

SUPREME COURT OF QUEENSLAND

CITATION: *Lawrie & Anor v Hwang & Ors* [2013] QSC 195

PARTIES: **KEITH JOHN LAWRIE** by his litigation guardian **THE PUBLIC TRUSTEE OF QUEENSLAND**
(first plaintiff)
LAWMAR PTY LTD
ACN 009 775 866
v
KUMOK HWANG
(first defendant)
SUNCORP-METWAY LIMITED
ACN 010 831 722
(second defendant)
GOLDPEARL PTY LTD
ACN 154 717 281
(third defendant)

FILE NO: SC No 9495 of 2012

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 11 July 2013

DELIVERED AT: Brisbane

HEARING DATE: 11 July 2013

JUDGES: Atkinson J

ORDERS: **1. Declare that the First Defendant is in contempt of court, in that:**

- a. The First Defendant has failed to comply with paragraph 8(a) of the judgment of this court dated 18 December 2012;**
- b. The First Defendant has failed to comply with paragraph 8(b) of the judgment of this court dated 18 December 2012;**
- c. The First Defendant continues to refuse to execute and deliver to the Second Plaintiff or its nominee instruments of transfer that transfer all of her right, title and interest in the Korean real properties listed in Part II of Annex A of the judgment of this court dated 18 December 2012 to the Second Plaintiff or its nominee and that are in form and substance acceptable to the relevant**

Korean real property registries for proper recording of such transfer.

- 2. Order that the First Defendant be sentenced to imprisonment for as long as she continues to refuse to execute and deliver to the Second Plaintiff or its nominee instruments of transfer (including, without limitation, an agreement for transfer of title in lieu of payment of monetary obligations and powers of attorney) that transfer all of her right, title and interest in the Korean real properties listed in Part II of Annex A of the judgment of this court dated 18 December 2012 to the Second Plaintiff or its nominee and that are in form and substance acceptable to the relevant Korean real property registries for proper recordation of such transfer, or until further order.**
- 3. The First Defendant pay the costs of this application on an indemnity basis.**
- 4. The examination of the First Defendant as to her assets and financial affairs be adjourned to a date to be fixed.**

CATCHWORDS: PROCEDURE – CONTEMPT, ATTACHMENT AND SEQUESTRATION – POWER OF COURT TO PUNISH FOR CONTEMPT – SUPREME COURT – GENERALLY – where the respondent was subject to non-money orders which included to execute instruments to transfer all right, title and interest in real properties in Korea – whether the respondent was in contempt of court and should be imprisoned for so long as the respondent refused to comply with the orders

Uniform Civil Procedure Rules 1999, r 898(2)(a)

COUNSEL: D O’Sullivan with S Webster for the applicants/plaintiffs
W F Brown for the respondent/first defendant
No appearance for the second and third defendants

SOLICITORS: The Official Solicitors to the Public Trustee for the applicant/plaintiff
Panacea Lawyers for the first defendant
No appearance for the second and third defendants

- [1] This is an application by the plaintiffs, pursuant to rule 898(2)(a) of the *Uniform Civil Procedure Rules 1999* (Qld) (UCPR), or alternatively in the inherent jurisdiction of the Court, that the first defendant, Kumok Hwang, be imprisoned for so long as she continues to refuse to comply with paragraph 8(a) and 8(b) of the judgment of the Supreme Court made on 18 December 2012, save insofar as those orders require performance within 14 days of 18 December 2012.
- [2] Justice Philippides of this court made orders on 18 December 2012 after a hearing on 5 to 7 December 2012. Her Honour made detailed findings about the behaviour

of the first defendant, which unsurprisingly led to her Honour making a number of very specific orders against the first defendant. Amongst those orders were orders requiring the first defendant, Ms Hwang, to restore properties to the plaintiff which were purchased using his funds.

- [3] Because the properties are situated in South Korea, certain formal requirements are required to be complied with in order to transfer those properties. Those requirements were set out in paragraph 8(a) of the judgment of the court dated 18 December 2012. Paragraph 8(b) required the first defendant to serve an affidavit setting out certain matters. Apart from two documents signed by Ms Hwang today, which she now appears to regret signing, she has otherwise completely refused to comply with the orders. The only possible excuse was her lack of understanding of the orders, due to her having spent the first 20-odd years of her life in Korea, and Korean being her first language.
- [4] Accordingly, I have taken whatever steps I could to ensure that she understood not only the orders but also the consequences of not complying with them. She has been represented by a solicitor from Sydney fluent in both English and Korean. He appeared in Court, instructing a barrister to act on her behalf. They have advised the first defendant and, indeed, I adjourned the court on two occasions to ensure that they were able to give her full and complete advice. I am satisfied they did so, and that it is her refusal to accept their advice which has led to their being given leave to withdraw from acting for her. An interpreter appeared in court today to interpret for Ms Hwang, and I am satisfied that every possible effort has been made by those who represented Ms Hwang and the court to ensure that she understood the effect of the orders, the effect of the papers she was required to sign to comply with them and the consequences of not doing so.
- [5] Contempt of court orders is a very serious matter. The rule of law requires that court orders be complied with. These orders have not been set aside or stayed, and Ms Hwang is clearly in contempt of court for failing to comply with them. I am only required to be satisfied on that on the balance of probabilities, but in this case, I am satisfied of that beyond reasonable doubt. I am also satisfied beyond reasonable doubt that the explanations given by Ms Hwang for not complying with the court orders are not the true explanations for her conduct.
- [6] In the circumstances, I find that the first defendant is in contempt of court in that she has failed to comply with paragraph 8(a) of the judgment of this Court dated 18 December 2012. I am satisfied that she is also in contempt of court for failing to comply with paragraph 8(b) of the judgment of this court, dated 18 December 2012.
- [7] I am satisfied that Ms Hwang continues to refuse to execute and to deliver to the second plaintiff or its nominee instruments of transfer that transfer all of her right, title and interest in the Korean real properties, listed in Part II of Annex A of the judgment of this court dated 18 December 2012, to the second plaintiff or its nominee that are in form and substance acceptable to the relevant Korean real property registries for proper recording of such transfer.
- [8] Accordingly, I order that the first defendant, Kumok Hwang, be sentenced to imprisonment for so long as she continues to refuse to execute and deliver to the second plaintiff or its nominee instruments of transfer (including, without limitation, an agreement for transfer of title in lieu of payment of monetary obligations and

powers of attorney) that transfer all her right, title and interest in the Korean real properties, listed in Part II of Annex A of the judgment of this court dated 18 December 2012, to the second plaintiff or its nominee and that are in form and substance acceptable to the relevant Korean real property registries for proper recordation of such transfer, or until further order.

- [9] In other words, Ms Hwang, you are sentenced to imprisonment until you sign those documents or the court makes a different order.
- [10] I should put it on the record that I am satisfied that Ms Hwang has not told the truth about not seeing documents, including the judgment, prior to her appearance in this court. There is ample evidence that she has seen those documents and, as with telling me that she has not had advice, I am satisfied that is patently untrue.
- [11] So far as the costs are concerned, the applicant seeks his costs on an indemnity basis, on the basis that he has been wholly successful and the first defendant's contempt has been contumacious and deliberate. The first defendant argues that she should not have to pay the costs because she does not have the capacity to pay the costs. That is not relevant to the proper order, and I order that the first defendant pay the costs of this application on an indemnity basis.