IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA429/2022
[2024] NZCA 38

BETWEEN	XIAOLIN CHEN First Appellant
	WAIHOPAI VALLEY VINEYARD LIMITED Second Appellant
	YI LU Third Appellant
	DON CHEN Fourth Appellant
	JINPING HUANG Fifth Appellant
	QI YANG Sixth Appellant
	ADELAIDE EDUCATION GROUP PTY LIMITED Seventh Appellant
AND	HONGZHAO HUANG First Respondent
	JIEYU LU Second Respondent
	MATAKANA WINES LIMITED Third Respondent

Hearing:	1 and 2 November 2023
Court:	Wylie, Mander and Muir JJ
Counsel:	A R B Barker KC, S R G Judd and P W G Ahern for Appellants M D O'Brien KC and M D Pascariu for Respondents
Judgment:	1 March 2024 at 11 am

JUDGMENT OF THE COURT

A Leave is granted to the respondents permitting them to adduce by way of further evidence [1] and [2] of Ms Lu's affidavit of 27 October 2023. Leave is declined to the respondents to adduce in evidence the remainder of the affidavit.

B The first appellant is granted leave to amend his prayer for relief as set out in [245] of this judgment.

C The respondents are granted leave to amend their prayer as set out in [246] of this judgment.

D The appeal is allowed in part:

(a) The award of equitable damages made in respect of the first, second and third causes of action is set aside.

(b) The principal sum awarded in respect of the fourth cause of action is reduced from $2,376,261, to $1.2 million.

(c) The principal sum awarded in respect of the fifth cause of action is reduced from $2,376,261, to $1,176,271.

(d) The orders made in respect of the seventh cause of action are set aside.

(e) The orders made in respect of the eighth cause of action are amended, by setting aside the direction that Waihopai pay Mr Huang, Ms Lu and Matakana Wines $2,376,271. In all other respects, the relief granted in respect of the eighth cause of action is upheld.

E The orders for the payment of interest in respect of Mr Chen's third counterclaim and in respect of the respondents' fourth, fifth, sixth and eighth causes of action are set aside.

F Interest on each relevant cause of action/counterclaim is awarded pursuant to s 24(2)(b) of the Interest on Money Claims Act 2016, from the date of each advance to the date of judgment at the rate of 5 per cent per annum and from

the date of judgment to the date of payment pursuant to ss 10 and 12 of that Act.

G In all other respects the appeal is dismissed.

H There is no order as to costs.

REASONS OF THE COURT

(Given by Wylie J)

Table of Contents

Introduction

[1] The primary (but not the only) issue in this appeal is whether a joint venture agreement (the JV agreement) dated 19 April 2012 between the first appellant, Xiaolin (Chris) Chen (Mr Chen), and the first and second respondents, Hongzhao (Alex) Huang (Mr Huang) and his wife, Jieyu (Chrissy) Lu (Ms Lu), remains in force, or whether it was replaced by a subsequent partnership agreement, based on an "Integration Scheme", in or about May/June 2013.

[2] In a comprehensive judgment issued on 4 August 2022, Gordon J, in the High Court at Auckland, found that the Integration Scheme was never agreed between the parties and that there was no partnership based on it or otherwise.[1] In the alternative, the Judge held that if a partnership agreement had been reached, it was vitiated ab initio by various misrepresentations made by Mr Chen.

[3] The appellants submit that the Judge's findings were incorrect. They argue that the overwhelming weight of the evidence was to the effect that Mr Chen, Mr Huang and Ms Lu did enter into a partnership and that they abandoned the JV agreement. They deny that either Mr Huang or Ms Lu was misled or deceived. They seek a declaration that there was a partnership, together with an accounting to determine the respective entitlements of the parties in the partnership assets.

[4] Mr Huang and Ms Lu support the findings made by the Judge. They say that the Integration Scheme was never finalised and that what was discussed was simply a proposal. They also deny that there was a partnership created by the conduct of the parties. They say that the governing document remains the JV agreement and that it applies to the unwinding of much of their business relationship with Mr Chen.

---

1 *Huang v Chen* [2022] NZHC 1888 [High Court judgment].

The factual background

The parties

[5] The proceeding arises following a falling out between two couples who were initially friends and who became increasingly involved in business dealings with each other.

The Chen interests (the appellants)

[6] Mr Chen first came to New Zealand in 1996. He has been a New Zealand citizen since 2001 and he now lives in this country. Since about 2006, Mr Chen and the fifth appellant, his wife Jinping Huang (Jackie Huang), have worked in the wine industry, including by promoting New Zealand wines in China. They both have wine industry qualifications. Gordon J recorded that Mr Chen's and Jackie Huang's first language is Mandarin but they can both speak, read and write English. Mr Chen is more proficient in English than Jackie Huang.[2]

[7] The second appellant, Waihopai Valley Vineyard Ltd (Waihopai), was incorporated by Mr Chen and the third appellant, Yi Lu, in August 2006. Mr Chen held 40 per cent of the shares in Waihopai; his brother, the fourth appellant, Xiaodong Chen (Don Chen), held 20 per cent of the shares; Yi Lu held the remaining 40 per cent of the shares.

[8] The sixth appellant, Qi Yang, is Yi Lu's wife. She lives with her husband in Auckland.

[9] The Judge recorded that the seventh appellant, Adelaide Education Group Pty Ltd (AEG), carries on an education business. It has its registered office in Australia. At relevant times, it had three shareholders, including Don Chen. He was also a director of the company.[3]

---

2 At [25].
3 At [29].

The Huang interests (the respondents)

[10] Mr Huang is a businessman. He lives in China. At all relevant times he would travel from China to New Zealand, stay a few days and then return. He typically spent less than a month a year in New Zealand. He obtained residency in January 2015, based on his marriage to Ms Lu. Mr Huang was, at all relevant times, an overseas person as defined in the Overseas Investment Act 2005 (the OIA).[4] He does not speak English.

[11] Ms Lu came to New Zealand in 2004 to study English. She has since obtained New Zealand residency. She met Mr Chen's wife, Jackie Huang, in China in 2003 or early 2004. Jackie Huang then operated a business helping Chinese students in New Zealand and she arranged accommodation and schooling for Ms Lu. She and Ms Lu became friends and Jackie Huang introduced Ms Lu to her (Jackie Huang's) husband, Mr Chen.

[12] The third respondent, Matakana Wines Ltd (Matakana Wines) was incorporated by Mr Chen in 2012. He was initially its sole director. As is explained below, its shares were initially in Mr Chen's name but, by the time of the hearing before Gordon J, the shares were held by an entity known as Kiwi Club Ltd (Kiwi Club), a company controlled by Ms Lu.

2006–2012

[13] There was no dispute between the parties as to what happened pre-late 2012. All agreed that the Judge was correct in her summary of the relevant facts prior to this date. We gratefully adopt her analysis.

> [30] In 2006 Mr Huang came to Auckland for business. By that stage he and Ms Lu were in a relationship. Ms Lu acted as his interpreter while he was here. She introduced Mr Huang to Mr Chen.
>
> *Matakana Villa Lots*
>
> [31] At about that time Mr Chen was interested in buying a property in Matakana, north of Auckland. He had been introduced to the land by Paul Vegar, a real estate agent. Mr Chen says that Mr Vegar explained that the

[4] Overseas Investment Act 2005, s 7 definition of "overseas person", para (2).

land was owned by his family company. It adjoined land owned by the Vegar family's Matakana Estate winery at 568 Matakana Road. Mr Chen says he discussed this with Yi Lu.

[32] The land for sale at Matakana was, at that stage, bare land and was in seven lots numbered 8 to 14. Mr Chen says Mr Vegar's proposal was that his companies would plant grapes on the properties except for an area reserved to build a house on each lot. The Vegars would maintain the vines and use the grapes in their winery and the purchasers of the lots would pay a small amount to the Vegars for maintenance. The neighbouring properties (Lots 4–7) would continue to be owned by the Vegars. The Matakana Estate winery itself was on Lot 4.

[33] Mr Chen's evidence was that at the time he had no experience in property investment or in the wine industry but was attracted to the idea of living on a property in Matakana surrounded by grapes. Mr Chen discussed this idea with Mr Huang and Ms Lu while Mr Huang was in New Zealand and they went to see the properties together.

[34] The upshot was that in late 2006 Mr Chen's wife, Jackie Huang, purchased Lot 8 and his brother, Don Chen, purchased Lot 14. Yi Lu's wife purchased Lot 9 and Yi Lu's brother-in-law purchased Lot 13. Mr Huang purchased Lots 11 and 12, and Ms Lu purchased Lot 10. Ms Lu's evidence was that Mr Chen and Yi Lu borrowed from Mr Huang to fund their purchases. There was evidence of at least some repayments by Mr Chen.

[35] Additionally, Mr Huang, Ms Lu, Mr Chen and Yi Lu entered into a written agreement signed and dated 15 March 2007 relating to all seven lots. It appears from that agreement that the parties intended to work together to develop the seven lots and in particular to build a lodge. They commissioned an architect to prepare concept plans but otherwise the 15 March 2007 agreement was not advanced.

[36] … The parties referred to [the lots they had purchased] as … the "villa" lots. …

Waihopai

[37] Mr Chen said at about the time he was introduced by Mr Vegar to the villa lots, Mr Vegar and his brother Peter talked to him and Yi Lu about investing in a new vineyard development in Marlborough on land owned by a company associated with the Vegar family. Mr Huang and Ms Lu were not involved in the acquisition that followed.

[38] Mr Chen says that the Vegars' proposal was that he and Yi Lu would buy the land and the Vegars would provide services to develop the then bare land as a vineyard and to manage and maintain the vineyard including by arranging to sell the grapes. The Vegars' initial proposal was for a property in Waihopai Valley. That was replaced by another offer by the Vegars for a different piece of land nearby under essentially the same arrangement. The replacement property was known as Kintyre, a name that appears on a number of the documents. The company name Waihopai reflected the land in the original proposal made by the Vegars.

[39] On 11 October 2006 Waihopai purchased the Kintyre property from the Vines Development Company Ltd, one of the Vegars' companies, for $5.2 million. Waihopai then entered into two contracts: a Vineyard Management Agreement with the Vines Development Company Ltd and a Grape Supply Agreement with Goldridge Estate Ltd. The latter was a company also owned by the Vegars. Both contracts were later assigned to another Vegar family company, Savvy Vineyards 3550 Ltd (Savvy).

[40] Waihopai was planted with grapes in 2007 and 2008 and it began supplying grapes to Savvy, some of which were sold by Savvy to the … Matakana Estate winery.

Chateau Kiwi

[41] Also in 2006, Mr Chen and others started a business called Chateau Kiwi which exported New Zealand wine to China. Wine was purchased from a number of New Zealand wineries, including the … Matakana Estate winery, and sold at a number of Chateau Kiwi outlets in cities and towns in China.

[42] Chateau Kiwi Headquarters, the name used for the franchisor, franchised the brand to 15 to 20 franchisees in China. From 2009 Ms Lu was a franchisee in her home town of Zhongshan, China.

Willow Flat

[43] The friendship between the two couples (Mr Huang and Ms Lu, and Mr Chen and Jackie Huang) continued. In 2009, Mr Huang and Ms Lu visited Marlborough with Mr Chen and looked at another piece of bare land owned by a Vegar family company at Willow Flat. It was 21.60 hectares in area. The Vegars were selling the land on the same basis as they had sold the land to Waihopai in 2006, including the vineyard development, vineyard management and grape supply agreements. Ms Lu was very keen to invest in a vineyard. Mr Chen referred her to his then lawyer, Brad Botting, who gave her advice on the sale and purchase agreement and the three other agreements. Ms Lu waived privilege in that correspondence. The advice was comprehensive and raised a number of issues and risks with proceeding with the transaction, including the risk of losing the deposit. …

[44] Notwithstanding Mr Botting's advice, Ms Lu signed the agreement for sale and purchase and paid the deposit of $114,500, not to the Vegars' solicitor, nor to the vendor company, but to another company owned by the Vegars. Ms Lu incorporated Kiwi Club for this venture. She was the sole director with 100 per cent shareholding. It appears from Ms Lu's evidence that her concern at the time was to obtain residency and she hoped that the purchase of Willow Flat would fast track her residency application through the immigration consultant she was using at the time. However, her residency application did not succeed, the company to which Ms Lu paid the deposit went into liquidation, and Ms Lu lost the deposit. …

Long-term business visa application – Ms Lu and Mr Huang

[45] After the failed immigration application, Ms Lu and Mr Huang engaged a new immigration consultant. In May 2011 they applied to Immigration New Zealand (INZ) for a long-term business visa. Ms Lu was

the principal applicant. The application was based on a business plan under which Ms Lu intended to set up a business in New Zealand to export wine to China. She relied on her experience as a franchisee of Chateau Kiwi in Zhongshan, China and ownership of the villa lots in Matakana.

…

Acquisition of Matakana Estate

[47] In or around 2011 Mr Chen became aware that the corporate owners of Matakana Estate were in liquidation and receivership and that the winery and land (Lots 4–7) [the Matakana land] were for sale. Mr Chen says this created a potential problem for the owners of the villa lots because the Vegar companies had set up the development on the villa lots and continued to manage those properties. He says the receivership was also a potential problem for Waihopai because some of the grapes Waihopai produced were supplied to Matakana Estate indirectly through Savvy.

[48] Mr Chen says he could not afford to purchase the Matakana land and winery business himself, so he discussed the issue with Mr Huang and Ms Lu in September 2011.

[49] The Matakana land and winery business were being sold in three parts:

(a) Three lots were being sold together as a package (Lots 5, 6 and 7). Those lots were used for growing grapes;

(b) Another lot was being sold separately (Lot 4). This lot (the winery lot) contained the main winery buildings used for the Matakana Estate business; and

(c) The Matakana winery business itself was being sold together with the stock.

[50] Mr Huang agreed to provide all of the funding to buy the Matakana land and winery business. The plan was that Mr Huang, Ms Lu and Mr Chen would own and operate the business together. It was agreed Mr Huang would lend Mr Chen his contribution towards the purchase and Mr Chen would repay Mr Huang.

[51] Mr Huang and Ms Lu did not have residency at that stage; they lived in China and were accordingly both "overseas persons" not eligible to purchase the Matakana land under the overseas investment rules. It was decided that Mr Chen would buy the land in his own name and the business through his company Matakana Wines; Mr Huang and Ms Lu would acquire 65 per cent of Matakana Estate (55 per cent to Mr Huang and 10 per cent to Ms Lu) once they had approval from the [Overseas Investment Office (the OIO) under the OIA]. Mr Chen would have a 35 per cent share for his contribution of $1.47 million loaned to him by Mr Huang which was to be repaid on specified future dates.

[52] On 30 September 2011 Mr Chen entered into an agreement to purchase Lot 4 for $1.2 million and an agreement to purchase the winery

business for $950,000. The agreement for the purchase of the winery business was later varied and the purchase price was ultimately $1,400,938.94.

[53] On 21 October 2011 Mr Huang, Ms Lu and Mr Chen entered into and signed a "Joint Venture Contract" which, … all parties agree was superseded by the later JV agreement.

[54] The 21 October 2011 agreement contemplated a total purchase price of $3.5 million dollars to be paid by Mr Huang. Mr Chen would later pay $1.4 million and Ms Lu would later pay $350,000. Mr Huang would therefore have a 50 per cent share, Mr Chen would have 40 per cent and Ms Lu would have 10 per cent.

[55] On 26 October 2011 the purchase of Lot 4 settled. Mr Huang paid the full purchase price and Mr Chen acquired the land in his name.

[56] On 2 November 2011, as part of the agreement reached with Mr Huang and Ms Lu, Mr Chen entered into an agreement to purchase Lots 5, 6 and 7 for $1.25 million. That transaction settled on 27 March 2012. Mr Huang again provided the funds for the purchase. As agreed, Mr Chen acquired the land in his own name and the business assets were acquired by Mr Chen's company, Matakana Wines.

The JV agreement

[57] After all the transactions had settled Mr Huang prepared an updated and more formal version of the 21 October 2011 agreement with the assistance of his lawyers in China. The agreement was in the Chinese language and was signed in China on 19 April 2012 by Mr Huang, Ms Lu and Mr Chen. …

[58] I will discuss the terms of the JV agreement later in this judgment. For present purposes the following summary suffices:

(a) The cost of acquisition of the Matakana Estate project was agreed at $4.2 million;

(b) $1.47 million of this was to be treated as a loan from Mr Huang to Mr Chen, repayable in three instalments on particular dates between 2013 and 2015;

(c) Mr Huang was to have a 55 per cent share, Ms Lu 10 per cent and Mr Chen 35 per cent;

(d) Due to the requirement for Mr Huang and Ms Lu to obtain [OIA] consent, Mr Chen would acquire the assets as nominee of the three parties, but the actual buyers were Mr Huang, Ms Lu and Mr Chen; and

(e) Mr Chen would be appointed [Chief Executive Officer (CEO)] of the business.

[59] The parties took possession of the Matakana land and winery business from February 2012 and continued to employ the existing chief winemaker. Mr Chen was employed as the CEO and General Manager of Matakana Wines.

…

Amended INZ application – Ms Lu and Mr Huang

[61] In mid-2012 Mr Chen transferred all the shares in Matakana Wines to Ms Lu's company, Kiwi Club. …

[62] … [T]he transfer was documented on 29 June 2012 and registered with the Companies Office on 10 September 2012.

[63] On 28 June 2012 Ms Lu was appointed a director of Matakana Wines.

[64] On 23 October 2012 Mr Huang and Ms Lu's immigration adviser wrote to INZ to amend their immigration application to rely on the Entrepreneur Plus category. This category requires the applicant to be a self-employed entrepreneur who owns and operates their own business. The letter and subsequent formal application said that Ms Lu was the sole owner of Matakana Wines and was responsible for managing the business.

[14] Some of what happened thereafter (and certainly the interpretation to be placed on various documents and on the parties' conduct) is in dispute. We discuss first what occurred and, later in this judgment, the interpretation to be placed on and the conclusions to be drawn from various of the documents produced and the parties' conduct.

2013

[15] Waihopai had become involved in a dispute with Savvy around mid-2012 and, by early 2013, Waihopai was in financial difficulty. Mr Chen travelled to China in late 2012/early 2013 and spoke with people he thought might be interested in investing in Waihopai. Yi Lu introduced him to Changjiang Sun. Mr Sun was interested and he, Mr Chen, Don Chen, Yi Lu and Yi Lu's brother-in-law entered into a letter of intent recording how they might refinance Waihopai.

[16] Waihopai remained under pressure from its bank. Receivers were appointed on 4 February 2013.

[17] Mr Chen nevertheless still hoped to resolve the situation. He offered Mr Huang the opportunity to invest in Waihopai. Mr Chen thought that Waihopai's grape growing business would fit in well with Matakana Wines' wine making business and with his, Mr Huang's and Ms Lu's overall plan of exporting New Zealand wine to China. Mr Chen sent Mr Huang a copy of the letter of intent with Mr Sun on

23 February 2013. Mr Huang could not remember receiving it but, through his personal assistant, Su Huimin (Ms Huimin), he sent Mr Chen a document in Mandarin on the same day. The heading on the document has been variously translated; one translation is "Vineyard Reform Suggestions". The document set out Mr Huang's proposals for refinancing Waihopai. It recorded that the shares in Waihopai were worth $8,425,000. It set out Mr Chen's shareholding in the company and then set out what the new shareholdings would be "[i]f Mr HUANG buys 20% shares from [Mr] CHEN". It also recorded:

> This plan may reject [Mr] SUN'S investment, or [Mr] SUN'S investment may belong to Yi LU.

