SUPREME COURT OF QUEENSLAND

CITATION:	*Ou v Wang* [2026] QSC 168
PARTIES:	**JUNJIE OU** (plaintiff) **v** **XUEFEI WANG** (defendant)
FILE NO/S:	BS No 15170 of 2023
DIVISION:	Trial Division
PROCEEDING:	Trial
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	24 August 2026
DELIVERED AT:	Brisbane
HEARING DATE:	25, 26, 27, 28, 29 May 2026
JUDGE:	Ryan J
ORDER	**1. Judgment for the plaintiff.** **2. The defendant is to pay to the plaintiff equitable compensation in the sum of $900,346 plus interest.** **3. As to costs: If either party contends that an order should be made, *other than an order that the defendant is to pay the plaintiff's costs*, then that party must contact my associate (copying in the other party) within 7 days of the delivery of my reasons, and I will set a timetable for the delivery of written submissions on costs. Otherwise, the defendant is to pay the plaintiff's costs.**
CATCHWORDS:	CONTRACTS – GENERAL CONTRACTUAL PRINCIPLES – STATUTE OF FRAUDS – NON-COMPLIANT WITH STATUTE – DOCTRINE OF PART PERFORMANCE – WHAT ACTS CONSTITUTE PART PERFORMANCE – where the plaintiff lived in China and owned a property in Queensland – where the defendant, who was Chinese but lived in Queensland, offered to purchase the property from the plaintiff for $1.5 million – where discussions about the purchase occurred via 'WeChat' but the parties did not execute a written contract of sale – where the property was transferred by the plaintiff to the defendant's company – where the defendant transferred only $600,000 to the plaintiff – where the plaintiff asked for payment of the balance of the purchase price – where the defendant relied upon the *Statute of Frauds* to argue that any WeChat agreement for the sale of the property was

unenforceable – where the plaintiff sought to rely upon the doctrine of part-performance of the WeChat contract to overcome the *Statute of Frauds'* point – whether the parties had reached a concluded agreement by way of WeChat communications – whether the doctrine of part-performance applied

EQUITY – EQUITABLE REMEDIES – EQUITABLE COMPENSATION – OTHER CASES – where the plaintiff lived in China and owned a property in Queensland – where the defendant, who was Chinese but lived in Queensland, offered to purchase the property from the plaintiff for $1.5 million – where the parties agreed that the defendant's lawyer would prepare a contract of sale – where instead, the defendant asked the plaintiff to execute a Deed of Gift to assist the defendant to minimise the stamp duty payable on the transfer of the property – where the plaintiff was reluctant to sign the Deed of Gift – where the defendant promised to pay him the purchase price of the property, notwithstanding that he was signing a Deed of Gift – where the plaintiff transferred the property to a company owned by the defendant – where the transfer document indicated that the transfer was by way of a gift – where the defendant transferred only $600,000 to the plaintiff – where the plaintiff asked for payment of the balance of the purchase price – where the defendant contended that the property had been transferred by way of gift, the $600,000 was a loan to the plaintiff, and that the plaintiff was bound by the Deed of Gift – whether, in executing the Deed of Gift, the plaintiff relied upon the defendant's assurance that he would be paid the purchase price for the property – whether equitable compensation is available to the plaintiff

Property Law Act 1974 (Qld) s 59
Property Law Act 2023 (Qld) s 7
Statute of Frauds 1677 (UK) 29 Cha 2, c 3, s 4

Air Great Lakes Pty Ltd v K S Easter (Holdings) Pty Ltd (1985) 2 NSWLR 309
Anaconda Nickel Ltd v Edensor Nominees Pty Ltd and Joseph Isaac Gutnick [2004] 50 ACSR 679
Baulkham Hills Private Hospital Pty Ltd v GR Securities Pty Ltd (1986) 40 NSWLR 622
Equuscorp Pty Ltd v Glengallan Investments Pty Ltd & Ors [2006] QCA 194
Junjie Ou v Xuefei Wang [2025] QSC 52
Junjie Ou v Xuefei Wang (No 2) [2025] QSC 306
Masters v Cameron (1954) 91 CLR 353
McBride v Sandland (1918) 25 CLR 69
Raftland Pty Ltd as Trustee of Raftland Trust v Commissioner of Taxation (2008) 238 CLR 516

