or she deliberately or wilfully acted in a manner that breached the order.¹³
- (b) it is not open to a defendant in a contempt proceeding to challenge the validity of the order said to have been breached;¹⁴
- (c) the imposition of sanctions is within the discretion of the court, considering the extent of the contempt, the motive with which the defendant was acting and the degree of prejudice suffered by the innocent party.¹⁵ The following considerations are relevant:
 - (i) a penalty should be imposed where there has been deliberate defiance of a Court order;¹⁶

¹⁰ Law Commission, *Contempt in Modern New Zealand* (NZLC IP36, 2014).

¹¹ At [7.18]-[7.32]. The standard of proof and elements were summarised by French J in *Shawyer v Thow* HC Invercargill CIV-2010-425-116 at [28].

¹² See *Solicitor-General v Krieger* [2014] NZHC 172 at [24]-[26].

¹³ See *Siemer v Stiassny* [2007] NZCA 117, [2008] 1 NZLR 150.

¹⁴ *Solicitor-General v Krieger*, above n 12, at [20], citing the decision of the Supreme Court of Canada in *Canada (Human Rights Commission) v Taylor* (1990) 75 DLR (4th) 577 (SC). See also *Siemer v Stiassny*, above n 13, at [191].

¹⁵ *Lockwood Group Ltd v Small* HC Auckland CIV-2009-404-1019, 21 April 2010 at [65].

¹⁶ As noted by Brewer J in *Grant & Khov as liquidators of Ranolf Co Ltd v Bhana* [2015] NZHC 2596, at [9].

- (ii) sequestration temporarily places property of the contemnor in the hands of the sequestrators until the contempt is purged;
- (iii) accidental or unintentional disobedience of the court would be unlikely to justify sequestration or imprisonment;¹⁷
- (iv) a degree of fault or misconduct would be required to justify sequestration or imprisonment;¹⁸
- (v) the power to imprison, for a maximum of three months, should be exercised with great care, and only as a last resort;¹⁹
- (vi) an injunction may be granted instead of committal to prison or sequestration;
- (vii) fines are also an available penalty, taking into account the seriousness of the contempt and the damage done to the public interest;²⁰ and
- (viii) costs may be payable by the defendant if found guilty of contempt which may include indemnity costs.

[40] Sequestration orders are issued under the Court’s inherent jurisdiction but are recognised in rr 17.86 and 17.87 under “Part 17: Enforcement” of the High Court Rules 2016. Their effect is to authorise and require a sequestrator to enter and take possession of all real and personal property of the defendant and obtain rents and profits from it until the contempt is purged or the Court orders otherwise.

¹⁷ *Morris v Douglas* (1996) 10 PRNZ 363 (HC) at 366. That passage has been cited with approval recently by Asher J in *Blomfield v Slater (No 4)* [2016] NZHC 210, (2016) 23 PRNZ 153, at 154.

¹⁸ Halsbury’s Laws of England (5th ed, 2012), vol 22 Contempt of Court at [66] (citing *Shoppee v Nation & Co* [1892] 1 QB 245 at 252). See also *Lockwood Group Ltd v Small*, above n 15, at [68].

¹⁹ The three month maximum was established by the Supreme Court in *Siemer v Solicitor-General* [2010] NZSC 54; [2010] 3 NZLR 767, at [67] [*Siemer SC*].

²⁰ Halsbury’s Laws of England, above n 18, at [114] (citing *Re Agreement of Mileage Conference Group Tyre Manufacturers’ Conference Ltd* [1966] 2 All ER 849 at 862, [1966] 1 WLR 1137 at 1162-1163).

[41] There have not been many instances of imprisonment for contempt, though there have been some. Direct defiance of Court orders calculated to challenge the Court's authority, of escalating gravity and exhibiting no remorse will attract imprisonment of six weeks and, if repeated, three months.²¹ Breach of injunctions may also incur imprisonment for terms of between three to six weeks, depending on the circumstances.²²

[42] Overall, a useful recent statement of the purpose of contempt is Elias CJ's statement in *Solicitor-General v Siemer* that:²³

The objective of the summary process in contempt of court proceedings is to protect the ability of the Courts to exercise their constitutional role of upholding the rule of law. Effective administration of justice under our constitution requires that the orders of the Courts are obeyed unless properly challenged or set aside. Public confidence in the administration of law, necessary for its effective administration, recognises that there is a strong expectation that those who ignore Court orders are quickly brought to account.

Was there contempt here?

[43] I consider it is clear that Ms Ying committed a contempt of court. The terms of the Consent Orders which she signed required specific performance by transfer of the property by 13 September 2016. They were clear and unambiguous and binding on Ms Ying. She certainly knew of them as she had tried to challenge them. I reject her proposition that she considered they were "pending" in some way. If she did consider that, it was not a reasonable belief to hold. Ms Ying also clearly acted in breach of the terms of the order by selling the property to a third party so preventing herself from complying with the order. Her actions in doing so were deliberate. The elements of contempt are made out.

²¹ The same defendant was the subject of both of these sentences, in two different cases. In *Ferrier Hodgson v Siemer* HC Auckland CIV-2005-404-1808, 13 July 2007 Potter J sentenced Mr Siemer to six weeks' imprisonment for civil contempt. For the three month sentence, see the *Siemer v Solicitor-General* cases: *Solicitor-General v Siemer* HC Auckland CIV-2008-404-472, 8 July 2008 [*Siemer HC*], *Siemer v Solicitor-General* [2009] NZCA 62, [2009] 2 NZLR 556 [*Siemer CA*], and *Siemer (SC)*, above n 19.

²² *Isis Group Seminars Ltd v Hawaii* HC Auckland CP 1987/89 6 March 1990; *Attorney-General v Pickering* HC Hamilton CP 24/98 21 September 2001; *Yang v Chen (No 7)* [2012] NZHC 848, [2012] NZAR 541.

