

THE HIGH COURT

[2021] IEHC 740
[2020/3566 P]

BETWEEN

YUZHU KANG

PLAINTIFF

AND

XIU XIANG KELLY, TUO DU, XIU LAN HOLDINGS LIMITED, LAN SIDERIVER
INVESTMENT HOLDINGS AND ALLIED EXPRESS INTERNATIONAL DEVELOPMENT
LIMITED

DEFENDANTS

DECISION of Mr. Justice Brian O'Moore delivered on the 12th day of November, 2021.

1. These proceedings concern the true ownership of certain Irish assets, including the Fota Island Resort and the Kingsley Hotel in Cork. These are very valuable assets. The claim is therefore a significant one.
2. Mr. Kang is obliged to make discovery of the following categories of documents: -

"Category 1

Documents evidencing, recording or otherwise relating to:

- (a) The incorporation of Holdings and Sideriver.
- (b) The funding of the share acquisitions in Holdings and Sideriver upon their respective incorporations.

Category 2

All documents evidencing, recording or otherwise relating to:

- (a) The purchase of Fota.
- (b) The Plaintiff's advance of monies for the purchase of Fota.

Category 10

Documents in respect of the Plaintiff's provision of funding, whether direct or indirect, to acquire the following properties:

- (a) The Little Island Property.
- (b) The Galway Property.
- (c) The Finglas Property.
- (d) The Kingsley."

Holdings and Sideriver are two companies involved in acquiring or holding assets.

3. In his discovery, Mr. Kang has provided bank statements which are heavily redacted. These redactions are justified by Mr. Kang on the basis that the information masked from view is (a) confidential and (b) is irrelevant to the proceedings and outside the scope of the discovery categories. Importantly, the bank accounts are not in the name of Mr. Kang but rather in the name of one Jianhain Shi. It is stated, on behalf of Mr. Kang, that these bank statements show the exit of monies used to buy the Irish assets.

4. The effect of these redactions is that it is impossible for the Defendants to know the source of monies paid into the Shi accounts out of which payments were made to buy the assets. This creates a real difficulty (to put it mildly) in challenging the plea that the funds were sourced from the Plaintiff's personal wealth.
5. I do not accept the evidence (on behalf of Mr. Kang) or the submission (of Mr. Kang's counsel) that the source of monies into the Shi accounts is irrelevant to the proceedings. On the contrary, this information is at the heart of the Mr. Kang's claim that his monies funded the acquisition of the assets.
6. The position adopted by Mr. Kang resulted in a proposition (on his part) which I find unsustainable. Despite a typically accomplished presentation, counsel for Mr. Kang ended up making this submission:-

"We say that the source of the payments into the account has nothing whatsoever to do with the funding of [...] the shares and the properties because Mr. Shi has sworn an affidavit and will give evidence that this was a Kang - a family account controlled by Mr. Kang and he directed that monies be paid out of it."

7. The payments into the Shi accounts have everything to do with the ultimate funding of the share purchase, both as a matter of principle and in the light of the particular way in which Mr. Kang's case has been pleaded. Evidence from Mr. Shi, who is Mr. Kang's brother in law, is evidence which the Defendants are entitled to challenge. It is unconvincing to argue that the source of payments made to acquire the Irish assets is rendered irrelevant because Mr. Kang will call a witness who will swear that the relevant accounts were controlled by the Plaintiff.
8. Equally, I reject Mr. Kang's argument that the source of payments into the Shi accounts is irrelevant because these were not made with the specific purpose of acquiring the companies. I could well pay my income into a savings account with no particular purpose, and then use the funds in that account to buy a house, for example. The proposition that I have bought the house with my own funds is not affected one way or the other by my intentions (or lack of intentions) when I lodged the monies to the account in the first place.
9. I also find misplaced the argument that, as no party to these proceedings suggests that an entity not involved in the action has funded the purchase of the companies, it is irrelevant who has placed funds in the Shi accounts. This submission ignores the claim made by Mr. Kang, which is that he funded the acquisition of the shares. That is the case which he must bring home, and his discovery obligations are tailored to this specific claim.
10. Having considered the discovery categories, I am satisfied that Mr. Kang is not entitled to redact the entries showing the payment of monies into the relevant accounts in the manner which he has done. I will list the matter for 10am on the 17th of November 2021 to hear submissions on the form of the Order, the costs of the Defendants' motion, and

whether or not I should limit the circulation of the unredacted documents to a confidentiality club (at least initially).

11. I should also make it clear that this is merely my decision, rather than my judgment on the motion. I will also hear the parties on the 17th of November on when my full judgment will be required.

Coda

12. At the hearing on the 17th of November, the parties informed me that they had agreed the form of Order, that there was no need for a confidentiality club, and that a full judgment was not required. This Decision is therefore being placed on the Courts Service website, *in lieu* of a comprehensive judgment.