	Scott v Federal Commissioner for Taxation (No 2) (1966) 40 ALJR 265 *Waltons Stores (Interstate) Ltd v Maher* (1988) 164 CLR 38 *Wright v Hamilton Island Enterprises Ltd* [2003] QCA 36
COUNSEL:	M E Clarke for the plaintiff The defendant appeared on her own behalf
SOLICITORS:	AusLaw Future for the plaintiff

[1] The plaintiff is Chinese. He has never been to Australia. The defendant assisted him to buy a residential property in Brisbane. He permitted the defendant and her son to live in the property, rent free. The plaintiff ran into financial difficulties and decided to sell the property because he needed money. The plaintiff said that he and the defendant entered into a contract, over WeChat, for him to sell the property to her for $1.5 million, payable within three months.

[2] Ultimately, he transferred the property to a company owned by the defendant and she and her parents transferred $600,000 to him in several instalments.

[3] When it was clear that the defendant would not be transferring any more money to him, the plaintiff sued her for specific performance of the contract, or alternatively equitable compensation.

[4] The defendant: (a) said that no concluded agreement was reached over WeChat; (b) raised the *Statute of Frauds*; (c) said that the defendant gave the property to her as a gift; and (d) said that the $600,000 transferred to the defendant was a loan from her parents, not part payment of the purchase price of the property.

Credit findings and approach to the evidence

[5] I will state my credit findings and my approach to the evidence at the outset of these reasons.

[6] I accept that the plaintiff has very little experience in, or knowledge about, the Australian property market.

[7] It was hard to gain a reliable impression of the plaintiff's English language skills, but I find that they were probably limited. His solicitor spoke to him and took instructions from him in Mandarin. He gave evidence at trial through an interpreter. I accept that he needed to rely upon translation software or similar to understand English language documents, but even then, he may have struggled.

[8] The defendant was born in China. She is now living in Melbourne. She was self-represented in these proceedings. She seemed to be a clever woman. She worked as a television journalist in China and later completed a Master's degree at a university in

Queensland. Her command of English and her understanding of legal proceedings, including the role of pleadings, was good. Although she asked, half-way through the trial, to give her oral evidence through an interpreter, I did not consider that she required one. She handled herself confidently under cross-examination. She was able to make relevant submissions on matters of law over the course of the trial and put forward her best case.

[9] I found that the defendant was dishonest in her dealings with the Queensland government authorities which administer property and tax/duty regimes. I also found her to be a dishonest witness. I had very little confidence in the truthfulness or reliability of any of her *self-serving* evidence on matters critical to the outcome of the plaintiff's claim. Her evidence was either inconsistent with WeChat statements made by her at relevant times; inconsistent with her own conduct at relevant times; or inherently incredible.

[10] However, I had full confidence in the truthfulness of her, probably unwitting, statement against interest, which emerged only during cross-examination, that she "ring-fenced" the property, to protect it from the plaintiff, by having him transfer it to a company she controlled rather than to her personally.

[11] I had no confidence in the truthfulness or reliability of the evidence of the defendant's parents which purported to support her defence to the claim. Much of it was inherently implausible.

[12] I had a little more confidence in the truthfulness and reliability of the plaintiff's evidence on matters critical to the outcome of his claim. But less confidence in his evidence about peripheral matters, such as his role in the defendant's decision to terminate her pregnancy.

[13] Because of my concerns about the self-serving evidence of the witnesses,[1] I relied heavily on the documentary evidence, especially the WeChat exchanges between the plaintiff and the defendant, in making findings of fact in this matter. For obvious reasons, I considered the unguarded, contemporaneous, documentary records, created before litigation was contemplated, to be inherently reliable. Although the WeChat messages were in Chinese, and I relied upon translations of them, I was sufficiently confident in my understanding of what their authors intended to convey to base my findings, to the relevant standard, upon them.

Background

[14] The plaintiff and the defendant, Mr Ou and Ms Wang, were in a relationship for a couple of years, in 2012 to 2014, while they both lived in China. He was a businessman, and she was then a television journalist.

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[1] Apart from the plaintiff's translator.

[15] Ms Wang became pregnant but Mr Ou either did not wish to marry her; or did not wish to raise a child with her. She terminated the pregnancy. Whether Mr Ou *expressly* pressured her to do so or not is not something I could, or needed to, determine.