[18] Mr Huang sent a WeChat message to Mr Chen on 23 February 2013. It has been translated as follows:

> I'm in the company, I can tell you.

[19] Mr Huang then drafted various proposals for a possible Integration Scheme. Drafts were sent to Mr Chen on or about 1 March 2013, 11 March 2013, 27 May 2013 (including a 26 May draft) and 26 June 2013 (two drafts — one more detailed than the other).

[20] Broadly, it appears from the drafts that Mr Huang's proposal was that he would purchase shares in Waihopai from Mr Chen, that Matakana Wines would integrate its business with Waihopai's business, that the assets of the two companies would be combined, that Mr Huang, Mr Chen and Yi Lu would each make cash injections into the integrated business and that the shares in Waihopai would be held between Mr Chen, Yi Lu and Mr Huang/Ms Lu.

[21] In the 11 March 2013 draft, one of the effects of integration was described as follows:

> Establish a 3-way decision making board of directors and a platform for the Matakana Estate brand, make good use of Yi LU's sales network in China, [Mr] CHEN's operations and management in New Zealand and Mr Huang's advantages amongst high-end communities, and reach our goal of taking our assets to the next level.

[22] The draft sent on 27 May 2013 recorded what Mr Chen said were the assets of each of the various entities and the planned cash injections, including $1.088 million it was then proposed would be advanced by Mr Huang. It noted the proposed shareholdings — Mr Chen, 40 per cent, Mr Huang, 50 per cent and "Jie Jie" (Ms Lu), 10 per cent. The draft also recorded as follows:

> The above figures are approximations, accurate figures will need to be confirmed. A new joint venture agreement should be signed in relation to the Matakana Integration Scheme, and local Auckland lawyer(s) should be employed to draft and witness the legal documents.

[23] On 25 June 2013, Mr Huang paid $1.2 million into Mr Chen's solicitor's (Mr Botting) trust account. The entry on Mr Botting's trust account statement records "[p]art of Funds for Shareholders Loan Advance to Waihopai". In addition, $499,975.00 was paid into the trust account by Mr Sun, $300,000 by Yi Lu,[5] and $25 by Mr Chen.

[24] On 28 June 2013, the funds were transferred to solicitors, who, we presume, were acting for Waihopai's banker. In any event it is clear that the monies were used to repay Waihopai's indebtedness to its bank and to take the company out of receivership.

[25] Also on 28 June 2013, Mr Chen and Yi Lu as directors of Waihopai signed a board of directors' resolution recording that they had managed to procure $2 million of "new shareholders' loans for the Company" and that the company should enter into an acknowledgment of debt to record the "new Shareholders' Loan". The acknowledgment of debt is dated the same day. It recorded that Waihopai was indebted to Mr Chen and Yi Lu in the sum of $2 million.

[26] WeChat messages were exchanged between Mr Huang and Mr Chen on 25 June 2013. The following exchange occurred:

> [Mr Chen]:
>
> Mr HUANG, funding has arrived, all of it arrived! The lawyer will arrange for us to take back the vineyard tomorrow.

---

5 Before us, Li Yu's advance was treated by the parties as amounting in total to $800,000. This sum presumably included the monies paid into Mr Botting's trust account by Mr Sun.

> [Mr Huang]:
>
> Thank you for the trouble of having to do the practical arrangements.
>
> [Mr Chen]:
>
> Now it feels like we are a real wine company, with the back up to do promotions. Success is the only option for Matakana !
>
> [Mr Huang]:
>
> Still need an estate, more efforts required !

[27] On 26 June 2013, Ms Huimin circulated two further versions of the proposed Integration Scheme. The covering email read:

> Ho[w] are you! Attached is the <<Matakana Estate Integration Scheme>> which has just been sorted[.]

Both versions recorded the capital in Waihopai at $8.435 million and Mr Chen's 60 per cent share of that capital at $5.061 million. These figures had been provided by Mr Chen. The documents also recorded that the equity or shareholding ratio in the integrated entity would be Mr Chen, 30 per cent, Jackie Huang 10 per cent, Mr Huang 44 per cent and Ms Lu, 16 per cent. One draft referred to the payment of $1.2 million made by Mr Huang the previous day as "[t]he NZD 1.2 million first advanced payment from Alex Huang to acquire [Waihopai]". The other draft contained a similar statement.

[28] Also on 26 June 2013, Mr Huang sent a WeChat message to, inter alia, Mr Chen. It read as follows:

> I have sent the Matakana Estate integration plan to everyone's mailboxes, please make amendments.

[29] On 28 June 2013, the receivership of Waihopai was terminated. On 1 July 2013, Mr Chen in a WeChat message sent to Mr Huang, Ms Lu and Jackie Huang the following:

> [Waihopai] Vineyard has been officially taken back on 28 June. Matakana also officially owns [Waihopai] vineyard, from now on it will be promoted as the Matakana Marlborough vineyard.

[30] On 2 August 2013, Ms Huimin sent an email to Mr Huang, Ms Lu, Mr Chen and Jackie Huang attaching one of the 26 June 2013 Integration Scheme drafts. The covering email said as follows:

> Please see attached the newly organised <<Matakana Estate Integration Scheme>> first draft and its attachment(s), please check you have received it! If you have questions about the attachment(s) you can enquire with the corresponding contact person, mr Huang, will arrive at Auckland on 9th August to discuss this integration scheme with [other] shareholders. Thank you!

[31] On 11 October 2013, Mr Chen forwarded Ms Huimin legal advice received by Waihopai in relation to its dispute with Savvy.

[32] On 22 October 2013, Ms Huimin circulated an English translation of one of the 26 June 2013 Integration Scheme drafts to Mr Huang, Ms Lu, Mr Chen and Jackie Huang. The accompanying email read:

> How are You! Attached is the <<Matakana Estate Integration Scheme>> which has just been translated … Wishing you success in business!

[33] Mr Chen was in China at the time. He forwarded the English translation to his New Zealand solicitor, Mr Botting. He asked Mr Botting to draft an agreement for the shareholders of Matakana Wines.

[34] Mr Botting prepared draft heads of agreement and sent them to Mr Chen for his perusal. A revised version was sent by Mr Botting to Mr Chen on 23 January 2014. The document prepared by Mr Botting recorded that the parties (Mr Huang, Ms Lu, Mr Chen and Jackie Huang) were to enter into a limited liability partnership, to be known as Matakana Wine LLP. The draft agreement contained a number of conditions, namely:

(a) Mr Huang and Ms Lu ceasing to be overseas persons for the purposes of the OIA or the partnership being otherwise permitted to own the assets.

(b) Each of the Chen group and the Huang group, or the parties who formed those respective groups, acquiring ownership or an unconditional right

to acquire ownership of the assets which were to form part of their initial capital.

(c) Each party procuring all consents and approvals required from third parties for the transfer to the partnership of those assets forming part of that party's initial capital.

(d) The parties approving the form of the partnership agreement and the constitution for the general partner.

Settlement was to be the later of 40 working days from the date of satisfaction of the conditions, or 20 working days after the partnership was registered as a limited liability partnership. The draft provided that the parties would, prior to settlement, incorporate a limited liability company for the purposes of being the general partner, procure the preparation of a partnership agreement and each execute all necessary documents.

[35] Mr Chen sent the heads of agreement prepared by Mr Botting to Mr Huang and Ms Lu. Neither responded. It is common ground that the heads of agreement were neither completed nor signed. Nor were any of the steps set out in the draft undertaken.

2014–2016

[36] On 24 March 2014, Ms Huimin sent Mr Chen, Jackie Huang and Ms Lu a document headed "Matakana Estate management structure". This document recorded that Mr Huang was to be a director and that the board of directors would comprise Mr Huang, Ms Lu, Mr Chen and Jackie Huang. Mr Chen was named as the CEO. One of the entries in a "wiring" diagram setting out the management structure was headed "South Island management team".

[37] The Matakana Estate management structure was approved at a "board meeting" held on 15 April 2014. Mr Huang was present, along with Ms Lu, Mr Chen and Jackie Huang. An accountant, Bin (Bernice) Lin, was also present. There were further board meetings in July and November 2014. At the November 2014 meeting, the South Island Vineyard financial report for 2013–2014 was presented along with forecasts for 2014–2015. The South Island Vineyard financial report for July 2014 to

July 2015 was presented at a meeting in March 2015. All present signed a record of this meeting as directors. It recorded that slight adjustments to the Matakana Estate management structure were proposed and that the Waihopai Vineyard was starting to produce an income. There was a further meeting in August 2015 where the South Island Vineyard financial report was discussed.

[38] Mr Chen and the accountant, Ms Lin, forwarded cash flow documentation for Waihopai to Mr Huang and Ms Lu. Mr Chen, Jackie Huang, Ms Lu and Mr Huang also received emails from the accountant advising them that further funds were needed. Proposed funding arrangements were sent out and financial projections were distributed.

[39] Mr Huang and Ms Lu made a series of additional advances to Mr Chen and/or Waihopai (we discuss this issue below) from various sources. The accountants circulated reports giving details of the funds injected into Waihopai.

[40] Mr Chen and Yi Lu were becoming increasingly concerned about Waihopai's situation with Savvy. Both companies were locked in litigation against each other. To try and protect against the perceived risk of losing any further advances to Waihopai, it was decided that such advances should be made by way of loans through Ms Lu, who would act as a third party lender. A document headed "Memorandum of Corporate Trusteeship" was drafted in Chinese.[6] The first paragraph of the memorandum recorded that the existing shareholders in Waihopai, Mr Chen and Yi Lu, had "invited" Mr Huang to become a new shareholder with a cash contribution. The document continued that each investing party confirmed that the updated shareholding structure for Waihopai would be amended as follows — Mr Chen 24 per cent, Mr Huang 36 per cent and Yi Lu 40 per cent. This document was signed by Mr Huang, Ms Lu, Mr Chen and Yi Lu in New Zealand in March 2015.

[41] By late 2016, Mr Chen was suffering from burnout and he took time off to recover. By this stage, relationships had begun to sour. In December 2016, Mr Huang

---

6 This document is referred to as both the "Memorandum of Corporate Trusteeship" and the "Memorandum of Company Trusteeship" by the parties. The former title was used in oral submissions and we adopt the same.

and Ms Lu terminated Mr Chen's employment. Mr Chen ceased to be the CEO and General Manager of Matakana Wines and Ms Lu took over.

2017

[42] In late 2017 and early 2018, Mr Huang and Mr Chen exchanged various WeChat messages and written proposals about how they could best separate their respective business interests. Mr Chen's position is that the various proposals drafted by Mr Huang were all based on the premise that the Integration Scheme applied, namely that Mr Huang and Ms Lu were entitled to 60 per cent of the integrated assets and that Mr Chen and Jackie Huang were entitled to 40 per cent. Mr Huang's position is that he was entitled to be repaid the various advances he had made to Mr Chen to enable the Matakana transaction to proceed as well as the various advances he had made to Mr Chen and/or Waihopai in relation to Waihopai. None of these various discussions and proposals resulted in agreement.

2018–2021

[43] On 11 May 2018, Mr Huang, via his New Zealand solicitors, made demand on Mr Chen for the loan advances made pursuant to the JV agreement. Mr Chen says that this was the first time that Mr Huang had ever demanded he repay these advances. Mr Huang says that he had made oral demands prior to the letter. The letter also alleged that Mr Chen had breached his obligations under the JV agreement to obtain consents under the OIA for Mr Huang and Ms Lu and, further, that Mr Chen owed Mr Huang and Ms Lu the monies they say that had advanced to assist Waihopai. The letter demanded that Mr Chen pay $4,536,651.15 to Mr Huang and Ms Lu by 21 May 2018.

[44] The demand was not met by Mr Chen.

[45] When Ms Lu took over the operation of Matakana Estate from Mr Chen, she and Mr Huang had still not obtained consent under the OIA in relation to the Matakana land. They asked their solicitors to advance this issue and the solicitors advised the OIO about the acquisition of the Matakana land. The OIO began an investigation into the transaction which lasted some two years. Mr Chen corresponded through his

barrister, Alan Lear, with the OIO. Mr Chen was also interviewed in the course of the investigation. We return to the detail of this correspondence and the interview below.

[46] Mr Huang and Ms Lu commenced proceedings against Mr Chen in January 2019. The initial claim was based on the alleged failure by Mr Chen to repay the loans made under the JV agreement and the alleged Waihopai loans. In an amended statement of claim filed subsequently, Mr Huang and Ms Lu further sought to recover the costs said to be associated with Mr Chen's alleged failure to obtain OIA consent for them. They also sought specific performance in relation to Mr Chen's alleged failure to transfer title of the Matakana land to them in breach of the JV agreement.

[47] Mr Chen filed a statement of defence. In his statement of defence, he asserted that the advances made to Waihopai were shareholder advances in accordance with the Integration Scheme and not loans. He denied that he was responsible for arranging for Mr Huang and Ms Lu to obtain OIA consent and he asserted that he was not required to transfer title in the Matakana land to them.

[48] On 16 September 2020, retrospective consent was granted to Mr Huang and Ms Lu permitting them to acquire the Matakana land. The consent was subject to a number of conditions. Inter alia, Mr Huang and Ms Lu had to develop the land and register an easement that allowed for public walking and cycling access across the property. Title to the Matakana land was still in Mr Chen's name. Mr Huang and Ms Lu's solicitors wrote to Mr Chen asking for his consent to carry out this work. Mr Chen's solicitor responded refusing to consent without further information.

[49] The parties attended a mediation on 21 December 2020, but no agreement was reached.

[50] Shortly before the mediation, and unbeknown to Mr Huang and Ms Lu, Mr Chen and Li Yu caused Waihopai to enter into an agreement to sell its land and business. Immediately after the sale was completed, Mr Chen distributed the net proceeds totalling $7,476,766.27; he received $1,138,000 (15.2 per cent of the proceeds); Don Chen received $3,348,059.76 (44.8 per cent); Yi Lu received

$2,990,706.51 (40 per cent). The payments were purportedly made to repay loans each was said to have made to Waihopai. Mr Huang and Ms Lu received nothing.

[51] The sale of the Waihopai assets was only disclosed to Mr Huang and Ms Lu on 22 February 2021. Mr Huang and Ms Lu immediately brought proceedings against Waihopai and they obtained, on a without notice basis, freezing orders in respect of its assets.[7] However, the sale proceeds had already been distributed.

[52] Having been served with notice of Mr Huang's and Ms Lu's application seeking freezing orders, Mr Chen, Don Chen and Yi Lu, each further distributed the monies they had received as follows:

(a) Mr Chen discharged a loan secured against his home;

(b) Don Chen made various payments, including to his family and to the seventh appellant, AEG; and

(c) Yi Lu transferred the sale proceeds to his wife, Qi Yang, the sixth appellant.

[53] When they became aware of this, Mr Huang and Ms Lu obtained further without notice freezing orders against Mr Chen, Don Chen, Yi Lu, Mr Chen's family trust and Qi Yang on 26 February 2021. By this time however, a significant portion of the sale proceeds had been transferred out of the reach of Mr Huang and Ms Lu.

The pleadings

[54] The pleadings are lengthy. What follows is very much a summary.

[55] Mr Huang, Ms Lu and Matakana Wines pleaded the acquisition of the Matakana land and the JV agreement dated 19 April 2012. They referred to the OIA consent and asserted that it had been Mr Chen's responsibility to arrange for Mr Huang and Ms Lu to obtain that consent. They said that Mr Chen had failed to do so. They

---

7 *Huang v Waihopai Valley Vineyard Ltd* HC Auckland CIV-2019-404-304, 24 February 2021 (Minute of Duffy J); and *Huang v Waihopai Valley Vineyard Ltd* [2021] NZHC 348.

then referred to Waihopai and to it coming under financial pressure in the second half of 2012. They asserted that, as part of a rescue plan to take the company out of receivership, Mr Chen and Yi Lu were required to inject $2 million by way of further capital into the company, but that Mr Chen did not have sufficient funds to make a capital contribution. They alleged that Mr Chen asked Mr Huang to lend him the required funds and that Mr Chen and Mr Huang agreed orally that the funds would be advanced as a loan, repayable on demand. It was asserted that the $1.2 million paid by Mr Huang to Mr Botting on 25 June 2013 was paid pursuant to this arrangement. It was also asserted that subsequent funding for Waihopai provided by Mr Huang was advanced by way of loan, repayable on demand (the total advances to or for Waihopai are referred to in this judgment as the Waihopai advances).

[56] It was pleaded that Mr Huang, Mr Chen and Yi Lu discussed the possibility of integrating the assets of Matakana Wines and Waihopai, and that a number of draft proposals for an Integration Scheme were exchanged. It was said that none of those drafts was ever agreed or executed and that none was binding or enforceable. The treatment of the Waihopai advances in Waihopai's accounts was pleaded, as was the sale of the Waihopai land in late December 2020/early January 2021. There was then a reference to the settlement of the agreement for sale and purchase, and to the dissipation of the sale proceeds.

[57] The first cause of action was against Mr Chen. Mr Huang and Ms Lu asserted that he held the Matakana land on constructive trust for them. They said that Mr Chen had retained legal ownership of the land, that it was unconscionable for him to do so and that they had been unable to replant grape vines, increase the profitability of the land, or develop the land as anticipated and as required in their OIO consent. It was asserted that they suffered loss and damage as a result. They sought a declaration that the Matakana land was held on constructive trust for them, an order requiring Mr Chen to transfer the title to the Matakana land to them (free from any encumbrances) and orders for equitable damages and interest.

[58] The second cause of action was also against Mr Chen. It alleged breach of fiduciary duty. Mr Huang and Ms Lu claimed that Mr Chen had obtained the Matakana land as a fiduciary and that he held it in their favour as principals. Again

they sought an order requiring Mr Chen to transfer the Matakana land to them, unencumbered. They also sought equitable damages and interest.

[59] The third cause of action alleged breach of the JV agreement by Mr Chen. Mr Huang and Ms Lu asserted that Mr Chen had failed to repay the Matakana loan, refused to transfer the Matakana land to Matakana Wines and that they had suffered loss and damage as a result. The same orders as are detailed above were sought.

[60] As a fourth cause of action Mr Huang and Ms Lu alleged that Mr Chen had failed to repay the Waihopai advances in the total sum of $2,376,261. They sought judgment against him in this sum together with interest.

[61] As an alternative, and as a fifth cause of action against Waihopai, they asserted that if the Waihopai advances had not been advanced by way of loan to Mr Chen, then they were by way of loan to Waihopai and that Waihopai had failed to repay the same. The same relief as in the fourth cause of action was sought.

[62] As an alternative, and as a sixth cause of action — for moneys had and received — Mr Huang and Ms Lu alleged that the appellants had all been unjustly enriched at Mr Huang and Ms Lu's expense and that it would be unconscionable for the appellants to retain the benefit of the Waihopai advances. They sought judgment in the sum of $2,376,261 together with interest.

[63] As a seventh cause of action against Mr Chen, Don Chen, Jackie Huang and AEG, they said that the various dispositions of Mr Chen's share of the sale proceeds from the sale of Waihopai had been made with the intent to prejudice Mr Huang and Ms Lu as creditors of Mr Chen and in breach of s 348 of the Property Law Act 2007. They sought orders pursuant to that provision.

