NEW SOUTH WALES SUPREME COURT

CITATION:
Xiaodong Yang v S&L Consulting Pty Ltd [2008] NSWSC 1051

JURISDICTION:

FILE NUMBER(S):
50162/2008

HEARING DATE(S):
12 September 2008

EX TEMPORE DATE:
12 September 2008

PARTIES:
Xiaodong Yang
S&L Consulting Pty Limited (ACN 053 781 694)
Stephen Ting Fong Lee

JUDGMENT OF:
Hammerschlag J

LOWER COURT JURISDICTION:
Not Applicable

LOWER COURT FILE NUMBER(S):
Not Applicable

LOWER COURT JUDICIAL OFFICER:
Not Applicable

COUNSEL:
J. Hogan-Doran (Plaintiff)

SOLICITORS:
Gray & Perkins Lawyers (Plaintiff)

CATCHWORDS:
COMMERCIAL ARBITRATION – enforcement of foreign arbitral award – plaintiff sough to enforce a Chinese arbitral award (“the award”) against the defendants – leave granted to plaintiff to enforce the award as if it had been made in this State in

accordance with the law of this State under s 8(2) of the International Arbitration Act 1974 (Cth) and s 33 of the Commercial Arbitration Act 1984 (NSW) – no discernible reason not to enforce the award – no appearance entered by defendant – judgment entered in favour of the plaintiff in terms of the award

LEGISLATION CITED:
International Arbitration Act 1974 (Cth)
Commercial Arbitration Act 1984 (NSW)
Uniform Civil Procedure Rules 2005

CASES CITED:

TEXTS CITED:

DECISION:
Leave to enforce award and judgment for the plaintiff against the defendants in the amount of $619,769.45. Defendants to pay the plaintiff's costs of the proceedings.

JUDGMENT:



**IN THE SUPREME COURT**
**OF NEW SOUTH WALES**
**EQUITY DIVISION**
**COMMERCIAL LIST**

**HAMMERSCHLAG J**

**12 SEPTEMBER 2008**

**50162/2008 XIAODONG YANG -v- S & L CONSULTING PTY LTD & ANOR**

**EX TEMPORE JUDGMENT**

1 **HIS HONOUR**: By summons issued on 13 August 2008 the plaintiff sought orders that he be granted leave to enforce a Chinese language arbitral award given on 12 December 2007 (and corrected on 21 December 2007) ("the award") in his favour in an arbitration under the terms of an agreement between the plaintiff and the defendants dated 12 January 2004.

2 The agreement contains a provision that:

> "Any dispute caused or related with the agreement shall submit to the China International Economic and Trade Arbitration Commission…"

3 Under the award the defendants were ordered to pay the plaintiff amounts of A$500,000, A$30,000 and China yuan renminbi (RMB) 323,932.60 respectively.

4 The summons was duly served and made returnable before this Court on 5 September 2008.

5 The defendants did not appear.

6 Leave was granted by Bergin J for the issue of a notice of motion to be made returnable today seeking judgment in the above amounts, together with interest up to and including today in the amounts of A$39,734.10 and RMB 24,285.23.

7 The evidence establishes that the defendants are aware of today's motion. They were called this morning when the matter commenced before Bergin J and did not appear. Her Honour then referred the matter to me for disposition.

8 The evidence also indicates that the defendants did not intend to appear today.

9 Section 8(2) of the *International Arbitration Act* 1974 (Cth), which applies to the award, provides that the award may be enforced in this Court as if it had been made in this State in accordance with the law of this State.

10 Section 33 of the *Commercial Arbitration Act* 1984 (NSW) provides that an award made under an arbitration agreement may by leave of the Court be enforced in the same manner as a judgment or order of the Court to the same effect, and where leave is so given judgment may be entered in terms of the award.

11 There is no reason discernable from the material relied upon why this Court should not enforce the award.

12 By the operation of s 8(2) of the *International Arbitration Act* and also of s 33 of the *Commercial Arbitration Act* the plaintiff accordingly requires, and in the present circumstances is entitled to, leave of the Court to enforce the award. I now grant such leave.

13 Such leave having been granted, judgment may be entered in terms of the award. The plaintiff is entitled to such judgment in accordance with *Uniform Civil Procedure Rules* 2005, r 6.10(1)(b) the defendants having not entered any appearance on the return date nor, if it be relevant, today.

14 The calculation of the amounts of interest appears in the submissions of counsel, which include a printout with respect to the exchange rates from which the final figures are derived from Chinese currency. The rate of interest payable on the award is specified in it and is explained in the affidavit of Mrs Kardashinsky read on behalf of the plaintiff.

15 The orders of the Court are accordingly as follows:

a pursuant to s 33 of the *Commercial Arbitration Act*, the plaintiff has leave to enforce the award made by the China International Economic and Trade Arbitration Commission in this Court as if it had been made in this State in accordance with the laws of this State and in the same manner as a judgment of this Court;
b judgment for the plaintiff against the defendants in the amount of $619,769.45;
c the defendants are to pay the plaintiff's costs of the proceedings.

16 A copy of submissions relied upon by counsel for the plaintiff has been initialled by me, dated today's date and will be kept with the papers.

17 Exhibits SC1 and SC2 which became exhibit H in these proceedings may be returned to the plaintiff.

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LAST UPDATED:
7 October 2008