[16] Their relationship ended. Ms Wang moved to Australia in August 2014 and began a Master's degree at Bond University on the Gold Coast in September 2014. Mr Ou stayed in China.

[17] In 2015, Ms Wang married a man she met in Australia. They have a son who was born in 2016. Ms Wang and her husband separated in 2017. I accept that Ms Wang assumed primary responsibility for the care of their child thereafter.

[18] In early 2018, Ms Wang travelled with her son from Australia to Shanghai, China for a few weeks. While she was there, she met up with Mr Ou. She visited Shanghai again in July of 2018. I find that Mr Ou and Ms Wang may have toyed with the idea of a relationship in 2018, but nothing came of it. Ms Wang and her son returned to Australia.

[19] I accept that Mr Ou and Ms Wang kept in touch after she left Shanghai. However, I do not accept that they contacted each other daily from 2018 until 2022, as Ms Wang claimed. I do not accept that they considered themselves to be in a de facto relationship, as Ms Wang claimed.

[20] When Ms Wang was in Shanghai, I find that she told Mr Ou that she was working as a real estate agent or similar in Australia.[2]

[21] Ms Wang established her own real estate business, Oz Faith Capital Pty Ltd trading as UHome Realty. Oz Faith was registered on 27 May 2018. Whether Ms Wang held a real estate *agent's* licence (which at one point she denied in her oral evidence but admitted in her further amended defence) or some other licence is irrelevant.

[22] In early 2018, Mr Ou told Ms Wang that he was looking to buy property somewhere warm. She suggested an upmarket property in St Lucia in Brisbane. He purchased the property on 22 October 2018 for $1,707,750, cash.[3] He did not pay her buyer's agent commission.[4]

[23] Mr Ou was aware that Ms Wang was in the process of divorcing her husband at the time of the property purchase. He allowed Ms Ou and her son to live in the property. Whether she asked to do so (as he said), or he invited her to do so (as she said) is not particularly relevant. The point is that he permitted her to live there from the property's settlement date.

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2 She is described as an investment consultant in a contract of employment, dated 16 April 2018.
3 Having signed the contract to purchase it on 23 February 2018.
4 Whether the vendor paid her commission, as is customary, is irrelevant.

[24] Ms Wang enrolled her son at a local private school. She was not required to pay rent to Mr Ou. However, she paid for utilities and other outgoings and successfully applied for an exemption from vacancy tax for him. Mr Ou paid little or no attention to the nature or cost of any expenses paid by Ms Wang.

[25] According to ASIC records, as from 12 June 2019, Oz Faith Capital's principal place of business was the St Lucia property and, as from 5 July 2019, the St Lucia property was Oz Faith's registered office.[5]

[26] On 26 February 2020, Ms Wang registered another company called Spon Pty Limited and a business name, "Spon Property". Its registered office and principal place of business were in Queen Street, Brisbane.

[27] I accept that, by 2020, Mr Ou was in financial difficulty. In 2020 or 2021, he asked Ms Wang to help him to sell the St Lucia property. I accept that Mr Ou appointed Ms Wang's company, UHome Realty, to be his agent for the sale, from 22 December 2021 until 20 March 2022. I accept that he agreed to pay commission.

[28] Ms Wang told Mr Ou that the property had been listed for sale, but it was not selling. I accept that the property had some defects and was still in need of repair in early 2023. However, no evidence about whether or when it was repaired was placed before me.

[29] Whether Ms Wang took active steps to sell the property in 2020, 2021 or 2022 is not relevant; although I find that it was probably not listed on the open market but may have been offered as an off-market sale.

[30] I find that Ms Wang preferred not to move from the St Lucia property, especially because her son had settled in the area. I do not accept her evidence that she had, in effect, a moral concern that the property ought not to be sold while it was defective.

[31] WeChat messages from 13 September 2022 and 21 September 2022 between Mr Ou and Ms Wang reveal that Mr Ou followed up with Ms Wang about the sale of his property. He told her he wanted it sold quickly, even at a loss.

[32] Mr Ou was very motivated to sell the property by 2023. I find that Ms Wang first offered to buy it from him for $1.5 million by way of a WeChat message on 14 February 2023.