[64] As an alternative eighth cause of action against all appellants, Mr Huang and Ms Lu asserted that the dispositions were made with the intent to prejudice them as creditors of Waihopai and again they sought orders under s 348.

[65] There was a ninth cause of action (wrongly noted in the pleadings as the tenth cause of action) alleging unjust enrichment.

[66] Mr Chen and the other appellants raised two affirmative defences. They first raised estoppel and asserted that Mr Huang and Ms Lu had represented to Mr Chen, Jackie Huang and Yi Lu, by words and conduct, that they were bound by the Integration Scheme. As a second affirmative defence, they alleged that Waihopai owed Mr Chen a debt and that, to the extent that payments had been made by Waihopai to Mr Chen, they were in satisfaction of that debt.

[67] Mr Chen (and in some cases the other appellants) also brought six counterclaims.

(a) There was a counterclaim against Mr Huang and Ms Lu for alleged breach of the JV agreement and the Integration Scheme. Mr Chen asserted that he and Mr Huang had agreed that Mr Chen was to receive an interest in the company incorporated in China — Matakana (Zhongshan) Wines Ltd. Mr Chen said that Mr Huang and Ms Lu failed to provide any interest in the company to him and that they had failed to account to him for its profits. Mr Chen sought specific performance and an account of the profits made by Matakana Zhongshan Ltd.

(b) Mr Chen alleged breach by Ms Lu of the JV agreement and/or the Integration Scheme.

(c) Mr Chen alleged that Matakana Wines had failed to repay him advances that he had made to that company between 8 May 2015 and 29 March 2016, in the total sum of $540,000. He sought judgment in this sum, together with interest.

(d) Mr Chen alleged that at all material times he was the registered proprietor of the Matakana land, that a written deed of lease had been entered into between the parties to the effect that Matakana Wines

agreed to least part of the Matakana land and that Matakana Wines had failed to pay the rental and other outgoings due under the lease.

(e) Waihopai alleged that it had repaid $120,000 to Ms Lu in October 2016, in repayment of an advance of $100,000 she had earlier made to the company and by way of a further advance of $20,000 to Ms Lu. Repayment of the further advance was sought, with interest.

(f) Mr Chen and Jackie Huang sought a declaration of partnership. They asserted that since on or about 25 June 2013, they, together with Mr Huang and Ms Lu, had been partners in the Integration Scheme partnership. They sought declarations they were in partnership and that the partnership had been dissolved, together with an order for the taking of the accounts of the partnership.

Mr Huang and Ms Lu for their part denied these various allegations and filed an affirmative defence to the sixth counterclaim (declaration of partnership), alleging misleading and deceptive conduct by Mr Chen.

The High Court judgment

[68] The judgment is lengthy and very thorough. What follows is, again, very much a summary.

Credibility

[69] After recording the factual background, largely as above, Gordon J turned to credibility issues.[8] She referred to the Supreme Court's decision in *Deng v Zheng*,[9] noting the caution there sounded in cases where one or more of the parties has a cultural background which differs from that of the Judge. She recorded that the Supreme Court nevertheless commented that most of the usual ways that Judges assess credibility remain available.[10] The Judge noted her view that there were credibility

8 High Court judgment, above n 1, at [108].
9 *Deng v Zheng* [2022] NZSC 76, [2022] 1 NZLR 151 [*Deng* (SC)].
10 High Court judgment, above n 1, at [168], citing *Deng* (SC), above n 9, at [78(d)].

issues for all three main witnesses: Mr Huang, Ms Lu and Mr Chen.[11] She also commented adversely on Yi Lu's evidence.[12] She recorded that she had exercised "a degree of caution in accepting the word of any of [these] witnesses on important issues unless there [was] other documentary support or support from other witnesses".[13]

The status of the payments made by Mr Huang/Ms Lu

[70] The Judge next turned to consider the status of Mr Huang's payment of $1.2 million into Mr Botting's trust account on 25 June 2013 and the later advances, totalling $1,176,261.00. The Judge dealt with this issue first because, if she found in favour of Mr Chen on the Integration Scheme issue, anything owing by Mr Chen under the JV agreement would be subsumed into the Integration Scheme.[14]

[71] After recording the views of the parties, the Judge noted that before Mr Huang advanced the $1.2 million, he was aware that Waihopai was in receivership.[15] She noted that Mr Huang said in evidence that issues with Waihopai had the potential to result in Mr Chen's bankruptcy and that the Matakana land would then be at risk because it was in Mr Chen's name. Further, Matakana and Waihopai had a joint interest in grape supply, because Waihopai was supplying grapes used by Matakana Wines for its wine production. The Judge considered that Mr Huang's concerns could be "reasonably understood".[16]

[72] The Judge noted that while the $1.2 million was advanced when discussions between Mr Huang and Mr Chen about integration were underway, that the advance was made did not necessarily mean that an agreement had been reached over integration.[17]

[73] The Judge considered that Mr Chen's position was contradictory. On the one hand, Mr Chen was saying that the Waihopai advances were a capital investment by Mr Huang. If that was so, Mr Huang and Ms Lu would receive nothing from Waihopai

---

11 At [109].
12 At [119].
13 At [121].
14 At [122].
15 At [127].
16 At [127].
17 At [129].

because it was insolvent. On the other hand, Mr Chen was acknowledging that Mr Huang and Ms Lu should receive a payment of approximately $2.4 million. The Judge took the view that these assertions were inconsistent.[18]

[74] Leaving the Integration Scheme issue aside, the Judge considered that the Waihopai advances were loans, noting the following:[19]

(a) The advances made by Mr Chen and Yi Lu to Waihopai were by way of loan.

(b) An investment in Waihopai by another person, Lucy Wang, was by way of loan.

(c) An indirect advance from Mr Jiang (a personal friend of Yi Lu) made via Yi Lu, was by way of loan, as were other advances from Yi Lu's family and friends.

(d) The $2 million paid out to take Waihopai out of receivership was recorded as a loan in Waihopai's board of directors' resolution and in a deed of acknowledgment of debt, signed by Mr Chen and Mr Lu.

(e) It would be inconsistent to treat Mr Huang's proportion of the $2 million advance ($1.2 million) recorded in the deed of acknowledgment of debt differently from the funds contributed by Yi Lu ($800,00).

(f) The $2 million advance was recorded in Waihopai's accounts from 2014 onwards as a loan.

(g) The later advances from Mr Huang and Ms Lu were recorded in Waihopai's accounts as loans.

---

18 At [130].
19 At [131].

[75] The Judge was satisfied that the accounts were authentic. She considered that they evidenced what was intended and that Waihopai's shareholders had advanced funds to the company by way of loan.[20]

[76] The Judge also referred to the letter written on Mr Chen's behalf to the OIO when it was investigating Mr Huang's and Ms Lu's retrospective application. The Judge considered that the letter supported the assertion that Mr Huang's advances were not capital payments, but rather were loans.[21]

Was there a partnership?

[77] The Judge then turned to consider whether or not there was a partnership, as Mr Chen had asserted. She noted that while Mr Chen was relying on the Integration Scheme, his argument that a partnership had come into existence did not depend on that scheme alone.[22] She also noted that it was agreed between the parties that New Zealand law applied to the partnership issue and that there was little, if any, disagreement as to the relevant principles that govern whether or not there was a partnership.[23]

[78] The Judge noted that it was Mr Chen's evidence that, from the time he received Mr Huang's first response on 23 February 2013, he regarded Mr Huang as committed to investing in Waihopai. The Judge considered that it could not be said that Mr Huang was committed as from that date, based on what was plain from the document.[24]

[79] The Judge next recorded that Mr Chen placed weight on the WeChat message sent by Mr Huang on 23 February 2013, noted above at [18]. She accepted Mr Huang's explanation that, correctly translated, the message meant "I'm in the company, can communicate via phone". She considered that this was a reasonable explanation, given the documents that followed.[25]

---

20 At [133]–[134].
21 At [135]–[137].
22 At [140].
23 At [144].
24 At [151].
25 At [152].

[80] The Judge observed that between February and June 2013, there were a number of documents drafted by Mr Huang in relation to the proposed Integration Scheme and that, under cross-examination, Mr Chen had asserted that the parties had reached a concluded agreement on the Integration Scheme in May 2013.[26] The Judge held that it was clear from the contemporaneous documents that the parties had not reached an agreement as at that date.[27] She noted that the drafts continued after May 2013; the values for the Waihopai Vineyard and other assets set out in the drafts were based on figures given by Mr Chen which needed to be verified; there were various emails from Ms Huimin which suggested that there were further discussions yet to occur; Mr Chen acknowledged under cross-examination that, as at 23 October 2013, it was Mr Huang's and his own intention to get a document drafted up under New Zealand law by a New Zealand lawyer for he and Mr Huang to consider; Mr Botting's email to Mr Chen on 23 January 2014 revealed that Mr Botting did not consider that agreement had been reached at that stage and the draft agreement prepared by Mr Botting made it clear that there was no final agreement.[28] The Judge also noted that under cross-examination, Mr Chen accepted that there was never any formal partnership agreement, that no general partner was established, that there was no formal assumption of responsibility for the specified percentages of the Waihopai debt, that Mr Huang plainly wanted a written formal agreement and that the heads of agreement were not signed by any of the parties.[29]

[81] The Judge went on to consider the cultural context. She referred to the Chinese concept of guānxi and to the decisions given by both this Court, and the Supreme Court in *Deng v Zheng* in regard to this issue.[30] The Judge referred to expert evidence given by a Dr Zhixiong Liao in relation to guānxi. It was Dr Liao's evidence that there was no "one-size-fits-all approach" to the concept of guānxi and that much depends on the type of relationship and the nature and value of the transaction.[31]

[82] The Judge recorded that:

---

26 At [152]–[153].
27 At [154].
28 At [155]–[167].
29 At [168].
30 At [169], citing *Zheng v Deng* [2020] NZCA 614, [2021] NZCCLR 30 [*Deng* (CA)]; and *Deng* (SC), above n 9.
31 High Court judgment, above n 1, at [172].

(a) Mr Huang and Mr Chen had previously entered into formal written agreements with each other, noting that in 2007 they signed a written agreement in relation to the intended development of the Matakana villa lots. In October 2011, they entered into a joint venture agreement, which was later superseded by the more formal JV agreement in April 2012. These agreements were in writing, prepared with legal assistance, witnessed, signed and fingerprinted by each of the three individuals involved. Additionally, Mr Chen had a written employment agreement in his capacity as General Manager of Matakana Wines. The Judge considered that the history of the business relationships between the parties indicated that each expected negotiations to conclude with a formal, written and signed agreement.[32]

(b) The value of Mr Chen's financial interest in Waihopai had not been confirmed. This was not a mere detail but rather a critical issue going to the heart of the Integration Scheme. Both Mr Huang and Mr Chen agreed that Mr Chen did provide Mr Huang with financial forecasts. It was Mr Huang's position however that he wanted to see the underlying financial accounts. Under cross-examination, Mr Chen accepted that he did not give Mr Huang a copy of Waihopai's accounts. While he asserted that Mr Huang did not ask for them, Mr Chen did agree that it would have been normal for Mr Huang to want to see them.[33]

For these various reasons, the Judge concluded that the parties were not in agreement on the Integration Scheme as at 23 January 2014 and there was no partnership agreement.[34]

[83] The Judge went on to consider the conduct of the parties. She noted Mr Chen's assertion that the conduct of the parties between early 2014 and late 2016 indicated that in fact they had integrated their respective businesses and that accordingly, a partnership was formed.[35] The Judge took the view that there were indications that

---

32 At [173].
33 At [174].
34 At [175].
35 At [176].

pointed both ways.[36] She referred to the Matakana Estate management structure document, noted above at [36], and to the Memorandum of Corporate Trusteeship dated 23 March 2015 and signed by the parties, noted above at [40]. She set out the detail of the latter document and held that it did not record integration.[37] Although it referred to Mr Huang's shareholding of 36 per cent, consistent with the percentage attributed to him in the draft Integration Scheme documents, the document also referred to an "invitation" to Mr Huang to join as a new shareholder. The Judge noted the evidence that Mr Huang never became a shareholder. The Judge also noted that, in addition, Ms Lu was not invited to be a shareholder of Waihopai, but that, on Mr Chen's version of events, she was meant to have a percentage interest in the integrated business as well. Further, the Judge noted that the document did not provide that Mr Huang's cash contributions were to be by way of equity rather than by way of loan. She also considered it important that the memoranda did not record any pre-existing integration of Waihopai and Matakana Estate.[38]

[84] The Judge noted that Mr Chen also relied on emails sent by the accountant for Matakana Wines and Waihopai, Ms Fu, to Mr Huang, Mr Lu, Mr Chen and Jackie Huang, which were addressed to them as "shareholders". She noted however that under cross-examination, the accountant said that she had been told by Mr Chen and Mr Huang that Mr Huang either had a share in Waihopai or was intended to have a share.[39]

[85] The Judge referred to various other factual matters, but she considered that none of them pointed unequivocally to a partnership agreement. She considered that they were equally consistent with the parties working together and even hoping for an agreement, but without agreement having been concluded.[40]

[86] In summary, the Judge did not consider that the evidence indicated that Mr Huang had given up on his position that he required that the Integration Scheme be formally documented. In the Judge's view, the evidence overall indicated that while

---

36 At [178].
37 At [180]–[185].
38 At [185].
39 At [186].
40 At [187]–[203].

the parties may have been working towards and planning to integrate their assets in each of the two operations, Matakana and Waihopai, actual agreement had not been reached. The Judge concluded that there was no partnership, whether based on the Integration Scheme or otherwise.[41]

Estoppel

[87] The Judge then turned to deal with Mr Chen's first affirmative statement of defence — estoppel. Her findings in this regard were not challenged before us and accordingly, we do not deal with the Judge's findings in relation to the matter in any detail. Suffice to say that the Judge found that Mr Chen and Jackie Huang had failed to establish an estoppel.[42]

Misrepresentations

[88] The Judge then turned to consider whether, if she was wrong in her finding and there was a partnership between Mr Chen and Mr Huang, there were any misrepresentations made by Mr Chen to Mr Huang, and if so, their legal effect.

[89] The representations pleaded by Mr Huang and Ms Lu were that Mr Chen had represented to them that he had a 60 per cent share in the equity of Waihopai, which had a value of approximately $5.061 million, and that he was willing to give 60 per cent of his share in the equity in Waihopai to Mr Huang and Ms Lu in exchange for a 40 per cent interest in Matakana Estate.[43]

[90] The Judge recited the relevant law and turned to consider whether or not representations had been made as pleaded.[44] She noted that there was no dispute that Mr Chen had represented to Mr Huang that the value of his 60 per cent interest in Waihopai was approximately $5.061 million and that he was willing to give 60 per cent of this interest to Mr Huang in exchange for a 40 per cent interest in Matakana Estate. It was Mr Chen's position however that this was all true.[45]

---

41 At [203].
42 At [214].
43 At [217].
44 At [219]–[224].
45 At [224]–[226].

[91] The Judge recorded that the respondents had called an expert accountant, Jason Weir, who had been able to reconstruct from the general ledger Waihopai's balance sheets for the years 2012–2014. Mr Weir considered that, when the shareholder's loans were treated as liabilities, the bottom line changed significantly. Waihopai was insolvent from at least 2013 onwards. The Judge noted that the expert evidence was clear — shareholder's loans are not equity but debt.[46] The Judge considered therefore that the value attributed by Mr Chen to his interest in Waihopai was misleading, because it overlooked the fact that company's shareholders did not control all of the loans.[47] She noted that it was Mr Huang's evidence that had Mr Chen told him that his shareholding in Waihopai had a negative value, there would have been no further discussions about integration.[48]

[92] The Judge therefore found that Mr Chen represented to Mr Huang that he had equity in Waihopai to the value of approximately $5.061 million and that this was not true.[49] The Judge also found that Mr Chen's interest in Waihopai was not 60 per cent. Rather it was 40 per cent and his brother, Don Chen, held the other 20 per cent.[50]

[93] In relation to Mr Huang and Ms Lu's assertion that Mr Chen was willing to give 60 per cent of his equity in Waihopai to Mr Huang and Ms Lu in exchange for a 40 per cent interest in Matakana Estate, the Judge considered that there were two relevant representations. First, Mr Chen's willingness to make a formal exchange and secondly, Mr Chen's assertion that he had equity in Waihopai.[51] There was no dispute that Mr Chen was willing to give 60 per cent of his interest in Waihopai to Mr Huang and Ms Lu, on the basis set out in the Integration Scheme. Accordingly, the Judge did not consider that Mr Chen's willingness was in issue;[52] rather if Mr Chen made a statement of his intention which was founded on a misrepresentation as to the nature and value of his actual interest in Waihopai and he knew when he made the statement that he could not fulfil his intention as expressed, then the representation of his

46 At [228].
47 At [232].
48 At [233].
49 At [234].
50 At [235]–[236].
51 At [240].
52 At [241].

intention was false. The Judge found that Mr Chen must have known that he was unable to fulfil his intention as expressed.[53]

[94] The Judge found that s 9 of the Fair Trading Act 1986 was satisfied;[54] Mr Huang was misled or deceived and Mr Chen's conduct was an effective cause of Mr Huang's resulting loss.[55] The Judge observed that even if she was wrong and that there was a partnership as from 23 June 2013 as alleged by Mr Chen, the partnership was vitiated ab initio by Mr Chen's misrepresentations as to the value of Waihopai and his interest in the company.[56]

The JV agreement

[95] The Judge then turned to consider the JV agreement in greater detail. It stated that it had been concluded within the territory of the People's Republic of China and that it was governed by and was to be construed in accordance with the laws of China. The Judge referred to the evidence of the two experts called by the parties, Dr Andrew Godwin by Mr Chen and Dr Zhixiong Liao by Mr Huang and Ms Lu. Both experts agreed that principles of good faith and fairness are applicable to the interpretation of contracts in China, but there were some areas of disagreement. The Judge referred to the evidence as to how the JV agreement would be interpreted under Chinese law. She noted the various provisions in the JV agreement and found that because Mr Chen had not repaid the monies advanced to him by Mr Huang under the JV agreement, Mr Chen was in breach of the agreement.[57] The Judge noted that as of the time of the hearing, Mr Chen remained the sole registered proprietor of the Matakana land and that he had refused to transfer the land or any portion of it to Mr Huang and Ms Lu. The Judge also found that because Mr Chen had not paid his financial contribution, he was, as matters stood at the time, not entitled to his 35 per cent of the joint venture assets.[58]

---

53 At [244].
54 At [245]–[251].
55 At [253] and [256].
56 At [258].
57 At [279].
58 At [279].

The causes of action pleaded

[96] The Judge then turned to the various causes of action pleaded by Mr Huang and Ms Lu, noting that the first three were against Mr Chen in relation to the Matakana land and that the other six were against Mr Chen and the other appellants and arose out of the Waihopai advances and the distribution of the net proceeds from the sale of Waihopai's assets.[59]

The Matakana causes of auction

[97] In relation to the Matakana land causes of action, the Judge noted that Mr Huang, Ms Lu and Matakana Wines said they held a beneficial interest in the Matakana land on two bases:[60]

(a) pursuant to a constructive trust (the first cause of action); and

(b) in accordance with the JV agreement:

(i) pursuant to fiduciary obligations owed by Mr Chen (the second cause of action); and

(ii) pursuant to contract (the third cause of action).

