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ACPNS Legal Case Notes Series: 2020-166 Chen v The Australian Shaanxi Chamber of Commerce Inc.
[Working Paper]

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<http://www.austlii.edu.au/au/cases/nsw/NSWSC/2020/1594.html>

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



CHEN V THE AUSTRALIAN SHAANXI CHAMBER OF COMMERCE INC [2020] NSWSC 1594

Supreme Court of New South Wales, Parker J, 11 November 2020

An interlocutory application for an injunction against the President of an incorporated association refused.

Key words: Incorporated Association, New South Wales, Injunction, President, Delay, China

1. The Australian Shaanxi Chamber of Commerce Incorporated (the Chamber) was an NSW incorporated association. Shaanxi is a province of China, located in the north-east of the country and the association sought to generate business opportunities for its members in China, to promote social and cultural exchanges for entrepreneurs in both countries and also to make representations to government agencies for the advancement of the interests of members.
2. A group of members were unhappy with the way in which the annual elections of office bearers were conducted and initiated court proceedings. They alleged that the election was invalid and that those who were purportedly elected were conducting the affairs of the Chamber without authority. The other side conceded that there was a prima facie case that the election did not comply with the rules of the Chamber's constitution and that the purported elections of the individuals were invalid. However, they also pointed out that the Associations Incorporation Act provides that the acts of purported office bearers are not necessarily invalid simply by reason of a defect in their appointment. These proceedings are continuing.
3. This proceeding arose when the previous office bearers sought to injunct the purportedly elected President of the Chamber (New President). The trigger for the application was an agreement, purportedly made on behalf of the Chamber with a Chinese organisation called the Qinshang Bairen Association. It was signed purportedly on behalf of the Chamber by the New President as president of the association. It provided for the parties to establish a system of reciprocal visits and co-operation between the two organisations, and for mutual participation in significant events such as conferences and trade visits. The day after the agreement was signed, the local branch of the Communist Party issued an invitation to the Chamber to attend a business forum in a major city in Shaanxi province.
4. The complaint was about the Chamber's strategic partnership with the Qinshang Bairen Association, and that that body is in some way associated with or controlled by the Chinese Communist Party. It was further claimed that this

would bring the Chamber into disrepute and the New President should be restricted from signing further agreements.

5. The Court was not convinced that there was anything contrary to the objects of the association in the agreement or its ability to govern itself. Further, the new office bearers had been managing the association for over a year, and delay in seeking interlocutory remedies was held against the old committee members.
6. The Court did not agree to the application.

IMPLICATIONS



The Court noted that an interlocutory remedy, such as the appointment of a receiver, could have been sought at any time after the initial proceedings had begun, but no such application was pursued. The delay was held against the applicants particularly as there was insufficient evidence that the agreement was contrary to the objects of the association.

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/au/cases/nsw/NSWSC/2020/1594.html>

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