[33] Ms Wang told Mr Ou that she would ask her father to sell his property in Shanghai to pay for the St Lucia property and that she would pay Mr Ou $5,000 a month until the Shanghai property sold, at which point she would pay him "the rest".

[34] Mr Ou asked Ms Wang for a market price appraisal. He told her that, while he would sell the property to her at a loss, the "payment cycle" had to be "reasonable" and "in line with the common sense of normal transactions".

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5 ASIC records also reveal that Mr Ou held shares in Oz Faith until 12 December 2019.

[35] Real estate data, sent by Ms Wang to Mr Ou, valued the property at about $2.2 million. However, Ms Wang told Mr Ou that "no one was buying it now". She said it was not worth that much because of its defects. Unconvincingly, in evidence, she claimed to be unable to offer any estimate as to its real worth.[6]

[36] On 14 February 2023, there was a further discussion of price between them, with Mr Ou suggesting that, given the appraisal of $2.2 million, Ms Wang's offer of $1.5 million was too low. Ms Wang said she based her offer upon her ability to pay. She also suggested that $1.5 million was the property's current market price. Mr Ou asked her to look at her "payment cycle" if she were to pay $1.5 million for it.

[37] Ms Wang got back to Mr Ou about her "payment cycle" on 1 March 2023. She said she asked "the lawyer" about the property and could pay the full amount in "about" 3 months. Mr Ou noted that she had used the qualifier "about" and asked her, "How many months maximum?" She said (my emphasis):

> **"Can transfer the property over for 1 million first, so I can save 20K in tax.** This time when I come back from China [she was scheduled to travel to Shanghai on 21 March 2023], I will give you RMB 1 million first, and then I will use this property and another one to borrow a loan together. **Conservatively, it will take three months**. Will transfer to you once the loan is released. I don't have to pay income tax this year in this way.
>
> **You still take AUD 1.5 million**
>
> **AUD 1.5 million minus RMB 1 million**
>
> According to the [exchange] rate"

[38] Mr Ou clarified with Ms Wang that he would get $1.5 million "in hand".

[39] He asked her whether there were any other fees. She suggested he could give her the "agent fee" of 2.5%. When he was offended by the suggestion, she said, "Forget it. 50% discount, 1.5% gst". She implied that she wanted to use that money to "subsidise" her stamp duty a little.

[40] After some irrelevant talk, she said, "**Then I'll tell the lawyer to proceed with the instruction?** Mr Ou said, "**OK** …Nothing more to say, **Let's just get this thing done**" (my emphasis).

[41] I find that on 1 March 2023, Ms Wang offered to buy the property from Mr Ou for $1.5 million dollars and Mr Ou agreed to sell it to her at that price. I find that Ms Wang's

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[6] It was impossible for me to determine whether the St Lucia property was attractive at $2.2 million to genuine buyers or not. But neither the state of the property; its real market value; or whether any other buyers were in fact interested in it is relevant.

offer to purchase the property was genuine. I did not find that Ms Wang was only engaging in casual, loose, speculative talk when she offered to buy the property, as she claimed. I find that Ms Wang suggested that she would pay the purchase price within three months. I find that Mr Ou was prepared to accept payment in instalments but was not prepared to pay Ms Wang an agent's fee.

[42] I find that, at this stage, both parties were contemplating that "the lawyer", that is, Ms Wang's lawyer, would prepare a contract, which would contain the terms of their agreement. This raises a *Masters v Cameron* point which I will come to later.

[43] I do not accept that Mr Ou planned to come to Australia to live with Ms Wang and her son in the St Lucia property, as she claimed. As above, I find that Mr Ou and Ms Wang were not de facto partners at this time, as she claimed.

[44] Ms Wang obtained a market value appraisal for the property from her own real estate company, UHome, which was dated 8 March 2023, and which valued the property at $1.15 million. Ms Wang did not ever show this UHome appraisal document to Mr Ou.

[45] I find that the UHome appraisal was not genuine. According to Ms Wang, the St Lucia property had serious obvious defects (including a hole in the ceiling), which reduced its value, yet the appraisal document made no mention of the defects when it purported to contrast the condition of the property with the condition of other comparable properties in the area. Further, one may ask rhetorically, if the appraisal was genuine, why would Ms Wang have agreed to pay substantially more for the property ($1.5 million) than it was worth ($1.15 million)?