The Judge dealt with these matters in reverse order.

[98] Before doing so, she turned to consider whether New Zealand law or Chinese law should be applied. Mr Huang said New Zealand law should apply. This was not contested. The Judge noted that the courts in this country can apply remedies under New Zealand law to match substantive rights determined by foreign law.[61] The evidence indicated that equity is not part of Chinese law unless incorporated by statute, which was not the case in the present situation; further, estoppel and resulting and constructive trusts have not been adopted in Chinese statutes; nor have fiduciary

59 At [284]–[285].
60 At [286].
61 At [288].

relationships.[62] The Judge recorded the observations of Chadwick J in *Arab Monetary Fund v Hashim* as follows:[63]

> … in cases involving a foreign element in which an English court is asked to treat a defendant as a constructive trustee of assets which he has acquired through a misuse of his powers, the relevant questions are: (i) what is the proper law which governs the relationship between the defendant and the person for whose benefit those powers have been conferred, (ii) what, under that law, are the duties to which the defendant is subject in relation to those powers, (iii) is the nature of those duties such that they would be regarded by an English court as fiduciary duties and (iv), if so, is it unconscionable for the defendant to retain those assets.

[99] Following this approach, the Judge dealt first with the third cause of action — breach of the JV agreement. She found that Mr Chen had breached his contractual obligations under the JV agreement in accordance with the laws of China because he had failed to make the stipulated payments on the due dates, he had failed to pay interest and he had failed to transfer title of the land to Mr Huang and Ms Lu. The judge found that the third cause of action was established.[64]

[100] As for the second cause of action — breach of fiduciary duty — Mr Huang argued that, while Mr Chen's obligations under Chinese law were purely contractual, Mr Chen also owed him and Ms Lu a fiduciary obligation in respect of the acquisition and ownership of the Matakana land. The JV agreement was governed by the law of China, which does not recognise fiduciary relationships in the same way as New Zealand. However, the principle of good faith is a fundamental principle enshrined in the Civil and Contract Codes under Chinese law. The Judge considered that Mr Chen owed Mr Huang and Ms Lu fiduciary obligations arising from the circumstances of the relationship. The JV agreement provided that the parties were contracting on the basis of honesty, mutual benefit and friendly cooperation. Further, Mr Huang and Ms Lu were in a vulnerable position; they were not New Zealand residents at the relevant time; they trusted Mr Chen with Mr Huang's money and with legal ownership of the Matakana land; they were not familiar with New Zealand law or business dealings; and they had no experience managing a winery. It was therefore reasonable for Mr Huang and Ms Lu to repose trust and confidence in Mr Chen. There

---

62 At [289]–[290].

63 At [291], citing *Arab Monetary Fund v Hashim* QB 15 June 1994, quoted in *Kuwait Oil Tanker Co SAK v Al Bader* [2000] EWCA Civ 160, [2000] 2 All ER (Comm) 271 at [192].

64 At [294]–[295].

was a fiduciary relationship and by excluding Mr Huang and Ms Lu from legal ownership of the Matakana land, Mr Chen had breached his fiduciary obligations.[65]

[101] Turning to the first cause of action — constructive trust — Mr Huang was claiming an equitable proprietary interest in the Matakana land and a constructive trust was the appropriate relief. Although purchased with Mr Huang's funds, legal title was in Mr Chen's name and Mr Chen had refused to transfer the property to Mr Huang and Ms Lu. The Judge considered that New Zealand law should apply to this claim.[66] She noted that, to establish a constructive trust, a claimant must show contributions (direct or indirect) to the property, the expectation of an interest, that such expectation was reasonable, and that the defendant should reasonably expect to yield the claimant an interest.[67] The Judge found that all elements were established and that Mr Chen held the land on constructive trust for Mr Huang and Ms Lu.[68]

[102] Mr Huang and Ms Lu had argued that any attempt by Mr Chen to belatedly repay the $1.47 million loan in order to acquire a share of Matakana Estate was barred by the equitable doctrine of laches.[69] The Judge observed that, given the dispute between the parties, it would be problematic if Mr Chen was to be permitted to belatedly repay the loan and acquire a share of Matakana Estate. She ventured that it would be pointless for Mr Chen to pursue such a claim and that he would likely be barred by the doctrine of laches.[70]

[103] Mr Huang and Ms Lu had sought equitable damages in relation to the three Matakana Estate claims. They said Mr Chen's failure to transfer title has delayed the development, which was required under the OIO consent conditions. They called an expert witness, Patrick Hanlon, who said that the development costs had increased by approximately $3 million between 2020 and 2022.[71] Mr Chen's position was that the

---

65 At [300]–[304].
66 At [306].
67 At [307], citing *Lankow v Rose* [1995] 1 NZLR 277 (CA) at 294 per Tipping J, with whom Cooke P, Hardie Boys, Gault and McKay JJ agreed.
68 High Court judgment, above n 1, at [308]–[310].
69 At [312].
70 At [318].
71 At [319].

damages claimed were not foreseeable and thus not recoverable.[72] The Judge was of the view that Mr Chen ought to have foreseen that Mr Huang and Ms Lu would want to start developing the Matakana land at the earliest opportunity. She found that Mr Huang and the other respondents were entitled to damages as a result.[73]

The counterclaims

[104] The Judge then considered the counterclaims to the Matakana causes of action.

[105] First, Mr Chen claimed that Mr Huang and Ms Lu had breached the JV agreement by failing to provide him any interest in Matakana Zhongshan Ltd. The Judge noted the JV agreement provided that a subsidiary of Matakana Wines was to be set up in China and that Mr Huang accepted that Mr Chen had been entitled to a share in Matakana Zhongshan Ltd, conditional on Mr Chen performing his obligations under the JV agreement, including repaying Mr Huang. The Judge accepted Mr Huang's arguments and concluded that this counterclaim failed.[74]

[106] The second counterclaim was against Ms Lu. Mr Chen said he was the sole shareholder when Matakana Wines was first incorporated. In September 2012, he transferred 100 per cent of the shares to Kiwi Club, a company owned by Ms Lu, to assist in her immigration application. Mr Chen said that it was an implied term in their agreement that she would procure the transfer to him of 40 per cent of the shares in Matakana Wines once her immigration application was approved. This 40 per cent was sought under the Integration Scheme. Alternatively, if the JV agreement was still in force, Mr Chen claimed 35 per cent of the shares in Matakana Wines. The Judge accepted that the transfer of the shares was to assist Ms Lu with her immigration application. However, Mr Chen was not entitled to 35 per cent of shares as he was in breach of the JV agreement. This counterclaim also failed.[75]

[107] Thirdly, Mr Chen argued that Matakana Wines had failed to repay advances he had made totalling $540,000 and he sought to recover this sum. He also claimed

---

72 High Court judgment, above n 1, at [320] and [322], citing *Hadley v Baxendale* (1854) 9 Exch 341, (1854) 156 ER 145 (Exch).
73 High Court judgment, above n 1, at [323]–[324].
74 At [328]–[331].
75 At [332]–[335].

interest on this sum and on earlier repaid advances. The Judge found that the amount owed to Mr Chen was $530,784.[76] However, the claim for interest was rejected due to a lack of evidence regarding agreed practice and because there was no pleading referring to the Interest on Money Claims Act 2016.[77]

[108] Mr Chen's fourth counterclaim relied on Mr Chen being the registered proprietor of the Matakana Land. He said that Matakana Wines had occupied the premises since March 2012 and had failed to pay rent or outgoings since at least January 2015. He said that if Mr Huang and Ms Lu were entitled to enforce the JV agreement, he was entitled to payment from Matakana Wines under the strict terms of the lease. The Judge held this was not a tenable position and said that "[b]ecause Mr Chen has failed to repay the amount he owes to Mr Huang under the JV agreement, he was at all relevant times holding the Matakana land on a bare trust for Mr Huang and Ms Lu".[78] This claim failed.[79]

The Waihopai claims

[109] The Judge held that both the fourth and fifth causes of actions brought by Mr Huang and Ms Lu succeeded.[80] The fourth cause of action was against Mr Chen for his failure to repay the Waihopai advances/loans. The fifth was an alternative claim against Waihopai for the failure to repay the loans.

[110] The sixth cause of action was brought by Mr Huang and Ms Lu to recover the Waihopai advances in equity. They had pleaded moneys had and received. They said they had made the advances as loans to remove Waihopai from receivership. Mr Chen and Yi Lu then caused Waihopai to sell its assets and dissipated the sale proceeds without repaying the advances/loans. Mr Chen and others were therefore unjustly enriched at Mr Huang's and Ms Lu's expense and it would be unconscionable for them to retain that benefit.[81] Mr Chen pleaded there was no debt due to the Integration Scheme, a defence which the Judge found had failed.[82] In the circumstances, the Judge

---

76 At [339].
77 At [343].
78 At [346].
79 At [347].
80 At [355].
81 At [356].
82 At [203] and [357].

considered that the claim for money had and received was an appropriate response. This cause of action also succeeded.[83]

[111] The seventh cause of action was in the alternative to the preceding causes of action. The eight cause of action was in the alternative to the seventh. The Judge addressed both together. Mr Huang and Ms Lu claimed that the payments of the sale proceeds of Waihopai's assets were "prejudicial dispositions" pursuant to the Property Law Act.[84] Mr Chen's position was that Mr Huang and Ms Lu were not creditors of Mr Chen or Waihopai because of the Integration Scheme, an argument that had been rejected by the Judge.[85] The Judge discussed the claim by reference to subpt 6 of pt 6 of the Property Law Act. She accepted that Mr Huang and Ms Lu were creditors of Mr Chen and/or Waihopai in respect of the Waihopai advances. The Judge concluded that Mr Chen and the other appellants had received property through a prejudicial disposition, having received monies from the sale of Waihopai.[86] These claims succeeded.[87]

[112] The ninth cause of action was founded on unjust enrichment. However, having found in favour of Mr Huang and Ms Lu in relation to the sixth and eighth causes of action, the Judge did not consider it necessary to determine this cause of action.[88]

The affirmative defences

[113] The Judge finally turned to the affirmative defences raised by Mr Chen. He had pleaded that payments he had received were partly owed to him. The Judge found there was a lack of underlying evidence regarding the debt owed and the affirmative defence failed.[89] The Judge also addressed a counterclaim brought by Mr Chen against Ms Lu, which pleaded that Ms Lu owed him $20,000. Again, there was an absence of evidence and the Judge rejected this counterclaim.[90]

---

83 At [360].
84 At [362].
85 At [363].
86 At [382].
87 At [384].
88 At [387].
89 At [390].
90 At [392]–[394].

Summary

[114] The Judge held as follows:[91]

(a) There was no partnership agreement based on the Integration Scheme or otherwise.

(b) The advance of $1.2 million and the subsequent advances totalling $1,176,261 made by Mr Huang and Ms Lu to Mr Chen and/or Waihopai were loans.

(c) The business relationship between Mr Huang, Ms Lu and Mr Chen was governed by the JV agreement dated 19 April 2012.

(d) Mr Chen had breached the JV agreement by failing to make the payments required for his share of Matakana Estate and by failing to transfer title to the Matakana land to Mr Huang and Ms Lu.

(e) Mr Huang and Ms Lu succeeded on the first to eighth causes of action (inclusive). The ninth cause of action did not require determination.

(f) Mr Chen succeeded in part on his third counterclaim. The other five counterclaims failed.

[115] The Judge ordered relief in regard to the Matakana claims as follows:

> **Matakana claims (first to third causes of action): relief in favour of [Mr Huang and Ms Lu]**
>
> [348] I grant the following relief on the first, second and third causes of action:
>
> (a) A declaration that Mr Chen holds the Matakana land on a constructive trust for Mr Huang and Ms Lu (first cause of action);
>
> (b) An order requiring Mr Chen to transfer the title to the Matakana land, unencumbered, to Mr Huang and Ms Lu (first, second and third causes of action); and

[91] At [406]–[411].

(c) An order for equitable damages against Mr Chen in the sum of $3 million in favour of the plaintiffs as a consequence of the delay suffered by the plaintiffs in developing the Matakana land (first, second and third causes of action).

Matakana claims (third counterclaim): relief in favour of Mr Chen

[349] I make an order that the third plaintiff, Matakana Wines, pay Mr Chen the sum of $530,784.00.

[116] The Judge ordered relief in respect of the Waihopai advances claims as follows:

(a) Fourth and fifth causes of action: judgment in the sum of $2,376,261 in favour of Mr Huang and Ms Lu against Mr Chen or, in the alternative, against Waihopai, together with interest on that sum from the date on which each of the individual advances making up that sum was made, calculated under s 12 of the Interest on Money Claims Act.[92]

(b) Sixth cause of action: in the alternative, judgment in favour of Mr Huang and Ms Lu for moneys had and received by all appellants in the sum of $2,376,261 together with interest on that sum on the basis set out immediately above.[93]

(c) Seventh cause of action: in the further alternative, an order under s 348 of the Property Law Act requiring Jackie Huang, Don Chen and AEG each to repay the funds received by them through prejudicial dispositions back to Mr Chen and an order requiring Mr Chen to pay Mr Huang and Ms Lu $2,376,261. The Judge awarded interest on this sum in the same terms as described above.[94]

(d) Eighth cause of action: as a further alternative, an order under s 348 of the Property Law Act requiring Mr Chen, Yi Lu, Don Chen, Jackie Huang, Qi Yang and AEG to repay the proceeds of the sale of Waihopai's assets received by them to Waihopai and an order requiring

92 At [395]–[396].
93 At [397]–[398].
94 At [399]–[401].

Waihopai to pay the respondents $2,376,261 together with interest in the terms described above.[95]

The appeal

[117] Not all matters decided by the Judge were challenged. Counsel agreed that the following issues were raised by the appeal:

1. Was an integration scheme and/or a partnership based on such a scheme agreed as alleged [by Mr Chen]?

2. If so, was it vitiated by misrepresentations or misleading conduct?

3. If the integration scheme or partnership was agreed and was not vitiated, then is the appropriate remedy to order an accounting?

4. If the integration scheme or partnership was not agreed or it was vitiated, then what are the appropriate remedies? In particular:

    4.1. Should all three parties to the [JV agreement] be required to perform the terms of that agreement and if so when, or should the assets remain with the respondents?

    4.2. Should the damages awarded against the first appellant, Mr Chen, for increased building costs of the proposed Matakana development due to delay, be set aside?

    4.3. Were the payments made by the respondents in relation to the [Waihopai Vineyard], loans to Mr Chen only or to both Mr Chen and [Waihopai]?

    4.4. Should the orders made against the third [to] seventh appellants under s 348 of the [Property Law Act] be set aside?

    4.5. Should the interest award to the respondents on the Waihopai [c]laims be set aside?

    4.6. Should Mr Chen be granted leave to amend his third counterclaim to seek interest under the [Interest on Money Claims Act] on amounts owing to him by the third respondent and if leave is granted, should interest be awarded?

[95] At [402]–[404].

[118] There are two additional matters raised that also require resolution:

(a) Should Mr Huang and Ms Lu be granted leave to amend their prayer for relief in respect of the fourth to eighth causes of action to seek interest under the Interest on Money Claims Act?

(b) Should Mr Huang and Ms Lu be permitted to adduce further evidence on questions of fact by way of an affidavit sworn by Ms Lu on 27 October 2023?

Analysis

[119] We deal with each issue, summarising, when required, the arguments advanced by the parties.

[120] In considering the appeal, we have borne in mind that, while the appellants bore the onus of satisfying this Court that it should differ from the decision under appeal,[96] they are entitled to judgment in accordance with the opinion of this Court, even though that opinion calls for assessments of fact and degree and entails value judgments.[97] This Court must come to its own conclusions in assessing the merits of the case, although it is entitled to bear in mind the advantages that the Judge had in assessing the oral evidence.[98]

[121] We acknowledge the Judge's comments regarding the credibility of the key witnesses noted above at [69]. Her comments accord with our own reading of relevant parts of the notes of evidence. We have followed the same approach as the Judge — we have exercised considerable caution in accepting the word of key witnesses on important issues unless there was documentary support or support from other witnesses whose evidence appeared to us to be credible and reliable.[99]

---

96 *Austin, Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141 at [4].
97 At [16].
98 At [13]. See also *Deng* (SC), above n 9, at [71].
99 See High Court judgment, above n 1, at [121].

Was there an Integration Scheme and/or a partnership based on such a scheme?

Submissions

[122] The primary argument advanced by Mr Barker KC for the appellants was that the relationship between Mr Huang, Ms Lu, Mr Chen and Jackie Huang was a partnership, governed by the terms of the Integration Scheme. The appellants relied primarily on the draft scheme prepared by Mr Huang and sent by him, via Ms Huimin, to Mr Chen on 26 June 2013. They acknowledged that this draft was not signed and that the parties intended, at least initially, that a more formal signed document would be executed in the future, but nevertheless they said that the 26 June 2013 draft recorded the agreement of the parties on all essential matters and that all operated in accordance with its terms over the four and a half years that followed.

[123] Mr Huang and Ms Lu through their counsel, Mr O'Brien KC, denied these assertions. They pointed to the evidence that there were a number of draft proposals for an Integration Scheme circulated by them and that none was concluded or signed. They said that each was no more than a proposal, that the figures in them were approximations, that the parties contemplated that a new joint venture agreement would be signed in relation to any Integration Scheme and that an Auckland lawyer was to be employed to draft and finalise the requisite documentation. They argued that Mr Chen's assertions to the contrary were contradicted by the contemporaneous documents and that the parties did not agree to be immediately bound, because all essential terms of the contract between them had not been agreed, let alone signed.

Relevant law

[124] At the relevant time, a partnership was defined as the relation which subsisted between persons carrying on a business in common with a view to profit.[100] In determining whether or not a partnership existed, regard was required to be had to various rules, none of which of itself evidenced a partnership.[101] Broadly, the rules dealt with the co-ownership of property, the sharing of gross returns and the receipt of profits. None has any particular application in the present case.

---

[100] Partnership Act 1908, s 4. The Partnership Act was repealed as from 21 April 2020 by s 85 of the Partnership Law Act 2019. The 2019 Act took effect from 21 April 2020.

[101] Partnership Act, s 5.

[125] It was common ground before us that partnership is a form of contract;[102] any partnership is rooted in agreement, express or implied, between the parties.[103] If there is no agreement, there cannot be a partnership.[104]

[126] The prerequisites to the formation of an agreement were summarised by this Court in *Fletcher Challenge Energy Ltd v Electricity Corporation of New Zealand*.[105] Blanchard J there stated as follows:

> [50] The question whether negotiating parties intended the product of their negotiation to be immediately binding upon them, either conditionally or unconditionally, cannot sensibly be divorced from a consideration of the terms expressed or implicit in that product. They may have embarked upon their negotiation with every intention on both sides that a contract will result, yet have failed to attain that objective because of an inability to agree on particular terms and on the bargain as a whole. In other cases, which are much less common, the intention may remain but somehow the parties fail to reach agreement on a term or terms without which there is insufficient structure to create a binding contract. …
>
> [51] A contract is not legally incomplete merely because consequential matters have been omitted, particularly when they relate to questions of contingency and risk allocation. The parties may have thought it unnecessary to the essence of their bargain to reach agreement upon such matters or it may have been difficult or even impossible to predict what might arise in the future, particularly under a long-term contract. It may therefore have been thought satisfactory — and it would often be more economically efficient — to leave such matters to be worked out if necessary in the course of the performance of the contract.
>
> [52] But even where the parties are ad idem concerning all terms essential to the formation of a contract — the basic structure of a contract of the type under negotiation is found to have been present in the terms which have been agreed — they still may not have achieved formation of a contract if there are other unagreed matters which the parties themselves regard as a prerequisite to any agreement and in respect of which they have reserved to themselves alone the power of agreement. In such cases, what is missing at the end of the negotiation is the intention to contract, not a legally essential element of a bargain. …
>
> [53] The prerequisites to formation of a contract are therefore:
>
> (a) An intention to be immediately bound (at the point when the bargain is said to have been agreed); and

---

102 P R H Webb (ed) *Laws of New Zealand — Partnership and Joint Ventures* (online ed, LexisNexis) at [4].

103 At n 1.

104 At n 1, citing *Matthews v Matthews* HC Auckland CP 7/00, 22 August 2003 at [84].

105 *Fletcher Challenge Energy Ltd* v *Electricity Corporation of New Zealand* [2002] 2 NZLR 433 (CA) per Blanchard J for himself, Richardson P, Keith and McGrath JJ.

