

I, Florian Ammer, solicitor on record for the Respondent, hereby certify this and the following 2 pages are a true and correct copy of the Respondent's Notice of Contention for publication on the Supreme Court of New South Wales website pursuant to paragraph 27 of Practice Note SC CA 1.
Dated: 17 October 2025


Florian Ammer

FILED

- 5 AUG 2025



Form 106 (version 3)
UCPR 51.40

NOTICE OF CONTENTION

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
Registry	Sydney
Case number	2025/161420

TITLE OF PROCEEDINGS

Appellant	Kin Lam
Respondent	Tuo Liu

PROCEEDINGS IN THE COURT BELOW

Title below	Tuo Liu v Kin Lam
Court below	NSW Supreme Court
Case number below	2020/00117870
Dates of hearing	14, 15, 16, 19, 20, 23 and 27 February 2024 and 13 March 2024
Material date	4 April 2025
Decision of	Walton J

FILING DETAILS

Filed for	Tuo Liu , Respondent
Filed in relation to	Whole decision below
Legal representative	Florian Ammer, Piper Alderman
Legal representative reference	FSA.414165
Contact name and telephone	Florian Ammer, 02 9253 9919
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DETAILS OF CONTENTION

The Respondent contends that the decision of the court below should be affirmed on grounds other than those relied on by the court below, but does not seek a discharge or variation of any part of the orders of the court below.

GROUND S

Noting that the Appellant did not allege an absence of consideration before the primary judge (including in his defence, the Statement of Agreed Facts and Issues, in oral submissions, or in written submissions), and while reserving the Respondent's position as to prejudice occasioned by reason of the allegation being raised, for the first time, on appeal (**Prejudice**), the Respondent contends that:

1. To the extent that the primary judge made no finding that the Respondent had provided sufficient consideration for the Appellant's promises under the agreement entered into between the parties on or about 14 May 2018 (**Agreement**), it was open to the primary judge to find that sufficient consideration had been provided on the basis that:

- a. by no later than 11 May 2018, the Respondent had a valid claim to be indemnified by the Appellant for payment of at least RMB 4,218,675;

Particulars

- A. The Primary Judge found at [140(1)] and [230] of the judgment below that the Appellant requested that the Respondent guarantee the Appellant's obligation to repay a loan made by Hong Kong Jiayi International Trade Co Ltd (**Jiayi**) to the Appellant pursuant to an agreement dated 3 June 2014 (the **Jiayi Loan Guarantee**).
 - B. As a result, there was an implied contract of indemnity pursuant to which the Appellant agreed to indemnify the Respondent for any payments made by the Respondent under the Jiayi Loan Guarantee or an implied term in the Jiayi Loan Guarantee to the same effect : *Hopper v DJ Sincock Pty Ltd* (2021) 107 NSWLR 153.
 - C. The Primary Judge found at [375] and [800] of the judgment below that the Respondent made payment of RMB 4,218,675 in part satisfaction of the Jiayi Loan Guarantee by no later than 11 May 2018.
- b. the Agreement contained a promise not to enforce the indemnity for a limited period of time;

Particulars

Clause III of the Agreement.

- c. the Respondent refrained from enforcing the indemnity for a limited period of time.

Particulars

The Respondent refrained from enforcing the Indemnity until after 31 December 2018.

2. To the extent that the Prejudice can be cured before the Court of Appeal, the Respondent contends that the Appellant is required to indemnify the Respondent for the entire RMB 9,469,485.52 paid under the Jiayi Loan Guarantee.

Particulars

- A. The Respondent repeats and relies on the particulars to paragraph 1(a) above.
- B. The Primary Judge found at [392] and [739] of the judgment below that the Respondent had paid the entire RMB 9,469,485.52 payable under the Jiayi Loan Guarantee by 24 January 2019.

SIGNATURE

Signature of legal representative



Capacity

Solicitor

Date of signature

5 August 2025