

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

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2019-404-2768
[2020] NZHC 1254**

UNDER the Overseas Investment Act 2005

BETWEEN CHIEF EXECUTIVE OF LAND
INFORMATION NEW ZEALAND
Plaintiff

AND CHOR LIMITED AS TRUSTEE OF CHOR
TRUST
Defendant

Hearing: 5 March 2020

Appearances: K R Muirhead and B S Rorrison for Plaintiff
J G Ussher for Defendant

Judgment: 8 June 2020

JUDGMENT OF PETERS J

This judgment was delivered by Justice Peters on 8 June 2020 at 2 pm
pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar

Date:

Solicitors: Meredith Connell, Auckland
PCW Law Ltd, Auckland

[1] By statement of claim of 18 December 2019, the plaintiff seeks an order requiring the defendant Chor Ltd (“Chor”) to pay a civil penalty to the Crown under s 48(1)(a) and (2)(b) Overseas Investment Act 2005 (“Act”). Chor does not dispute that I should make the order sought.

Background

[2] In 2013, Ms Xi Rong Zhou entered into an agreement to purchase a residential property for NZ\$2,550,000 (“property”). Ms Zhou subsequently nominated her husband, Mr Bingyan Zhou, as purchaser of the property. Mr Zhou settled the purchase in October 2013. It is common ground Ms Zhou and Mr Zhou required consent under the Act to acquire their equitable and legal interests respectively; they did not obtain those consents; and thereby contravened the Act.

[3] Chor was incorporated on 22 September 2016 and is the trustee of the Chor Trust which was settled on the same day. At all material times, Mr Zhou and Ms Zhou have been Chor’s directors and shareholders.

[4] On 29 September 2016, Mr Zhou entered into an agreement to sell the property to Chor for \$3.2 million, and that acquisition was subsequently settled. Chor also required consent for its purchase. Having failed to obtain that consent, Chor also was in contravention of the Act.

[5] In about 2017, the Regulator was alerted to the possibility of the contravention or contraventions. It transpired the Zhous and Chor had been poorly advised by their former solicitor and, since being informed of the position, have co-operated with the Regulator.

[6] In late-2018, Chor sold the property to third party for \$3.2 million.

Remedy

[7] Section 48(1) of the Act permits the Court to order a party who has contravened the Act to pay a civil penalty to the Crown. Chor admits such a contravention.

[8] Section 48(2)(b) of the Act confers power on the Court to impose a penalty calculated by reference to the “quantifiable gain” the party made on holding the property for which a consent was required. The plaintiff seeks such a penalty in this case.

[9] On the face of it, Chor bought and sold the property at the same price and so derived no quantifiable gain. However, it appears from the parties’ agreed statement of facts that, throughout, the beneficial interest in the property has been held for Ms Zhou and the couple’s son, that is from the acquisition of the property in 2013 until its sale in late-2018. The (gross) quantifiable gain acquired, \$650,000, is thus presently held by Chor for its beneficiaries.

[10] The plaintiff has proposed Chor pay a penalty of \$539,914.47, being the (net) quantifiable gain by Chor in relation to the property — really the net quantifiable gain by the beneficiaries of the Chor Trust — of \$650,000, less the costs of disposal and other disbursements.¹ The plaintiff also seeks an order that Chor pay \$15,000 towards its costs.

[11] Chor does not object to these orders, and as I understand it from Mr Ussher and the documents before me, there is no objection by the beneficiaries. I am satisfied it is appropriate to make the orders.

Result

[12] The defendant is to pay the plaintiff:

- (a) \$539,914.47 by way of penalty pursuant to s 48(1) and (2) of the Overseas Investment Act 2005;
- (b) \$15,000 as a contribution to the plaintiff’s costs.

[13] I reserve leave to apply.

Peters J

¹ Section 48(2).