(b) An agreement, express or found by implication, or the means of achieving an agreement (eg an arbitration clause), on every term which:

(i) was legally essential to the formation of such a bargain; or

(ii) was regarded by the parties themselves as essential to their particular bargain.

A term is to be regarded by the parties as essential if one party maintains the position that there must be agreement upon it and manifests accordingly to the other party.

[54] Whether the parties intended to enter into a contract and whether they have succeeded in doing so are questions to be determined objectively. In considering whether the negotiating parties have actually formed a contract, it is permissible to look beyond the words of their "agreement" to the background circumstances from which it arose — the matrix of facts. This can include statements the parties made orally or in writing in the course of their negotiations and drafts of the intended contractual document.

[127] Where, subsequent to the preparation of an unexecuted document, which the parties intended should constitute a contract between them, the parties have acted consistently with its provisions, it can be concluded that they have entered into an informal or implied contract in terms of that document, from the date identified from the conduct in issue.[106] As against this, there is a presumption that, where the parties have agreed to prepare a formal written document to record the terms of their agreement, they do not intend to be bound until that document is drawn up and signed by both, irrespective of whether all of the terms have otherwise been agreed.[107] This presumption is particularly strong where the agreement involves the disposition of an interest in land, or where the agreement is a complex business transaction involving substantial sums.[108]

---

106 *Ambridge Investments Pty Ltd (in liq) v Baker* [2010] VSC 59 at [195], citing *PRA Electrical Pty Ltd v Perseverance Exploration Pty Ltd* [2007] VSCA 310, (2007) 20 VR 487 at [62] per Ashley JA; aff'd *Baker v Ambridge Investments Pty Ltd (recs app) (in liq)* [2011] VSCA 334 at [194]. See also *Geebung Investments Pty Ltd v Varga Group Investments (No 8) Pty Ltd* (1995) 7 BPR 14,551 (NSWCA) at 14569–14570.

107 See, for example, *Carruthers v Whitaker* [1975] 2 NZLR 667 (CA) at 671–673; *Concorde Enterprises Ltd v Anthony Motors (Hutt) Ltd* [1981] 2 NZLR 385 (CA) at 388–389; and *Wallace v Studio New Zealand Ltd* [2021] NZCA 392, (2021) 22 NZCPR 408 at [50]–[51].

108 Jeremy Finn, Stephen Todd and Matthew Barber *Burrows, Finn and Todd on the Law of Contract in New Zealand* (6th ed, LexisNexis, Wellington, 2018) at 279, referring to *Carruthers v Whitaker*, above n 107.

[128] Whether a partnership exists is a legal question to be determined by the Court on the basis of what the parties said and did.[109] Limited assistance can be derived from the authorities, because the analysis is highly fact specific.[110] Regard should be had to the true intention of the parties as appearing from the whole facts of the case.[111]

[129] The decisions in *Deng v Zheng* are a good example of the relevant principles.[112] The Courts were there required to determine whether two property developers, originally from China, were working in partnership in New Zealand, or through various corporate and contractual structures they had put in place but with no overarching partnership. This Court, and subsequently the Supreme Court, disagreed with the High Court Judge and found that, on the evidence, there had been a partnership between the two parties in respect of all but one of the projects in which they were jointly involved.[113] Both Courts relied on the internal accounts and on a document providing for the separation of the parties' respective business interests. The Courts found that these documents revealed a personal relationship between the two men and that the various companies were their nominees.[114] This Court and the Supreme Court emphasised a number of matters:

(a) A written partnership agreement is not required and a partnership can be implied from the circumstances.[115]

(b) The focus is on the substance of the parties' arrangements as revealed by their conduct over time.[116]

(c) The evidence of the parties must be assessed against the contemporaneous documents and the nature of the relationship which

---

109 *Clark v Libra Developments Ltd* [2007] NZSC 16, [2007] 2 NZLR 709 at [51] per Chambers J; and *Deng* (CA), above n 30, at [93].

110 *Deng* (CA), above n 30, at [92], referring to *Aldridge v Paterson* (1914) 33 NZLR 997 (SC) at 1006.

111 *Davies v Newman* [2000] All ER (D) 620 (Ch) at [8].

112 *Deng* (SC), above n 9; and *Deng* (CA), above n 30.

113 See *Zheng v Deng* [2019] NZHC 3236; *Deng* (CA), above n 30, at [127]; and *Deng* (SC), above n 9, at [68]–[69].

114 *Deng* (SC), above n 9, at [68]; and *Deng* (CA), above n 30, at [99]–[100].

115 *Deng* (CA), above n 30, at [33].

116 *Deng* (SC), above n 9, at [78(d)]; and *Deng* (CA), above n 30, at [89].

emerges from those documents.[117] There is however nothing unusual about the absence of express evidence from one or other party about matters such as mutual loyalty, reliance and trust, or the absence of reference to these concepts in contemporaneous documents.[118]

(d) Any internal accounts between the parties can provide evidence of what they agreed, even if unusual or idiosyncratic and even if inconsistent with external accounts.[119]

(e) Documents recording the principles for separating their interests based on the terms of the partnership is strong evidence of a partnership.[120]

(f) It is not inconsistent with a partnership for one or more of the partners to hold shares in a company on behalf of the partnership.[121]

(g) The court should not give undue weight to the use, or absence, of particular language or terminology, especially when dealing with documents translated from another language.[122]

(h) The focus should be on the conduct of the parties over time, viewed objectively, rather than on the possible meaning of particular words used.[123]

[130] Against this background and with these observations in mind, we turn to consider the evidence in this case.

What did the parties say and do?

[131] Counsel in their respective submissions focused on five different periods/series of events: Mr Huang's initial investment and the Integration Scheme documents; the

---

117 *Deng* (SC), above n 9, at [72], [73] and [77].
118 *Deng* (CA), above n 30, at [119].
119 *Deng* (SC), above n 9, at [60], [68] and [73]; and *Deng* (CA), above n 30, at [101] and [111]-[112].
120 *Deng* (SC), above n 9, at [61] and [68]; and *Deng* (CA), above n 30, at [102].
121 *Deng* (SC), above n 9, at [64]; and *Deng* (CA), above n 30, at [96], [103], [111] and [113].
122 *Deng* (CA), above n 30, at [87]–[88], [105] and [107].
123 *Deng* (SC), above n 9, at [78(d)]; and *Deng* (CA), above n 30, at [89] and [105]–[107].

conduct of the parties between 2014 and 2016; the conduct of the parties following the break down in their relationship in 2017; the OIO correspondence in April 2018 and Mr Chen's OIO interview June 2018; and Mr Chen's and Yi Lu's actions in selling Waihopai's assets and distributing the net proceeds of sale in December 2020/early 2021. We follow the same course. We do not refer to every piece of correspondence or act done by the parties and referred to by counsel but only to the principal documents and actions.

[132] Before doing so, we note that Mr Chen's position as to when the Integration Scheme, and any partnership based on that scheme, was finalised has varied.

(a) Mr Chen (and Mr Barker) asserted that Mr Huang acknowledged on 23 February 2013 that he would invest in Waihopai.

(b) In cross-examination at trial, Mr Chen said that the parties reached agreement on the integration of their business interests in May 2013.

(c) In his pleadings, Mr Chen asserted that he, Jackie Huang, Mr Huang and Ms Lu, had been partners since on or about 25 June 2013.

(d) Mr Barker in his submissions before us relied on one of the documents exchanged on 26 June 2013 and asserted that it was the foundation for the alleged partnership.

In our view, this apparent confusion is telling. It is for Mr Chen, as the party asserting that there was a partnership, to prove, on the balance of probabilities, when the bargain between the parties is said to have been agreed and when the intention to be bound by that bargain was manifested.

Mr Huang's initial investment and the Integration Scheme documents

[133] On 23 February 2013, Mr Chen sent Mr Huang a copy of the letter of intent with Mr Sun that outlined a proposal for investment in Waihopai. Mr Huang responded on the same day by sending Mr Chen a document in Mandarin, the heading

of which has been translated as "Vineyard Reform Suggestions". We have discussed this document above at [17]. As noted, it was suggested that this document was effectively an acknowledgment that Mr Huang would invest and that Mr Chen should reject Mr Sun's proposal.

[134] We disagree.

(a) The letter of intent with Mr Sun was clearly a proposal only. It was headed "Letter of Intent"; Mr Chen, Yi Lu, his brother-in-law and Don Chen, were inviting Mr Sun to join them in establishing a new company to restructure Waihopai. It recorded what the new company's equity would be following any restructure — $8,425,000 — and that Mr Sun's investment had to be no less than $500,000.

(b) Mr Huang's vineyard reform suggestions were also just that — suggestions. Clause 3 expressly recorded that "[i]f Mr HUANG buys 20% shares from [Mr] CHEN," then the share structure would be as was set out in the document: Mr Huang with 20 per cent of shares and Mr Chen with 40 per cent. Clause 5 was headed "Issues". It set out a number of matters which needed to be clarified. For example, the timetable for usage of the funds. While we have endeavoured to avoid putting undue weight on particular words used, the document was, in our view, nothing more than an exploratory proposal. That this was the case is clear from what followed thereafter.

(c) The position was not altered by Mr Huang's WeChat message of 23 February 2013, noted above at [18]. The English translation of that email was "I'm in the company, I can tell you". We agree with the Judge that the explanation of that English translation advanced by Mr Huang — "I'm in the company, can communicate via phone" — was reasonable,[124] given the tenor of the documents that followed. We consider it more likely than not that Mr Huang was

[124] High Court judgment, above n 1, at [152].

saying no more than that he was at work but could communicate with Mr Chen by phone if required.

[135] There is no dispute that Mr Huang drafted a number of further documents and exchanged them with Mr Chen — dated 1 March 2013, 11 March 2013, 26 May 2013 and 26 June 2013. These documents set out a possible structure for the refinancing of Waihopai and for the integration of Waihopai and Matakana Wines. We do not however consider that any of these documents of itself resulted in a contract of partnership being entered into for the following reasons:

(a) A number of the drafts expressly recorded that they were "suggestions" only.

(b) The drafts referred to an integration "scheme", to what investors could do and what they might obtain after any integration.

(c) The draft sent on 11 March 2013 was referred to in the accompanying email as being "newly amended".

(d) The various drafts each made suggestions for a share structure following the injection of additional funds and integration of the respective businesses. There were variations between each draft. Figures included in the documents were updated as matters progressed.

(e) It was expressly recorded in the draft sent on 27 May 2013 that a cash increase was "planned", that the figures set out in the document were approximations and that accurate figures needed to be confirmed. As noted at [22], it was also recorded that a new joint venture agreement should be signed and that a local lawyer or lawyers should be employed to draft and witness these documents. A question was posed. Mr Huang asked "… can the funds be combined and paid to a company, and the company will lend it to the [Waihopai] company, then repaid to the bank, this will pave the way and provide reasoning for getting the management rights back next time".

[136] We agree with the Judge (and with the submissions made by Mr O'Brien) that Mr Chen's assertion that the parties reached agreement on an Integration Scheme and that a partnership based on the Integration Scheme was concluded on or about 27 May 2013 is contradicted by the contemporaneous documents.[125] It is clear, in our view, that Mr Huang considered that the figures which had at that point been provided by Mr Chen were approximations only. Mr Huang in evidence said that he asked for Waihopai's accounts many times and Mr Chen, when cross-examined, acknowledged that he did not provide Mr Huang with the accounts. Mr Huang said repeatedly in his evidence that he was not prepared to proceed with any Integration Scheme without the accounts. He was also clear that he required that a new joint venture agreement be prepared and signed. His various assertions in relation to these matters are supported by the contemporaneous documentation. We accept his evidence in this regard.

[137] In our judgement, the provision of Waihopai's accounts and the requirement that a new joint venture agreement be signed in relation to any Integration Scheme were essential prerequisites to the formation of any partnership or integration agreement between the parties. Mr Huang was clear in regard to these matters, both in the iteration of the Integration Scheme forwarded to Mr Chen on 27 May 2013 and in his oral evidence at trial.

[138] Mr Huang made a payment of $1.2 million to Mr Botting's trust account on 25 June 2013. As noted in [23], that payment was recorded in Mr Botting's trust account records as being part of the funds "for Shareholders Loan Advance to Waihopai". As noted at [25], that payment was treated by Mr Chen and Yi Lu, as directors of Waihopai, as a shareholder loan from Mr Huang to Mr Chen and then by Mr Chen to Waihopai. However, two further drafts for the proposed Integration Scheme were produced and forwarded to Mr Chen the following day, 26 June 2013. The proposals were drafted by Mr Huang with the assistance of Ms Huimin. One version of the 26 June 2023 draft Integration Scheme recorded as follows:

> The NZD 1.2M first advanced payment from [Mr] Huang to acquire [Waihopai] Estate, less the amount of his additional share, the rest 0.193M should return back to him from the operating revenue of integrated Matakana Estate.

---

[125] High Court judgment, above n 1, at [154]–[155].

The other version was in similar terms.

[139] The recital in the 26 June 2013 drafts arguably suggests that Mr Huang had advanced the $1.2 million to acquire shares in Waihopai. This interpretation is however inconsistent with the narration in Mr Botting's trust account, with the directors' resolution of 28 June 2013 and with the deed of acknowledgment of debt, also dated 28 June 2013.

[140] The Judge considered that there was an alternative explanation for the recital in the drafts. In her view the words "to acquire [Waihopai] Estate" were arguably a reference to the taking back of Waihopai from the receivers. The Judge considered that this interpretation was consistent with the undisputed evidence that the $1.2 million advanced by Mr Huang was in fact used, together with other funds, to take Waihopai out of receivership.[126]

[141] We are inclined to agree with the Judge. It is inappropriate to place undue emphasis on the particular words used, but the alternative explanation is consistent with what happened and with what followed. We also agree with the Judge that, in any event, the payment of the $1.2 million does not of itself mean that the parties had concluded a contract of partnership or that Mr Huang had advanced the money to purchase shares in Waihopai from Mr Chen.[127]

[142] We accept that there are other indicia which suggest that agreement had been reached and that Mr Huang had or was going to enter into a partnership with Mr Chen and acquire shares in Waihopai from him. We note the following:

(a) The email from Ms Huimin attaching the two June iterations of the Integration Scheme, set out above at [27], contained the words "… which has just been sorted".

(b) One version of the 26 June 2013 draft started with the following words:

---

126 At [158]–[159].
127 At [159].

> On the basis of the JOINT VENTURE CONTRACT (see Annex 1 for details), in order to give light to each party's special advantage, [Mr] Chen, [Mr] Huang and [Ms] Lu decide to reintegrate MATAKANA ESTATE. Concrete operations as follows.

(c) As noted at [29], on 1 July 2013, Mr Chen sent a WeChat message to Mr Huang, Ms Lu and Jackie Huang, telling them that Waihopai had been officially taken back from the receivers, that Matakana officially owned Waihopai and that from then on, it would be promoted as the Matakana Marlborough Vineyard.

(d) As noted at [31], on 11 October 2013, Mr Chen forwarded to Ms Huimin legal advice that Waihopai had received in relation to its dispute with Savvy.

(e) As noted at [32], on 22 October 2013, Ms Huimin sent an email to Mr Huang, Mr Chen, Jackie Huang and Ms Lu, attaching the translated version of the Matakana Estate Integration Scheme draft, asking that parties confirm that they had received it, and "wish[ed] [them] success in business".

[143] There are however difficulties in maintaining that an agreement had been finalised:

(a) On 26 June 2013, Mr Huang sent a WeChat message to Mr Chen, Jackie Huang and Ms Lu, in which he recorded that he had sent the Matakana Estate integration plan to their respective mailboxes. He asked them to "please make amendments" — see above at [28].

(b) While Mr Chen maintained, through Mr Barker, that the partnership was agreed on or about 26 June 2013, he does not say which version of the Integration Scheme circulated on the 26 June 2013 formed the basis for the alleged partnership. The versions differ. One version is more detailed than the other. One was apparently accompanied by a number

of annexures (although, as we understand it, only one annexure was discovered and produced in evidence).

(c) Both versions relied on values provided by Mr Chen. While it seems that Mr Chen did provide some financial information to Mr Huang, there is nothing to suggest that he complied with Mr Huang's requests and provided Waihopai's accounts by 26 June 2013.

(d) Neither of the 26 June 2013 drafts was expressly accepted or signed by any of the parties.

(e) On 2 August 2013, Ms Huimin sent an email to Mr Huang, Ms Lu, Mr Chen and Jackie Huang, attaching one of the 26 June 2013 Integration Scheme documents. The text of the covering email has been set out at [30]. We agree with the Judge that the expression "first draft" indicates that there was not then agreement on the Integration Scheme or on any resulting partnership.[128] So do the words "newly organised" and the invitation to discuss the attachments with Mr Huang when he was in this country.

(f) As noted in [32], on 22 October 2013, Ms Huimin sent an email to Mr Huang, Ms Lu, Mr Chen and Jackie Huang, attaching a translated version of one of the 26 June 2013 Integration Scheme drafts. Mr Chen promptly emailed Mr Botting from China, saying that he would be back in New Zealand at the end of the month and that he wanted Mr Botting to draft an agreement for the shareholders of Matakana Wines.

(g) On 5 November 2013, Mr Chen forwarded the email from Ms Huimin dated 22 October 2013 and the attached translated version of the Integration Scheme draft to Mr Botting.

(h) Mr Chen accepted under cross-examination that, at this point, it was his and Mr Huang's intention to get a document drafted up under

[128] At [162].

New Zealand law by a New Zealand lawyer for the parties to consider. Mr Botting prepared a draft. He sent the draft to Mr Chen for comment.

(i) Mr Botting then returned a revised draft of the heads of agreement to Mr Chen on 23 January 2014. We have discussed the draft heads of agreement above at [34]. They were conditional on a number of matters and they imposed various obligations on the parties. As Mr Botting recorded in his covering email, the document itself was not complete. He required a place of residence for Mr Huang, a date by which the conditions were to be satisfied and an address for service for notices on Mr Huang and Ms Lu. He also advised Mr Chen that Mr Chen's accountant's sign off was required, before making firm commitments, as there might be significant tax losses and/or imputation credits which the entities involved might lose if the shareholdings changed. He recorded that if Mr Chen wished, this could be added as a condition.