²³ *Siemer (SC)*, above n 19, at [26].

[44] I do not consider Mr Young committed a contempt. He did not effect the transfer of the property so he did not directly breach the Consent Orders. He did encourage that, by propagating his extraordinary and irrational theory that the orders were “pending”. But his evidence, and that of Ms Ying, is that he also advised her directly against selling the property. His actions were concerning in attempting to have the hearing resumed in the two days after the Consent Orders were made, and his incompetent attempts to challenge the Consent Orders through the Chief High Court Judge, the improper filing in the High Court and the doomed “appeal” in the Court of Appeal. Those actions are grounds for grave doubts as to his professional competence, consistent with his admission under oath that he is not a prudent solicitor. I forward this judgment and the Notes of Evidence to the New Zealand Law Society for consideration of the professional disciplinary consequences of that. But I do not consider his actions constitute contempt of court.

Issue 3: What orders should be made?

[45] The Hoteo Avenue property has been sold to an independent bona fide third party purchaser for value. The parties accept Ms Zhang cannot recover it. Instead, I order that she should receive an amount broadly equivalent to the value she would have received had the Consent Orders been honoured. The fund paid into Court at the orders of Toogood J on 17 November 2016 provides means to do that. Sequestration is unnecessary.

[46] The amount to be paid to Ms Zhang is \$506,000, composed of:

- (a) the market value of the Hoteo Avenue property she would have received, which was \$655,000 at 12 September 2016;
- (b) minus the purchase price she would have had to have paid (other than the deposit she did pay) of \$369,000;
- (c) plus the \$220,000 that the parties agreed she would receive under the settlement.

[47] I also order interest at the Judicature Act rate on the \$506,000 from the time at which payment under the Consent Orders was required, i.e. from 13 September 2016. The parties are to file a joint memorandum, or failing agreement, separate memoranda, on what that amount is within 10 working days of the date of this judgment.

[48] I order that the \$506,000 be paid by the Registry to Ms Zhang as soon as practicable from the \$550,000 ordered by Toogood J to be paid into Court in relation to the Wintere Road property. The interest payment will also be met from the remainder of that sum.

[49] I also order indemnity costs to be paid to Ms Zhang for these proceedings (not for the proceedings which were settled by the Consent Orders, in respect of which costs were agreed to lie where they fell). I direct the parties to file a joint memorandum, or failing agreement separate memoranda, within 20 working days of the date of this judgment as to the amount of indemnity costs for these proceedings. These costs will be paid from the remainder of the \$550,000 fund with any excess still owing after that to be paid by Mr Young as second defendant.

[50] There is also agreement between the parties that the interim freezing order over the HSBC bank account should be removed since it does not contain funds of the defendants or Ms Ying.

[51] The above orders are sufficient to vindicate the rights of Ms Zhang. There is a real issue as to whether they are sufficient to satisfy the public interest in ensuring the rule of law is followed by the observance of court orders. That is given emphasis by Ms Ying's demonstration of her continuing inability to follow court directions in seeking to address the Court on specified ground rules and very quickly transgressing them.

[52] Before the continuation of the hearing of this case on 17 November 2016 my preliminary inclination was that Ms Ying's conduct did not warrant imprisonment but, rather, a warning that further contempt might do so. Her conduct at the 17 November hearing made that a close call. She has come close to talking herself

into prison because of her attitude in further failing to observe my directions in addressing the Court. I do not accept her counsel, Mr Hurd's, valiant attempt to excuse her behaviour by suggesting his instructions were not clear enough.

[53] However, throughout all these events Ms Ying appears to have been particularly motivated by money. I consider a fine may be at least as, if not more, effective in bringing home to Ms Ying the requirement to honour court orders. I order Ms Ying to pay a fine of \$10,000 to the Court. If she does not do so within 10 working days she will be imprisoned for 20 days or until the payment is made, whichever is the earlier.

Result

[54] My orders are:

- (a) I decline the application to set aside the Consent Orders;
- (b) I vary the Consent Orders to remove the obligation to transfer the property at 30 Hoteo Avenue to Ms Zhang and associated orders relating to payment (i.e. the first three of the four orders in Duffy J's Minute of 5 July 2016);
- (c) I declare Ms Ying has committed a contempt of court;
- (d) I order Ms Ying to pay a fine to the Auckland High Court Registry of \$10,000 within 10 working days of the date of this judgment;
- (e) I discharge the freezing order over the HSBC bank account by consent;
- (f) I direct the Registry to pay to Ms Zhang, as soon as practicable, the sum of \$506,000 from the \$550,000 paid into Court as ordered by Toogood J on 17 November 2016;

- (g) within 10 working days of the date of this judgment I direct the parties to file a joint memorandum, or failing agreement separate memoranda, identifying the amount of Judicature Act interest on the sum of \$506,000 from 13 September 2016 that will be paid from the remainder of the \$550,000 fund;
- (h) within 20 working days of the date of this judgment I direct the parties to file a joint memorandum, or failing agreement separate memoranda, as to the amount of indemnity costs for these proceedings which will be paid from the remainder of the \$550,000 fund with any excess still owing after that to be paid by Mr Young as second defendant;
- (i) I refer this judgment, together with the Notes of Evidence, to the New Zealand Law Society for consideration in relation to the conduct of Mr Young.

[55] If the Court Order at [54](d), imposing a fine on Ms Ying, is not paid within 10 working days, I order Ms Ying to be imprisoned for 20 days or until the payment is made, whichever is the earlier.

[56] The interim freezing order over the Haseler Crescent property will remain until the Court orders otherwise, based on evidence that the orders within the control of Mr Young and Ms Ying have been complied with.

Palmer J