[46] I find that the appraisal was acquired by Ms Wang for the purpose of dishonestly minimising the amount of stamp duty she would be required to pay as the transferee of the property. I infer that Ms Wang's reference to "sav[ing] 20K in tax" in one of her WeChat messages on 1 March 2023 was a reference to the approximate difference between stamp duty on $1 million and stamp duty on $1.5 million.

[47] On 8 March 2023 at 1.48 pm, Ms Wang transmitted by WeChat to Mr Ou a Disclosure Statement and gave him instructions about signing it, including that he was to sign it on the "Seller" side. She explained to Mr Ou that it had to be signed before the contract was signed. She told him that the lawyer was working on the contract (also relevant to the *Masters v Cameron* point).

[48] I infer from the messages that Mr Ou attempted to complete the statement and returned it to Ms Wang at 2.20 pm. At 2.21 pm, he asked her whether it was "okay like that?" Ms Wang said she would ask "the lawyer".

[49] At 2.23 pm, Ms Wang added Mr Ou to a WeChat group with herself and her solicitor, Abigail Lee of LinkLaw. Ms Wang sent the Disclosure Statement to Ms Lee and @Pheadra H (whom I assume worked at LinkLaw) and asked them whether it was ok.

There was no evidence of any reply from Ms Lee (or @Pheadra H) before me. Nor was a copy of the Disclosure Statement in evidence.

[50] Also at 2.23 pm, Ms Wang said to Mr Ou only, "When transferring, just say settlement in RMB, nothing to do with Australian banks". She also told him to say that she was his cousin. I find that he was surprised by the instruction to say he was her cousin.

[51] At 2.41 pm – 2.50 pm, on 16 March 2023, Ms Lee sent to Mr Ou and Ms Wang *not* a contract of sale but instead a "Deed of Gift (Property Gift Agreement)" (the **Deed of Gift**). The parties to the Deed of Gift were *not* Mr Ou and Ms Wang but rather Mr Ou and "Spon Pty Ltd as Trustee for CCC Faith Holding Trust".

[52] Ms Lee also sent a retainer letter and an OSR Annexure for Mr Ou to sign.[7] The retainer letter from Ms Lee to Mr Ou had as its subject lines:

> **"Your transfer to Spon Pty Ltd**
> **Property: [The St Lucia property]."**

[53] Although the retainer letter used the word "transfer" rather than "sale" in its subject line (and referred to Spon rather than to Ms Wang), the first sentence of the body of the letter said, "Thank you for entrusting us to represent you in your **sale** of [the St Lucia property]" (my emphasis). The scope of work set out in the retainer was relevant to conveyancing on the *sale* of a property including the preparation of a *contract of sale*. Yet, as above, Ms Lee sent Mr Ou a Deed of Gift to execute, not a sale contract.

[54] Mr Ou said that he used an "app" on his phone to translate the Deed of Gift from English into Mandarin. He said he briefly read it but did not fully understand it. He said he "gathered that it was a document purporting to give the property to Ms Wang as a gift (for free)". He said he did not understand what was happening so, at 3.11 pm, he sent a message to Ms Wang asking what a gift agreement meant.

[55] Ms Wang replied at 3.15 pm –

> "There are no Australian incoming and outgoing accounts, if done through Contract of Sale, the chance that the price of the property gets checked is relatively high."

[56] At 3.16 pm she said, "Gifting right now write down $115, stamp duty is a bit less".

[57] I find that Ms Wang knew that the property was worth more than $1.15 million (typed as "$115" in the WeChat message). I find that she believed that transferring the property by way of Deed of Gift would cause the Queensland authorities to pay less attention to the genuineness of its stated value, for the purposes of calculating the stamp duty payable upon the transfer, than if the property were transferred by way of a contract of sale. In other words, I find that Ms Wang intended to rely on a *false* undervalue of the St Lucia

[7] An OSR Annexure is a form to be completed by non-Australian transferors and transferees of real property.

property, to reduce the amount that she would have to pay in stamp duty and thought that she would be more likely to get away with it if the transfer were by way of gift, rather than in pursuance of a contract of sale. I find that Ms Wang suggested that Mr Ou say he was her cousin to lend legitimacy to the Deed of Gift.