[144] In our judgement, on balance, it is clear that, as at 23 January 2014, no final agreement had been reached in relation to the Integration Scheme and there was no resulting partnership. Rather Mr Huang had made it plain that he wanted a formal written agreement. Heads of agreement had been prepared by Mr Chen's solicitor on Mr Chen's instructions, but they had not been finalised or signed by any of the four parties. The proposed integration and the issues canvassed in the heads of agreement were complicated, with potentially significant implications for all parties. In our view, the presumption noted above at [127] was in play. The parties had agreed to prepare a formal written document to record the terms of their agreement and they did not intend to be bound until that document was drawn up and signed by them.

[145] We accept that the concept of guānxi might have been relevant given that all of the parties are from China. The Supreme Court explained guānxi as follows in *Deng v Zheng*:[129]

> [76] Guānxi is a complex term with multi-faceted meanings. Guānxi may be understood as "interpersonal connections", "social capital", or the "set of personal connections which an individual may draw upon to secure resources

[129] *Deng* (SC), above n 9 (footnotes omitted).

> or advantage when doing business or in the course of social life". Important bases of guānxi for an individual include kinship and co-working. As will be apparent from our reasons, the relationship between Messrs Zheng and Deng (and those they worked with) is consistent with these concepts: in particular, the apparent significance to them of family relationships and pre-existing friendships in terms of whom they did business with and the relative dearth of formal agreements. For this reason, an understanding of guānxi provides some support for Mr Zheng's case.

[146] We have already noted Dr Liao's evidence. It was to the effect that assumptions about Chinese culture and practice should not be applied across the board, that there is no "one-size-fits-all" approach to the concept of guānxi and that much depends on the type of relationship and the nature and value of the transaction in issue. Dr Godwin, also a Chinese law expert, cited this Court's decision in *Zheng v Deng*,[130] and agreed with Dr Liao that, subject to the specific factual matrix in any dispute, factors such as the values involved and the parties' "stickiness" to traditional Chinese culture, as well as any "interference factors", could be relevant when determining the nature of a transaction between Chinese parties. He did not otherwise disagree with Dr Liao's assertions.

[147] In the present case, the transaction was not between family members. Mr Huang, Ms Lu, Mr Chen and Jackie Huang had become friends, but there was no kinship between them. While they had earlier entered into various business transactions together, they had invariably entered into formal written agreements to document those transactions. For example, when they purchased the initial Matakana villa lots in late 2006, they subsequently entered into an agreement (in March 2007). In October 2011, they entered into a joint venture agreement in relation to the purchase and funding of the Matakana land and winery business. This agreement was superseded by the April 2012 JV agreement. This latter document was in writing, prepared with legal assistance, witnessed, signed and fingerprinted by each of the three individuals who were parties to it. Mr Chen also had a written employment agreement with Matakana Wines in relation to his position as General Manager of that company.

[148] As the Judge noted, the history of the business relationships between the parties suggested that each expected negotiations to conclude with a formal written and signed

---

130 *Deng* (CA), above n 30.

agreement.[131] Mr Huang's various iterations of the Integration Scheme support this expectation, as do Mr Chen's actions in referring one of Mr Huang's drafts to Mr Botting, with instructions that he prepare a formal document, to be governed by New Zealand law.

[149] In the present case, we do not consider that the concept of guānxi advances matters to any significant extent.

The conduct of the parties from 2014–2016

[150] The appellants relied heavily on the conduct of the parties from early 2014 until 2016. Mr Barker submitted that conduct unequivocally indicated that the parties had agreed on integration and that accordingly, a partnership was formed. Mr O'Brien disagreed. He argued that it was necessary to look at the broader picture — while some matters point to integration and partnership, others do not.

[151] In March 2014, Mr Huang prepared a diagram for the Matakana Estate management structure and it was circulated by Ms Huimin to Mr Chen, Jackie Huang and Ms Lu. This document, discussed above at [36], was consistent with an agreement having been reached for the integration of Waihopai and Matakana Wines and with the parties getting on with the conduct of the integrated entity's business.

[152] Other conduct points to integration from this time onwards. First, Mr Huang, Ms Lu, Mr Chen and Jackie Huang, attended regular "board of directors' meetings", where they discussed various issues, some of which related to Waihopai's affairs. Secondly, accounting staff sent regular updates to each of the main parties. The updates related to both Matakana Wines and Waihopai. Thirdly, one of the accountants, Ms Fu, created spreadsheets recording the injection of "shareholders" funds. Further, there was a steady stream of WeChat messages, where the word "shareholder(s)" was used repeatedly. Again, all of these interactions were consistent with a partnership agreement having been concluded, although we note the acknowledgment given by Mr Chen in his brief of evidence — Mr Huang, Ms Lu, Mr Chen and Jackie Huang "were not legally the 'board' of any company". There is

[131] High Court judgment, above n 1, at [173].

no evidence that a new integrated company was incorporated or that authorities to act as directors were signed or filed with the Companies Office.

[153] Mr Barker submitted that there were two documents that were signed by the parties that confirmed that the Integration Scheme had been agreed and that there was a partnership in place. He referred to the following:

(a) A "Meeting contents summary" dated 21 March 2015 signed by Mr Huang, Ms Lu, Mr Chen and Jackie Huang. This document referred to sales goals for the year July 2015 to June 2016 and the need to undertake further market development. It was noted that Waihopai Vineyard was starting to produce an income, but that a profit analysis would need to wait until the end of the year. There was a reference to the management and beautification of Matakana Estate and to Matakana Zhongshan Ltd's financial reports. It was recorded that slight adjustments to the Matakana Estate management structure were required. As Mr Barker pointed out, Mr Huang's explanation under cross-examination for this document was unconvincing.

(b) The Memorandum of Corporate Trusteeship — noted above at [40]. One translation of this document recorded as follows:

> To resolve [Waihopai's] investing and financing matters, the original shareholders [Mr Chen], [Yi Lu] invited [Mr Huang] to join as a new shareholder with a cash contribution. Each investing party confirms that the updated shareholding structure for [Waihopai] will be amended as follows: [Mr Chen] represents 24%, [Mr Huang] represents 36%, Yi Lu 40%, and at the appropriate time the registration procedures for amending the company shareholders will be handled.

It was signed by Mr Chen, Yi Lu, Mr Huang and Ms Lu on 23 March 2015. Mr Barker submitted that its clear intent was to protect the interests of all investing parties, including Mr Huang, and to record the agreement between them as to the ownership of the company and the status of their respective investments.

[154] This latter document is ambivalent. In its terms it is open to a number of interpretations, but on balance we doubt that it goes as far as Mr Barker submitted. Like the Judge, we note that the document recorded an invitation by Mr Chen and Yi Lu to Mr Huang to become a shareholder in Waihopai.[132] It also refers to Mr Huang joining as a shareholder and to the shareholdings being amended at some future date. On Mr Chen's version of events, why such an invitation was necessary on 23 March 2015 and why changes were expressed in the future tense is unclear. On Mr Chen's argument, the partnership and the purchase of the shares had been concluded sometime in 2013. Perhaps more importantly, the document is notable for what it does not say. It does not record that the parties' interests in Waihopai and Matakana Wines had already been integrated. Further there is no reference to Ms Lu becoming a shareholder although clearly this had been contemplated in earlier draft documents.

[155] We also consider that there is force in Mr O'Brien's submission that neither of the signed documents satisfied the essential terms required by Mr Huang in his 26 May 2013 draft of the Integration Scheme and emphasised by him in his evidence at trial. Nor do they satisfy the conditions in the draft heads of agreement prepared by Mr Botting.

[156] In our view, there are indicia in the party's conduct between 2014 and 2016 pointing both ways, that is, toward and away from an agreed Integration Scheme. We accept that much of the party's conduct supports Mr Chen's argument but consider that other conduct does not. Significantly, there is no evidence of the shareholdings in Waihopai being changed. Rather financial spreadsheets prepared for the relevant years continued to refer to Mr Chen's 60 per cent share in the company and to Yi Lu's 40 per cent share. There is nothing to suggest that gross returns or profits were shared. Mr Huang and Ms Lu were providing substantial funds to assist Mr Chen/Waihopai, but these funds were recorded in Waihopai's accounts as loans.

[157] In the round, on the balance of probabilities, we do not consider that the parties' conduct establishes a partnership agreement as alleged. Their conduct is equally

---

[132] At [185].

consistent with the parties working towards and even hoping for a partnership agreement, but without agreement having been concluded. There is nothing to suggest that Mr Huang had given up on his essential terms, namely that he needed to see Waihopai's accounts,[133] and that there should be a formal agreement in writing.

The conduct of the parties following the breakdown of their relationship in 2017

[158] The relationship between the parties broke down in 2017 and, between September 2017 and March 2018, they discussed how they might best separate their respective business interests.

[159] It was submitted for Mr Chen that this evidence is consistent with integration and that, in their various communications, Mr Huang and Ms Lu sought to separate their interests and secure an accounting based on the Integration Scheme. It was claimed that there was no demand for repayment of the loans under the JV agreement, because the parties had ceased to rely on that agreement given that they were in partnership.

[160] It was argued for Mr Huang and Ms Lu that Mr Huang had advanced a lot of money to Mr Chen and/or Waihopai and Mr Huang and Ms Lu wanted to work out a way to get it back. Mr Chen did not have any cash and, given the earlier integration discussions, Mr Huang was willing to talk to Mr Chen about the possibility of Mr Chen repaying him by the transfer of assets.

[161] There were numerous WeChat messages exchanged from November 2016 onwards. Initially Mr Huang was prepared to proceed on the (it seems hypothetical) assumption that everyone was a shareholder, with the apparent intention of negotiating a satisfactory separation of his business interests from those of Mr Chen. Later Mr Huang was more direct. For example, in October 2017, he stated in a WeChat message to Mr Chen that the parties were involved in "a negotiation of two major shareholders over assets division". In a subsequent message on the same day, Mr Huang asserted that he was made a shareholder of Waihopai because of Mr Chen's

[133] Some accounts were made available in late 2015, but Mr Huang considered that they were unsatisfactory and he requested more information.

"urgent need". Jackie Huang however took a rather softer stance. She sent an email to Ms Lu, thanking her and Mr Huang for their "mutual help during our co-operation, especially Mr Huang who transferred cash into the company".

[162] Several exit proposals were drafted, mostly by Ms Fu on Mr Huang's instructions. It seems that the parties were trying to ascertain what assets they had which might be available for any exit agreement. A "Matakana Assets Value Summary" was circulated late September 2017/early October 2017. Some of the information in that summary concerning Waihopai was, according to Mr Huang, provided by Mr Chen. A further document headed "Matakana Wine Factory Assets Disposal Plan" set out various proposals and recorded that regardless of which plan was chosen, inventory and debts had to be cleared before ownership of the assets could be finalised. In another document, dated 20 November 2017, entitled "Assets Disposal By Way of Reconstruction of Capital Investments", it was recorded under the heading "Investment Evolution", as follows:

> Based on the Matakana Estate Assets Integration Agreement signed by [Mr Huang] (includes [Ms] Lu) and [Mr Chen] (includes [Jackie] Huang) in 2013 …

This suggests that there was a version of the Integration Scheme signed in 2013. No such document was produced at trial. The Judge recorded that, to Mr Chen's credit, he had not seized on this reference to say that there was in fact a signed version of the Integration Scheme.[134] Mr Barker argued before us that the significance of the reference was more that it confirmed that Mr Huang and Ms Lu thought that the Integration Scheme had been agreed. He also pointed to various other documents which he argued were only consistent with all parties believing that the separation of their interests should be in accordance with the Integration Scheme.

[163] We do not refer to each of these documents in detail nor to the evidence given by Ms Fu relied on by the Judge. We accept that the various proposals for the unravelling of the parties' business interests proceeded broadly on a 60/40 per cent spilt, as had been proposed in the Integration Scheme. We note however, that none of the documents was signed by the parties. We consider that the various documents are

---

134 High Court judgment, above n 1, at [190].

also consistent with the parties endeavouring to reach agreement on the untangling of their business interests. In our view, each of them, Mr Chen and Mr Huang, was jockeying for position and trying to maximise his financial position. Nothing was finalised and we do not consider that the discussions and proposals provide a reliable guide to whether or not the parties had earlier reached agreement to carry out their respective businesses in partnership.

The OIO correspondence and interview

[164] In 2017, in the context of a separate property development, Mr Huang and Ms Lu engaged lawyers in Auckland to obtain advice on the OIO process. On 20 October 2017, those lawyers, on behalf of Mr Huang and Ms Lu, advised the OIO about the Matakana land acquisition. The OIO began an investigation into that transaction that lasted for some two years. In the course of that investigation, the OIO contacted Mr Chen and sought his version of what had occurred. By letter dated 5 April 2018 from his barrister, Mr Lear, Mr Chen stated as follows:

> [**Waihopai**]
>
> 23. During early 2013, [Waihopai] was placed into Receivership by its bank which was caused by the difficult trading conditions created by the management and supply contracts with the Vegars. The bank remained supportive of [Mr Chen] and Yi Lu and agreed to take it out of Receivership if new shareholder funds were introduced in order to reduce the Bank's lending facility by $2m. [Mr Chen] and the other shareholders could only raise $800,000 and went to other friends and acquaintances to raise the balance. [Mr Chen] advises that he secured loans for the balance from acquaintances in China but then thought that he should perhaps inform [Mr Huang] and [Ms Lu] given their connection with Matakana and that his vineyard supplied some grapes to Matakana. On hearing the proposed arrangement, [Mr Huang] said he would help them out and provide the balance of the funds to bail the company out of Receivership. [Mr Huang] advanced $1.2m to [Mr Chen] and with the other funding provided by the shareholders, [Waihopai] came out of Receivership.
>
> 24. Following the bailout of [Waihopai], [Mr Huang] put forward a proposal that their respective loans and investments in Matakana and Waihopai be amalgamated in what was termed the "Matakana Estate Integration Scheme". We believe the OIO has already been provided with a copy of this document. [Mr Chen] does not believe this was signed as a formal agreement needed to be prepared.
>
> 25. At the end of 2013, [Mr Chen] arranged for his lawyer, Brad Botting, to start drafting an agreement. Attached is a draft Heads of Agreement between [Mr Chen] and his wife, and [Mr Huang] and [Ms Lu] called

> the Matakana Wine Limited Partnership. Similar to the Integration Scheme, this agreement would have brought together under a 60/40 ownership of [Mr Chen's] (and his brother's) interest in [Waihopai], and their respective interests in the Matakana properties. This agreement was conditional on obtaining consents under the Overseas Investment Act if required at the time. [Mr Chen] believes a copy of the draft was emailed to [Mr Huang] and/or [Ms Lu] in January 2014 but does not think it was advanced any further or signed.
>
> 26. Approximately 10 months after coming out from under Receivership, [Waihopai] became embroiled in lengthy and very costly High Court litigation in relation to the disputed management and supply contracts with the Vegars[.] Additional money was required to fund the litigation that went to a full hearing. The shareholders of the company, along with [Mr Huang], contributed funds, at least some of which were loaned to the company via [Ms Lu] and secured by an unregistered second mortgage, with a caveat registered against the vineyard property. [Waihopai] was mainly successful in the High Court case, but both sides appealed. To avoid more legal costs, the dispute was finally settled and although it was expensive for the company the Vegars finally have no involvement with that vineyard.

[165] Mr Chen was interviewed by the OIO on 6 June 2018. It was a voluntary interview, but Mr Chen was told at the outset that it was an offence to make a false and misleading statement to the investigating officers, or to make a material omission in any statement made. Relevantly Mr Chen:

(a) agreed with an assertion made by the investigating officer that the $1.2 million received from Mr Huang was a loan;

(b) confirmed that Mr Huang had advanced $1.2 million to him as stated in para 23 of the letter cited above at [164];

(c) agreed that the integration proposals were merely a "sort of a future plan"; and

(d) agreed with his barrister's description of the integration proposals as being:

> … sort of the vision, or whatever, [of] how they were going to put it together. … [A] concept scheme … it's a scheme, an integration of a scheme.

[166] Clearly, Mr Chen's version of events both in his correspondence with the OIO and at interview is inconsistent with the later assertion in his pleadings and at trial that there was a partnership agreement based on the Integration Scheme.

Mr Chen's actions in selling Waihopai and distributing its assets

[167] As noted above at [50]–[51], on 10 December 2020, unbeknown to Mr Huang and Ms Lu, Mr Chen and Yi Lu caused Waihopai to enter into an agreement to sell its land and business. The sale was settled and, in January and February 2021, Mr Chen and Yi Lu caused Waihopai to distribute the net proceeds totalling $7,476,766.27 to Mr Chen, Don Chen and Yi Lu. The amounts paid to each have been noted above.

[168] The sale of the assets was only disclosed to Mr Huang and Ms Lu on 22 February 2021 in a brief of evidence from Mr Chen forwarded to the respondents. At this point the settlement was complete and the sale proceeds had been distributed.

[169] Mr Chen did not treat Mr Huang and Ms Lu as partners. Nor did he treat them as joint venturers. He did not discuss the sale of Waihopai with them. No funds from the sale were transferred to them. Mr Chen's actions in selling one of the alleged partnership's principal assets, Waihopai, and distributing the proceeds of sale to himself, his brother and Yi Lu, are completely inconsistent with any alleged partnership. It is difficult to think of any actions that could have been more antithetical to the alleged partnership. We agree with Mr O'Brien, that, if there was a partnership and a concluded Integration Scheme as alleged, Mr Chen's conduct was either fraudulent or, at the least, an egregious breach of his fiduciary obligations.

Conclusion

[170] We fall back on the burden of proof. Mr Chen and the other appellants were alleging that there was a partnership based on the Integration Scheme. The burden of proving the same rested on them, on the balance of probabilities. They failed to persuade the Judge that it was more probable than not that there was a partnership. They have not persuaded us that there was any material error in the Judge's analysis. We have considered the issue afresh on its merits. While there are factors pointing both ways, we agree with the Judge's overall assessment that there was no partnership

arising out of the Integration Scheme or otherwise. Accordingly, this aspect of the appeal fails.

Other issues related to the alleged partnership

If there was a partnership, was it vitiated by misrepresentations or misleading conduct?

[171] We have found that there was no partnership. Accordingly, it is not necessary for us to address this issue. The Judge found that if there was a partnership, it was vitiated by Mr Chen's misrepresentations and misleading conduct. For completeness, we record that we agree with the Judge's analysis, for the reasons which she set out in [215]–[258] of her judgment.

If the Integration Scheme or partnership was agreed and was not vitiated, is the appropriate remedy to order an accounting?

[172] Again, and for the same reasons, it is not necessary for us to address this issue. We accept that, had there been a partnership, then prima facie, the appropriate remedy would have been to order an accounting, but the issue does not arise for consideration on our view of the facts.

If the Integration Scheme or partnership was not agreed or it was vitiated, what are the appropriate remedies?

[173] This aspect of the appeal was dealt with by Mr Judd for the appellants and Mr Pascariu for the respondents. Before we turn to consider the various particularised issues relating to remedy raised by the appellants, there is one other issue it is convenient to deal with at this stage.

Should Mr Huang and Ms Lu be permitted to adduce further evidence?

