

**COURT OF APPEAL**

**FRASER JA**

**Appeal No 6155 of 2018  
SC No 553 of 2017**

**SINO-RESOURCE IMP & EXP CO LTD  
BVI 1057253**

**First Applicant**

**PERRY COOPER**

**Second Applicant**

**v**

**OAKLAND INVESTMENT GROUP LIMITED  
BVI 1057253**

**Respondent**

**BRISBANE**

**TUESDAY, 24 JULY 2018**

**JUDGMENT**

**FRASER JA:** The appellant agrees that it ought to be ordered to provide security for costs. The only issue concerns the quantum. The respondent to the appeal, who is the applicant for security, has supplied evidence in the form of affidavits from an experienced solicitor which produce a figure for the costs and outlays the respondent could incur in the conduct of the appeal which total \$134,946 before GST. The GST would not be able to be recovered by the respondent for reasons set out in the material. GST is added to that figure to produce a total of \$148,946.

The affidavits give the impression that this cost is likely to be actually incurred by the respondent in defending the appeal. It is not sworn that it is likely to be recovered pursuant to a costs order on a standard basis. I am not persuaded that there is any ground for assessing the amount on an indemnity basis. It should be assessed on a standard basis.

The affidavit by Mr Mertzner for the appellant is said to be deficient because it does not set out Mr Mertzner's experience. That is not an unreasonable proposition, but I would expect Mr Mertzner, as a solicitor, not to depose to these matters unless he was able to depose to them. However, his estimates of the time expected to be taken for some matters seem to me to be perhaps unrealistically low. Another point is that he deposes to what, in his experience, costs of counsel and solicitor would be allowed in amounts which are lower than those upon which the respondent relies.

It is not possible to conduct an arithmetical or scientific exercise, but taking these various considerations into account, together with others mentioned in argument which seem to me to be much less significant, an appropriate figure for security for costs is \$85,000. That is the amount I propose to order.

The order will be that the appellant provide security for costs in the amount of \$85,000 in a form satisfactory to the registrar by 4 pm on the 14th of August 2018.

...

**FRASER JA:** This is an application by Mr Cooper to be joined as a party to this appeal as an appellant. In essence, what was decided at first instance was that a purported loan by the appellant to a company known as Passage was a sham, so that there was nothing secured under the mortgage granted by Passage to the appellant as purported security for that loan.

Mr Cooper's case for joinder is that in the course of the trial Judge's decision that the purported loan was a sham, his Honour found that a related document, a deed of settlement purportedly made on the 23rd of September 2016, was also a sham. That document recites as the parties Passage, Mr Cooper, and another company called D&M Technologies Proprietary

Limited. It is recited that Passage agreed to pay Cooper \$6,800,000, Cooper acknowledged that \$4,150,000 had been discharged by or on behalf of Passage, and Cooper acknowledged that the balance had been discharged by a different company. In the operative part, there is what appears to be a boilerplate clause providing discharges and releases mutually between Cooper, Passage, and D&M Technologies Proprietary Limited.

There is no material before me to establish what prejudice Mr Cooper might suffer by the finding of the trial judge that the deed of settlement is a sham. None of the parties to the deed were parties to the litigation in the trial division. Prima facie at least, none of the parties to the deed are bound by the orders made by the trial judge or bound by findings made in their absence from the proceedings. On the face of the deed, if it is not a sham, Mr Cooper has been paid the amount recited. As to the discharges and releases, there is no material to establish that anything relevant would have been discharged and released if the deed were not a sham. I am not persuaded that Mr Cooper's interests are adversely affected in a way which require his joinder in this appeal.

I refuse the application.

The costs of the application for security for costs are reserved.