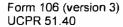
I, Florian Ammer, solicitor on record for the Respondent, hereby certify this and the following 2 pages are a true and correct copy of the Respondent's Notice of Contention for publication on the Supreme Court of New South Wales website pursuant to paragraph

27 of Practice Note SC CA 1. Dated: 17 October 2025

Florian Ammer

FILED

- 5 AUG 2025



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

Contact email

FAmmer@piperalderman.com.au

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.

GROUNDS

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;

<u>Particulars</u>

Clause III of the Agreement.

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

<u>Particulars</u>

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

 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.

<u>Particulars</u>

- 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

Date of signature

Solicitor

5 August 2025