[174] On 27 October 2023, the respondents filed an interlocutory application under r 45 of the Court of Appeal (Civil) Rules 2005 seeking leave to adduce what was

described as "updating" evidence. The evidence comprised an affidavit from Ms Lu, also dated 27 October 2023. In that affidavit Ms Lu dealt with the following matters:

(a) Following delivery of the High Court judgment, Mr Chen transferred title of the Matakana land to Ms Lu and Mr Huang. Mr Chen owed $793,971.18 to a bank, the ASB, which was secured under a mortgage he had registered over the Matakana land. Mr Chen claimed that he was unable to repay this debt and Ms Lu and Mr Huang had to refinance the mortgage. After crediting Mr Chen with the $530,784.00 owed to him by Matakana Wines, as determined by the Judge (see above at [114]–[115]), Ms Lu and Mr Huang assumed liability for the remaining sum outstanding.

(b) The proposed development of the Matakana land as required under the retrospective consent granted by the OIO.

[175] The appellants objected to this further evidence being received by the Court. They argued that the application was too late, that to the extent it related to events since the High Court trial, it was irrelevant and that to the extent that it related to events prior to the High Court trial, it was evidence that could and should have been given at trial. They protested that it was not possible to address the credibility of the proposed evidence and that there was no way of knowing whether the evidence was a fair and complete record of what had happened, particularly in regard to the proposed development.

[176] The criteria for the filing of fresh evidence are well established. The evidence must credible, fresh and cogent. Evidence will not be regarded as fresh if it could, with reasonable diligence, have been produced at trial.[135] Litigants have a duty to adduce at trial all of their evidence, reasonably discoverable.[136] The constraints on the admission of further evidence are strict.

---

135 *Erceg v Balenia Ltd* [2008] NZCA 535 at [15]; *Rae v International Insurance Brokers (Nelson Marlborough) Ltd* [1998] 3 NZLR 190 (CA) at 192–193; and *Paper Reclaim Ltd v Aotearoa International Ltd (Further Evidence) (No 1)* [2006] NZSC 59, [2007] 2 NZLR 1 at n 1, referring to *Rae v International Insurance Brokers (Nelson Marlborough) Ltd*.

136 *Airwork (NZ) Ltd v Vertical Flight Management Ltd* [1999] 1 NZLR 641 (CA) at 649–650.

[177] We accept that the updating evidence, explaining that the land has been transferred since judgment and the circumstances in which it was transferred, is fresh and, prima facie, cogent and credible. It is concise and it is contained in a sworn affidavit. Notwithstanding the appellants' protests, it could have readily been corrected if there was any error in it. We are not however persuaded that the proposed evidence in relation to the proposed development of the Matakana land is fresh, or necessarily credible and cogent. It is evidence which should have been adduced at trial, in support of Mr Huang's and Ms Lu's claim for damages. It is lengthy and it is accompanied by a voluminous exhibit. It would not have been easy for the appellants to correct or take issue with the proposed evidence at short notice. It is, in our view, too late for the respondents to try and adduce this evidence on appeal, essentially to try and repair an evidential lacuna exposed by the notice of appeal. To admit it at this stage would be unfair to the appellants.

[178] We grant leave to the respondents permitting them to adduce by way of further evidence [1] and [2] of Ms Lu's affidavit of 27 October 2023. We decline leave to the respondents to adduce in evidence the remainder of the affidavit dealing with the proposed development of the Matakana land.

[179] We now turn to the particularised remedy issues raised by the appellants.

Should all three parties to the JV agreement be required to perform the terms of the agreement and if so when, or should the assets remain with the respondents?

The submissions

[180] Mr Judd, for the appellants, acknowledged that, if the Court found that there was no partnership agreement between the parties, the JV agreement remained in force. He submitted however that the agreement should be enforced in accordance with its terms. He accepted that Mr Chen did not make the loan repayments which he was required to make in accordance with the JV agreement and that Mr Chen held the Matakana land on constructive trust. He asserted however, that Mr Chen held the land on constructive trust not just for Mr Huang and Ms Lu, but for all three joint venturers: Mr Huang, Ms Lu and himself. Mr Judd did not accept that Mr Chen had breached the fiduciary duties owed by him, or that he had otherwise engaged in conduct that

disentitled him from requiring performance of the JV agreement for his own benefit. It was argued that the appropriate relief was to order all three parties to perform the JV agreement, which would require Mr Chen to repay the loans made by Mr Huang (together with interest) and to transfer legal ownership of the assets held under the JV agreement to the three joint venturers in the agreed proportions.

[181] Mr Pascariu, for the respondents, asserted that the JV agreement had been terminated. He noted that it is subject to the law in China and that Dr Liao gave evidence that the Contract Law Act (or Code) in China provides that a party may unilaterally cancel a contract if the other party has fundamentally breached the contract or failed to perform his, her or its obligations after being demanded to do so. Mr Pascariu accepted that there was no evidence as to the mechanics of cancellation under Chinese law, but argued that it was clear that demand was made on Mr Chen for repayment of the monies advanced under the JV agreement and for the transfer of the title to the Matakana land, and that Mr Chen failed to comply with this demand. It was submitted that the Judge's decision to grant relief under New Zealand law, by way of a declaration of constructive trust and an order for the transfer of the Matakana land was appropriate and supported by authority.

The JV agreement

[182] The JV agreement is dated 19 April 2012. It was between Mr Huang, Mr Chen and Ms Lu. It recorded that, on the basis of "honesty, mutual benefit and friendly cooperation", the parties had reached agreement on the joint acquisition and operation of Matakana Estate. Details of the acquisition were set out, as was the funding for the purchase. Under the heading "Cooperation Model", the total investment required for the project was said to be $4.2 million. Mr Huang was to invest $2.31 million in the project, accounting for 55 per cent of the venture, Mr Chen was to invest $1.47 million, accounting for 35 per cent of the venture, and Ms Lu was to contribute $420,000, accounting for 10 per cent of the venture. The funds to acquire Matakana Estate were to be paid in advance by Mr Huang and once OIO approval had been obtained, Mr Chen was to repay Mr Huang and Ms Lu. The agreement provided that the $1.47 million to be invested by Mr Chen was a loan from Mr Huang to Mr Chen, accruing interest from the date of the loan in accordance "with the interest rate on

commercial loans in New Zealand over the same period". Mr Chen promised to repay $470,000 by 31 December 2013, $500,000 by 31 December 2014 and $500,000 by 31 December 2015. The JV agreement expressly recorded as follows:

> This Agreement is concluded within the territory of the People's Republic of China and is governed by and construed in accordance with the laws of China.

The applicable law

[183] In the High Court, the Judge accepted submissions advanced for the respondents, and not challenged by the appellants, that the Court should apply remedies under New Zealand law to match the substantive rights determined by Chinese law.[137]

[184] Parties are free to choose the law they wish to be applicable to their agreement and the courts generally give effect the parties' intentions.[138] It is ordinarily the lex causae that determines whether a party is entitled to relief and whether the Court should grant relief. This however is not an invariable principle and the response of the courts can vary depending on the nature of the relief that is sought.[139] New Zealand courts can have jurisdiction to determine a claim even though the substance of the claim is not governed by New Zealand law.[140]

[185] Claims for equitable relief were traditionally considered to be a matter for the law of the forum — the lex fori.[141] However, in *Schumacher v Summergrove Estates Ltd*, this Court held that the imposition of a constructive trust was governed by the law applicable to the obligation, interest or event giving rise to it.[142]

[186] While the New Zealand courts lack the power to grant a remedy that is unknown to New Zealand law, where relief available under the lex causae lacks an equivalent under the lex fori, the court is still able to grant its own relief, provided it is sufficiently similar in nature. The authors of *The Conflict of Laws in New Zealand*

---

137 High Court judgment, above n 1, at [287]–[291] and [306].
138 Maria Hook and Jack Wass *The Conflict of Laws in New Zealand* (LexisNexis, Wellington, 2020) at [1.28] and [4.143].
139 At [4.210].
140 *Commerce Commission v Viagogo AG* [2019] NZCA 472, [2019] 3 NZLR 559 at [50].
141 Hook and Wass, above n 138, at [4.210].
142 *Schumacher v Summergrove Estates Ltd* [2014] NZCA 412, [2014] 3 NZLR 599 at [37].

suggest that the right approach in such cases is to apply the lex causae to determine whether the relief is available or should be granted, and then to make an order for the New Zealand form of that relief if appropriate. They suggest that the courts should ask themselves the following — what is the nature of the liability under the foreign law and what remedy or remedies does New Zealand law provide for New Zealand law liability similar or analogous to the kind of liability established under the foreign law?[143]

[187] This is essentially the approach the Judge applied to those causes of action that related to the Matakana land. This approach was not challenged on appeal and we take the issue no further.

[188] There are no conflict of laws issues with the Waihopai claims. Each cause of action arose in New Zealand. Waihopai is a New Zealand registered company. Its business and assets were in New Zealand. So were its directors and shareholders (and presumably its registered office). By the time the matter was before the High Court, all of the relevant parties had New Zealand residence. It was intended that an agreement would be drawn up in New Zealand, by a New Zealand lawyer and the draft agreement that was drawn up was intended to be governed by New Zealand law.

The Matakana land — Chinese law

[189] As already noted, the Judge received expert evidence on relevant Chinese law from two expert witnesses, Dr Liao and Dr Godwin.

[190] It was Dr Liao's evidence that, as a matter of Chinese law, a party's contractual obligations, including what the obligations are and when a particular obligation is due, are as agreed by the parties to the contract, unless otherwise prescribed by an applicable compulsory law. Dr Liao said that there was no compulsory law applicable to the JV agreement in respect of Mr Chen's repayment obligations that would change or affect what the JV agreement said. He also considered that, under Chinese law, once OIO consent had been obtained, it was Mr Chen's obligation under the JV agreement to transfer ownership of the Matakana land to Mr Huang and Ms Lu,

143 Hook and Wass, above n 138, at [4.216].

proportionate to the capital contributions of each party to the joint venture. He said that specific performance is more readily available in China than in common law jurisdictions and that it would be the preferred relief given that what was involved was unique real property.

[191] Dr Liao also said that Chinese law provides that a party can cancel a contract in two situations — first, termination by agreement or on satisfaction or fulfilment of agreed conditions, and secondly, unilateral termination under art 94 of the Contract Law Act (or Code) of the Peoples' Republic of China (Contract Law Act). The English translation of art 94 provided by Dr Liao relevantly states as follows:

> A party to a contract may terminate/cancel/dissolve the contract under any of the following circumstances:
>
> …
>
> (2) prior to the expiration of the period of performance, the other party expressly states, or indicates through its conduct, that it will not perform its main obligation;
>
> (3) the other party delayed performance of its main obligation, and after such performance has been demanded, fails to perform within a reasonable period;
>
> (4) the other party delays performance of its obligations, or breaches the contract in some other manner, rendering it impossible to achieve the purpose of the contract;
>
> …

[192] Dr Liao gave evidence that equity is not part of Chinese law, unless a particular equitable principle is incorporated by statute. Estoppel, resulting and constructive trusts have not been adopted by any statutes to date in China and fiduciary relationships are not part of Chinese law.

[193] Dr Godwin, called by the appellants, was in broad agreement with Dr Liao's evidence that a party's obligations under Chinese law are as agreed by the parties to the contract and also with the proposition that a party's obligations can be overridden by mandatory rules of law. Dr Godwin did not comment on Dr Liao's observations regarding cancellation, or on the availability of remedies either in equity or otherwise under Chinese law.

Has the JV agreement been cancelled?

[194] It was not disputed that Mr Chen breached the JV agreement. However, breach does not result in automatic cancellation.

(a) Article 94 of Contract Law Act makes it clear that, when the circumstances set out in that provision apply, the parties have a discretion whether or not to terminate, cancel or dissolve the contract. There was no evidence adduced to suggest that Mr Huang and Ms Lu decided to terminate the JV agreement or that they took any steps to that end. Further there was no evidence adduced as to what is required under Chinese law to cancel a contract. While circumstances have arisen which would entitle Mr Huang and Ms Lu to cancel the JV agreement under Chinese law, there is no evidence suggesting that they have done so.

(b) Similarly, under New Zealand law, it is clear both at common law and under the Contract and Commercial Law Act 2017 that a contract is not automatically cancelled where it is breached.[144] The innocent party has an election. The innocent party may either treat the contract as cancelled or affirm the contract by treating it as still in force. If the innocent party chooses to keep the contract on foot, the status quo is preserved intact. The contract remains in force for the benefit of both sides.[145]

(c) The respondents in their pleading did not allege that the JV agreement had been cancelled. Rather they sought to enforce it by seeking an order that Mr Chen transfer the Matakana land to them.

[195] We conclude that the JV agreement has not been cancelled and that it remains in force.

---

144 Contract and Commercial Law Act 2017, s 37.

145 *Harbutt's Plasticene Ltd v Wayne Tank and Pump Co Ltd* [1970] 1 QB 447 at 464–465 per Lord Denning MR; and see Steven Todd and Matthew Barber *Burrows, Finn and Todd on the Law of Contract in New Zealand* (7th ed, Lexis Nexis, 2022) at [18.3.1].

The consequences of non-cancellation

[196] Under New Zealand law, fresh demand could be made and, if it was not complied with, Mr Huang and Ms Lu could then cancel the JV agreement. It may be that the same position applies under art 94(3) of the Contract Law Act in China, although we do not have enough information before us to reach a concluded view in this regard. While the Judge expressed views as to the application of the doctrine of laches,[146] those views were obiter. Mr Chen has not belatedly sought to repay the $1.47 million loan that he received from Mr Huang under the JV agreement or interest on that sum. Additional monies are now owing as a result of the fact that Mr Huang and Ms Lu were required to refinance and assume liability for part of the mortgage Mr Chen had put in place over the Matakana land. Unless and until Mr Chen complies with his obligations, issues of laches do not arise.

[197] The appellants seek a direction from the Court that all three parties to the JV agreement should be required to perform the terms of that agreement and a further direction as to when they should do so. In the circumstances, these matters are academic. Mr Chen cannot expect the Court to declare what his rights might be in the event that he decides to belatedly honour his obligations under the agreement and at law. We decline to take this issue any further.

Should the damages award against Mr Chen for the increased building costs of the proposed Matakana development due to delay be set aside?

[198] The Judge ordered "equitable damages" of $3 million against Mr Chen for losses she found had been suffered by the respondents because they were not able to commence the proposed development of the Matakana land when they otherwise intended to do so.[147]

[199] At trial, the respondents alleged that Mr Chen's failure to transfer the Matakana land to Mr Huang and Ms Lu, and Mr Chen's obstructive approach to the proposed development, delayed, by around two years, the development of the Matakana land as

---

146 High Court judgment, above n 1, at [311]–[318].

147 At [319]–[324] and [348(c)]. Strictly we doubt that the damages were "equitable" damages. Rather they were common law damages for breach of the JV agreement. However nothing turns on this.

required under the OIO consent conditions. Mr Huang and Ms Lu asserted that the development costs increased significantly during that delay. They called evidence from a chartered quantity surveyor, Patrick Hanlon, who said that the development costs increased by approximately $3–$3.2 million between late September 2020 (when the OIO consent was issued) and 2022. The appellants did not call evidence in an endeavour to rebut Mr Hanlon's evidence; nor did they cross-examine him.

Submissions

[200] For the appellants, Mr Judd argued that there was no evidential basis for awarding equitable damages, because there was no evidence of the factual assumptions relied on by Mr Hanlon. He also asserted that the loss was not reasonably foreseeable, that it was too remote and that the quantum of the award should be reduced to reflect Mr Chen's entitlement to a 35 per cent in the joint venture.

[201] Mr Pascariu, for the respondents, submitted that this was a new argument, which Mr Chen was seeking to raise for the first time on appeal. He suggested that the issue was not pleaded and that it was not put to either Mr Huang or Ms Lu in cross-examination. In the alternative, he asserted that Ms Lu provided evidence, albeit brief, of the fact that Mr Chen's failure to transfer the land to her and Mr Huang had delayed the development of the Matakana land and that she was not cross-examined on this aspect of her evidence. It was submitted that this uncontested evidence was a sufficient basis for Mr Hanlon's loss assessment.

Analysis

[202] The respondents, in their pleadings, alleged loss and damages as a result of Mr Chen retaining the ownership of the Matakana land. They asserted that they had been unable to develop the land and business as anticipated and as required by the OIO consent. In their prayer for relief, they sought equitable damages "to be detailed before trial". The appellants, in their statement of defence, denied that Mr Huang and Ms Lu had suffered loss and damage and asserted that, if Mr Huang and Ms Lu had requested that Mr Chen agree to work to improve the land, he would have agreed as it would have been in his interests. In their reply, the respondents denied these assertions.

[203] Clearly, there was an assertion of loss and damage and a corresponding denial. As a result, it fell for Mr Huang and Ms Lu to prove the damages they were claiming.[148] We agree with Mr Judd that they failed to do so. We have reached this view for the following reasons:

(a) In his evidence, Mr Hanlon said that he had been "instructed that … [the respondents] would have been able to commence works on approximately 23 September 2020, allowing one week for the transfer of the land to [them]". The date 23 September 2020 was one week after the OIO consent was granted.

(b) There was no evidence from the respondents either that they intended to start work on 23 September 2020 or that they were able to do so. There was, by way of example, no evidence in relation to the financing of the proposed development, the obtaining of any resource consents required or the obtaining of other regulatory approvals, for example building permits. There was no evidence regarding possible opposition to the development by neighbours or others. We were told by Mr Judd that some of the land included in the master plans for the proposed development was not owned by the respondents. This assertion was not disputed by Mr Pascariu.

(c) Ms Lu in her evidence-in-chief simply complained that Mr Chen's breaches of the JV agreement had delayed her and Mr Huang's plans and that they had suffered loss. She gave no greater detail. Rather she referred to the evidence of somebody called Alex Shi. However, Alex Shi was not called as a witness.

[204] Section 25(3) of the Evidence Act 2006 provides that if an opinion by an expert is based on a fact that is outside the expert's knowledge, the opinion may be relied on "only if that fact is or will be proved or judicially noticed in the proceeding". In this case, the underlying facts relied on by Mr Hanlon were not proved and they were not matters of which judicial notice could be taken. Without the factual foundation for his

148 *Clarkson v Whangamata Metal Supplies Ltd* [2007] NZCA 590, [2008] 3 NZLR 31 at [49].

evidence, Mr Hanlon's opinion as to an increase in costs could not be relied on — it was of no substantial assistance to the Court.[149]

[205] As a result of our finding on this issue, it is not necessary for us to go on and consider whether or not the Judge erred when she found that it was reasonably foreseeable that Mr Huang and Ms Lu would start implementing their proposed development plan at the earliest opportunity. Nor is it necessary for us to consider whether or not a reduction in quantum was appropriate.

[206] We allow the appeal in this respect and set aside the award of equitable damages made by the Judge in respect of the first, second and third causes of action.

Were the payments made by the respondents in relation to the Waihopai Vineyard loans to Mr Chen only, or to both Mr Chen and Waihopai?

[207] The Judge found that the Waihopai advances were made to both Mr Chen and Waihopai.[150] She referred throughout her judgment to the loans being made to "Mr Chen and/or Waihopai" and the relief she granted to the respondents covered both possibilities.

Submissions

[208] Mr Judd advised that Mr Chen accepted that, if the appellants' primary argument based on integration was not successful, the monies paid to him by Mr Huang were a debt owing by him. He did not however accept that the Judge was correct to find that Waihopai was also liable for the debt.

[209] Mr Pascariu submitted that it was common ground that Waihopai was the end recipient of all the advances made by Mr Huang and Ms Lu, and that whether the advances were made to Mr Chen on Waihopai's behalf or to Waihopai direct was irrelevant; the company was the ultimate beneficiary.

---

149 *Thomas Cullen v R* [2013] NZCA 328 at [19]; and *R v Turner* [1975] QB 834 at 840 (CA).
150 High Court judgment, above n 1, at [352]–[353] and [355].

Analysis

[210] We agree with Judge that the initial advance of $1.2 million made by Mr Huang on 25 June 2013 and the later advances, which the Judge accepted totalled $1,176,261,[151] were loans and not payments for the purpose of acquiring an interest in Waihopai. We concur with her reasoning in this regard.[152] These findings however do not deal directly with the issue of whether or not the loans were to Mr Chen or to Waihopai or to both.

[211] In our view, the initial $1.2 million loan made on 25 June 2013 must be considered separately from the later advances made from December 2013 through to February 2017.

[212] Mr Huang gave evidence that he lent the monies advanced by him to Mr Chen and not to Waihopai. When he was questioned about Waihopai, he claimed that at the time he lent the monies, he had never heard of the company and that he knew nothing about it. We do not accept his assertions that he knew nothing about Waihopai. They are patently untrue and are clearly inconsistent with the evidence, some of which we have set out above. Nevertheless, Mr Huang's assertion that he advanced the monies to Mr Chen is relevant because it is consistent with the way in which the advance was made. It was made direct to Mr Chen's solicitor's trust account. It is also consistent with the way in which the advance was treated. Mr Chen and Yi Lu, as directors of Waihopai, signed a resolution dated 28 June 2013 which recorded that they had managed to procure new loans "for" (not to) the company. An acknowledgment of debt was entered into, recording that Waihopai was indebted to Mr Chen and Yi Lu and the same position was taken by Mr Chen in his correspondence and interview with the OIO in mid-2018. There is no documentary record of any indebtedness by Waihopai to Mr Huang. The $1.2 million advance was not recorded in Waihopai's financial accounts as being a loan direct to the company by Mr Huang. It follows, in our view, that the $1.2 million initial advance was made by Mr Huang to Mr Chen, who in turn on-lent it to Waihopai. That Mr Chen on-lent the monies to Waihopai does not create a debtor/creditor relationship direct between Waihopai and Mr Huang.

---

151 At [353]. This figure was not challenged before us.
152 At [123]–[138].

[213] The position with the later advances is more difficult to ascertain, because the evidence is more limited. Mr Huang and Ms Lu pleaded that the later advances were loans to Mr Chen. Mr Chen denied this and said that they were loans to Waihopai. The loans commenced in December 2013 and continued on a relatively regular basis until February 2017. The March 2015 Memorandum of Corporate Trusteeship recorded that all future advances to Waihopai were to be made by way of loan through Ms Lu, as a third party lender. This document was signed by Mr Chen, Yi Lu, Mr Huang and Ms Lu.

[214] In so far as we can glean, the later advances made by Mr Huang, Ms Lu and entities associated with them, were treated in such other records as were adduced in evidence for the period 2014–2018 as loans direct to Waihopai (albeit that most of the records produced in the course of the hearing were unsigned). In its financial statements for the year ended 30 June 2016, Waihopai included the later advances to that point comprising two loans — one called the "Alex loan" and the other the "Chrissy loan". They were shown as being liabilities of Waihopai. The 2017 financial statements do not assist and in the 2018 financial statements, the Alex loan and the Chrissy loan seem to have been consolidated with other loans under the heading "Shareholder Loans". The Waihopai shareholders, Mr Chen and Yi Lu, were also advancing funds to Waihopai by way of loan. There is no evidence to suggest, or reason to find, that the advances by Mr Huang, Ms Lu and the various entities they controlled, should be treated differently. The Judge was satisfied that the accounts were evidence of what was intended.[153] So are we. On the balance of probabilities, we conclude that the additional advances over and above the initial $1.2 million were made by way of loan to Waihopai.

[215] The conclusions we have reached require some amendment to the amounts awarded under some of the causes of action relating to the Waihopai advances. The Judge gave judgment in the principal sum of $2,376,261 against Mr Chen under the fourth cause of action. That sum is reduced to $1.2 million. Under the fifth cause of action, she gave judgment against Waihopai in the principal sum of $2,376,261. That sum is reduced to $1,176,261.

---

153 High Court judgment, above n 1, at [134].

Should the orders made against the third to seventh appellants under s 348 of the Property Law Act be aside?

[216] We have summarised the relevant causes of action above at [111].

Submissions

[217] Mr Judd's submission on this point was straightforward. He argued that Waihopai did not owe any debt to Mr Huang and that therefore the judgments against the third to seventh appellants should be set aside, as Mr Huang (and Ms Lu) were not creditors of Waihopai. He accepted however that, if monies were owing by Waihopai to Mr Huang (and Ms Lu), the proceeds of sale of the vineyard should be repaid to the company. He challenged the Judge's direction that any of the funds received by the appellants from the sale of the vineyard should be paid direct to Mr Chen and by him to Mr Huang in satisfaction of the Waihopai advances. He argued that the effect of the Judge's direction in relation to the sixth and seventh causes of action was to give Mr Huang priority over other creditors of Waihopai.

[218] Mr Pascariu argued that the appellants' criticisms were unwarranted. He argued that Waihopai was a recipient of all the advances made by the respondents. He noted that if Mr Chen was the party liable for the Waihopai advances, he could no longer repay those advances to the respondents, because he had rendered himself insolvent through his concealed distribution of the vineyard proceeds. He also noted that the distribution rendered Waihopai insolvent. He submitted the Judge's finding that the distribution of the vineyard proceeds was intended to cause prejudice and had the effect of causing prejudice to the respondents was supported by the evidence. He referred to ss 346–348 of the Property Law Act and argued those provisions gave the Court a discretion to make an order vesting property in, or requiring a person to pay reasonable compensation to, an applicant prejudiced by the disposition of the property. He submitted that the exercise of the discretion conferred by the Property Law Act and the "waterfall" relief granted by the Judge was appropriately tailored to respond to the appellants' breaches of the Property Law Act and the loss suffered by Mr Huang (and Ms Lu) as a result.

Analysis

[219] We have concluded above that some of the monies advanced by Mr Huang were loans to Mr Chen and that other of the monies were loans to Waihopai. There was no challenge to the Judge's findings in regard to the operation of ss 346–348 of the Property Law Act.

[220] The seventh cause of action was against Mr Chen, Don Chen (Mr Chen's brother), Jackie Huang and AEG. The Judge found the cause of action was proved and made an order under s 348 of the Property Law Act requiring each of them to repay the funds they received through the prejudicial dispositions back to Mr Chen's account and further requiring Mr Chen to pay the respondents $2,376,261, together with interest on that sum from the date on which each of the individual advances making up that sum was advanced.[154]

[221] We have some difficulty with the Judge's orders in relation to the seventh cause of action. The monies that were paid out to Mr Chen, Yi Lu, Don Chen, Jackie Huang, Qi Yang and AEG came from the proceeds of sale of Waihopai and its assets. It seems that some of them were creditors of Waihopai, as were Mr Huang and Ms Lu. We cannot see that it is appropriate to direct Mr Chen, Don Chen, Jackie Huang and AEG to repay the funds received by them to Mr Chen's account. It was never Mr Chen's money. In so far as we are aware, Don Chen, Jackie Huang and AEG were not creditors of Mr Chen and they were not paid out on that basis. In our judgement, it is appropriate to set aside the orders the Judge made in respect of the seventh cause of action.

[222] With one exception it is however appropriate to retain the orders made by the Judge under the eighth cause of action. Under that cause of action, the Judge required Mr Chen, Yi Lu, Don Chen, Jackie Huang, Qi Yang and AEG to repay the amounts they received direct to Waihopai, and for Waihopai to pay the respondents $2,376,261.[155]

---

154 High Court judgment, above n 1, at [399].
155 At [402]–[403].

[223] In our view, it is not appropriate to require Waihopai to pay the monies direct to Mr Huang, Ms Lu and Matakana Wines. Waihopai may have other creditors, including some of the appellants. The better course is to leave it open to any of the parties to appoint a liquidator. Each of the various parties, together with Mr Huang and Ms Lu and any other creditors, will be entitled to seek to prove in the liquidation and to participate pro rata in the distribution of Waihopai's assets.

[224] This requires us to amend the orders made in respect of the eighth cause of action, by setting aside the order that Waihopai pay Mr Huang, Ms Lu and Matakana Wines $2,376,261. In all other respects we uphold the relief granted by the Judge in relation to the eighth cause of action.

Should the interest award to the respondents on the Waihopai claims be set aside?

[225] The Judge awarded interest to the respondents on the Waihopai claims under s 12 of the Interest on Money Claims Act.

Submissions

[226] Mr Judd argued that the Judge was wrong to award interest to the respondents, because they did not, as required, plead a claim for interest under s 24(2)(b) of the Interest on Money Claims Act. It was submitted that as a result, the Judge was prevented by s 25 of that Act from awarding interest to the respondents.

[227] Mr Pascariu pointed to s 26 of the Interest on Money Claims Act and argued that it expressly preserves the respondents' right to interest at common law and in equity. He also said that claim for recovery of the Waihopai advances was pleaded not only as a debt, but also by way of claims for monies had and received and for unjust enrichment. Out of caution he made an oral application for leave to amend the statement of claim to seek interest under s 24(2)(b) of the Interest on Money Claims Act.

Analysis

[228] The Interest on Money Claims Act came into force on 1 January 2018, well after the initial $1.2 million was advanced by Mr Huang and some time after the later advances, which occurred between 2013 and 2017.

[229] Section 24 of the Interest on Money Claims Act provides, relevantly, as follows:

> **24 Special provision for interest or lump sum relating to contracts entered into before commencement**
>
> (1) This section applies to the period before the date of a money judgment if the judgment is given for an amount under, or for breach of, a contract entered into before the coming into force of this Act.
>
> (2) Where this section applies to a period before the date of a money judgment,—
>
> (a) the court may not award interest under Part 1 for the period; but
>
> (b) the court may—
>
> (i) award interest on all or part of the amount of the money judgment at a rate not exceeding the rate prescribed for the purposes of this section, calculated in the manner (with or without compounding) that the court directs; or
>
> …
>
> (iii) determine not to award interest …

[230] The maximum prescribed rate is currently 5 per cent per annum.[156]

[231] Section 25 of the Act relevantly provides as follows:

> **25 Court may not award interest unless procedural requirements complied with**
>
> (1) A court may not award interest under a section of this Act for a period unless the party who claims interest under the section for that period specifies the section and, as far as possible, the period in that party's statement or notice of claim or counterclaim.
>
> …

[156] Interest on Money Claims Regulations 2019, reg 4.

> (2) If a party claims interest under section … 24,—
>
> (a) the party must specify in that party's statement or notice of claim or counterclaim the amount or rate of interest claimed; and
>
> (b) the court may not award interest—
>
> (i) exceeding the amount claimed under paragraph (a); or
>
> (ii) at a rate exceeding the rate claimed under paragraph (a).
>
> …
>
> (4) Nothing in this section prevents a court from making an award of interest where the court has at any time made or accepted an amendment to a statement or notice of claim or counterclaim in accordance with the rules of court and where that statement or notice of claim or counterclaim, as amended, complies with the requirements in subsections (1) and (2).

[232] The respondents, in their statement of claim, sought interest in respect of the fourth to eighth causes of action in the following or similar terms:

> Interest on the above amount in accordance with s 10 of the Interest on Money Claims Act 2016 from the date of advance or such other date as the Court thinks fit; …

[233] Section 10, which provides that in every money judgment, a court must award interest as compensation for a delay in the payment of money, is contained in pt 1 of the Act. Pursuant to s 24(2)(a), the Judge had no power to award interest under s 10, because the relevant time period was before the Act came into force. The Judge did not do so — rather she ordered interest from the date of each advance, calculated under s 12 of the Act on each of the relevant causes of action. Section 12 is also in pt 1 of the Act and again s 24(2)(a) applies.

[234] Without amendment, Mr Judd's argument seems to us to be correct. Section 25(1) and (2) preclude the Court from awarding interest, because the respondents did not specify the section under which interest was sought or the amount of rate of interest claimed. They did however, in respect of each of the fourth to eighth causes of action, specify at least in some part and in so far as was possible, the periods

in respect of which interest was sought — namely from the date of each advance or payment.

[235] For the sake of completeness, we record that we did not understand Mr Pascariu's argument that the position was in some way affected by the fact that one of the claims — the sixth cause of action — was for monies had and received and that another claim — the ninth cause of action — was for unjust enrichment. The Judge did not deal with the ninth cause of action. As already noted, in the sixth cause of action, interest was sought under s 10 of the Interest on Money Claims Act. It suffers from the same defect regarding interest as the other Waihopai advances claims.

[236] We now turn to the final issues raised by the appeal. If they succeed there is no need to set aside the interest awards although they will require amendment.

Applications for leave to amend claims to seek interest

[237] Mr Chen sought leave to amend his third counterclaim to seek interest under s 24 of the Interest on Money Claims Act on amounts owing to him by the third respondent. Mr Huang and Ms Lu sought leave to amend their prayer for relief in respect of the fourth, fifth, sixth and eighth causes of action to seek interest, also under s 24.

[238] We have set out above an example of the respondents' pleading seeking interest in respect of the fourth to eighth causes of action. The appellants, in their pleading, sought interest in respect of the third counterclaim as follows:

> Interest of $498,777.53 to 15 July 2021 plus further interest on any amounts outstanding at a rate of 15% per annum until date of payment.

[239] It is clear that the pleadings do not comply with s 25(1) and (2) of the Interest on Money Claims Act. It is equally clear from s 25(4) that the court can make or accept an amendment to the statement of claim or the counterclaim.

[240] Under s 25(4) any amendment must be in accordance with the rules of the court. The relevant rule is r 1.9 in the High Court Rules 2016. It provides that the court can, before, at, or after the trial of any proceeding, amend any defects and errors

in the pleadings, whether or not there is anything in writing to amend and whether or not the defect or error is that of the party applying to amend.[157] Amendments can be made that are necessary for determining the real controversy between the parties.[158]

[241] Rule 48(2) of the Court of Appeal (Civil) Rules provides that this Court has all the powers and duties of the court of first instance concerning procedure, including in relation to the amendment of pleadings.

[242] There can be a late amendment to pleadings provided an applicant can surmount the "three formidable hurdles" identified by this Court in *Elders Pastoral Ltd v Marr*.[159] An applicant must show that:

(a) the amendment is in the interests of justice;

(b) it will not significantly prejudice the other party; and

(c) it will not cause significant delay.

[243] The amendment of pleadings to accommodate the requirements of ss 24 and 25 of the Interest on Money Claims Act has very recently been considered by Osborne J in the High Court in *Davern v QBE Insurance (Australia) Ltd*.[160] The Judge observed that s 25(4) permits an amendment "*at any time*" and that this contemplates the possibility of very late amendment, including after the trial of a proceeding. He also commented that the breadth of the power accommodates the fact that issues in relation to interest claims are most likely to arise consequential upon the substantive judgment.[161] The Judge discussed previous cases where parties have failed to comply with s 25 and, either formally or informally, obtained leave to amend their pleadings so as to belatedly comply.[162]

---

157 High Court Rules 2016, r 1.9(1).
158 Rule 1.9(2).
159 *Elders Pastoral Ltd v Marr* (1987) 1 NZPC 91, (1987) 2 PRNZ 383 at 385.
160 *Davern v QBE Insurance (Australia) Ltd* [2023] NZHC 3543.
161 At [16].
162 At [23], referring to *Harvey v Harvey* [2021] NZHC 2405; *Harvey v Harvey (No 2)* [2021] NZHC 3508; *Leondale Ltd v Boyd* [2021] NZHC 470; *Plumbco New Zealand Ltd v Plumbco Commercial and Civil Ltd* [2023] NZHC 690; *Plumbco New Zealand Ltd v Plumbco Commercial and Civil Ltd* [2023] NZHC 1819; and *Swenson v Lawton* [2022] NZHC 3544, [2022] NZFLR 847.

[244] In our view, it is appropriate to take the same approach as Osborne J took in *Davern* to Mr Chen's proposed amendment to his third counterclaim and to Mr Huang and Ms Lu's proposed amendment to their prayer for relief in respect of the fourth, fifth, sixth and eighth causes of action. It is clear that the omission to properly plead interest in accordance with the relevant statutory provisions was a straightforward error. Both Mr Chen in his pleading, and Mr Huang and Ms Lu in their pleading, claimed interest, albeit not in compliance with the Interest on Money Claims Act. There is no prejudice to either party. Delay is not in issue. In our clear view, the interests of justice require that the amendments should be allowed.

[245] Accordingly, Mr Chen is granted to leave amend his prayer for relief in respect of his third counterclaim to claim as follows:

(a) interest pursuant to s 24(2)(b) of the Interest on Money Claims Act from the date of each advance to the date of judgment, at 5 per cent per annum; and

(b) interest from the date of judgment to the date of payment pursuant to ss 10 and 12 of the Interest on Money Claims Act.

[246] The respondents are granted leave to amend their prayer for relief in respect of the fourth, fifth, sixth and eighth causes of action, to claim as follows:

(a) interest pursuant to s 24(2)(b) on the Interest on Money Claims Act, from the date of each advance as identified in sch 1 to the statement of claim, to the date of judgment, at 5 per cent per annum; and

(b) interest from the date of judgment to the date of payment pursuant to ss 10 and 12 of the Interest on Money Claims Act.

[247] We vacate the interest awards made by the Judge and award interest in accordance with the above amendments.

Costs

[248] Both the appellants and the respondents have enjoyed a measure of success on this appeal. We make no order as to costs.

Result

[249] Leave is granted to the respondents permitting them to adduce by way of further evidence [1] and [2] of Ms Lu's affidavit of 27 October 2023. Leave is declined to the respondents to adduce in evidence the remainder of the affidavit.

[250] The first appellant is granted leave to amend his prayer for relief in respect of his third counterclaim as set out in [245] of this judgment.

[251] The respondents are granted leave to amend their prayer for relief in respect of the fourth, fifth, sixth and eighth causes of action as set out in [246] of this judgment.

[252] The appeal is allowed in part.

(a) The award of equitable damages made in respect of the first, second and third causes of action is set aside.

(b) The principal sum awarded in respect of the fourth cause of action is reduced from $2,376,261, to $1.2 million.

(c) The principal sum awarded in respect of the fifth cause of action is reduced from $2,376,261, to $1,176,271.

(d) The orders made in respect of the seventh cause of action are set aside.

(e) The orders made in respect of the eighth cause of action are amended, by setting aside the direction that Waihopai pay Mr Huang, Ms Lu and Matakana Wines $2,376,271. In all other respects, the relief granted in respect of the eighth cause of action is upheld.

[253] The orders for the payment of interest in respect of Mr Chen's third counterclaim and in respect of the respondents' fourth, fifth, sixth and eighth causes of action are set aside.

[254] Interest on each relevant cause of action/counterclaim is awarded pursuant to s 24(2)(b) of the Interest on Money Claims Act, from the date of each advance to the date of judgment at the rate of 5 per cent per annum and from the date of judgment to the date of payment pursuant to ss 10 and 12 of that Act.

[255] In all other respects the appeal is dismissed.

[256] There is no order as to costs.

Solicitors:
Morrison Kent, Auckland for Appellants
Hamilton Locke, Auckland for Respondents