[58] At 3.17 pm she said, "Rest assured, [I] won't fail to give it to you, the lawyer knows there is RMB transaction, if I don't give to you, you can trace back to me".

[59] At 3.18 pm, Mr Ou said, "You mean you'll give all money to me in rmb?"

[60] Ms Wang clarified, "Not all, 1,000,000 – 1,500,000 RMB, I'll see how much I have card has expired, I'll need to come back for it to be activated, the rest can be given to you in AUD after the loan is sorted. Or if you want RMB/USD any of them is fine".

[61] Mr Ou continued to express concerns about signing the Deed of Gift in WeChat messages with Ms Wang between 3.26 pm until 3.59 pm. Ms Wang told Mr Ou that signing the Deed of Gift indicated that he was "literally" giving the property *to her*:

> "Mr Ou: This gift means I give you my property as a gift.
>
> Ms Wang: Uh, yes … literally."

[62] He said, at 3.44 pm, that he wanted to think about it. At 3.51 pm she told him to "Hurry up".

[63] Ms Wang told Mr Ou that she would "ask the broker to do the appraisal and submit the document **after it is done** …" (my emphasis). This statement by Ms Wang supported a finding that she *nominated* $1.15 million as the market price of the St Lucia property *before* she caused UHome to create the false appraisal document upon which stamp duty would be calculated. It also raises doubts about the 8 March 2023 date on the appraisal document.

[64] Mr Ou said that he understood that Ms Wang intended to pay him $1.5 million for the St Lucia property but wanted to document the transfer as a gift to improve her position. He said he assumed that the lawyer and Ms Wang (as a real estate agent) would structure the transaction "appropriately and lawfully". He said, in effect, that he was desperate for money and decided, ultimately, to "trust" that Ms Wang would pay him. He said that as far as he knew, the Deed of Gift was a document Ms Wang and the solicitor put together because it created some benefit for Ms Wang. He said he did not think about whether it would enable Ms Wang to pay less tax or stamp duty than she was supposed to.

[65] I find that, during their conversation about the Deed of Gift, Ms Wang reassured Mr Ou that, even though the documents would convey that the property was transferred by way of a gift, that was not what was actually happening: she would pay him for the property.

[66] He concluded their conversation with, “I really regret buying this property, damn it”.

[67] At 3.59 pm to 4.01 pm, under instructions from Ms Lee, Mr Ou returned the signed retainer, annexure and Deed of Gift. I find that Mr Ou did not notice that Spon was the donee of the purported gift of the property or named as transferee in the heading of the retainer letter.

[68] Another aspect of the transaction was attended to on 21 March 2023, when Ms Wang contacted Mr Ou, apparently from Sydney airport, on her way to China. She told him she had emailed an “authority” to him. He told her he was sick and would attend to it when he got well. (I infer that this authority is the “Client Authorisation” required by the *Electronic Conveyancing National Law (Queensland)* to facilitate the electronic completion of a conveyancing transaction. It was not in evidence.)

[69] On 22 March 2023, Ms Wang told Mr Ou that she had “prepared the money in the bank”. He told her to remit the money to him if she had it: he needed it “urgently”. She told him to check his email and that she would remit the money when “all the paper work” was done.

[70] On 23 March 2023, Mr Ou attempted to complete the authority, and he provided Ms Wang with his Chinese and Hong Kong bank account details. He asked her to transfer money as soon as she could and she said, “Ok Let me confirm it with the lawyer”.

[71] On 28 March 2023, at 2.37 pm, Ms Lee informed Mr Ou and Ms Wang, by WeChat, that the property had been transferred.

[72] The electronic transfer document stated that the transfer was to Spon “as trustee”. “Gift” appeared under the heading “Consideration”. Duty was self-assessed at $46.650.00. The trust known as the CCC Faith Holding Trust was said to have been created on 24 September 2021. Ms Wang was its only beneficiary. All relevant details were said to have been certified by Yu Shih, an “Australian Legal Practitioner”.

[73] Also lodged was a Form 24 Part B, which stated that Mr Ou and Spon were cousins. That makes no sense because Spon is a company. Regardless, Mr Ou and Ms Wang are not cousins. Ms Wang gave some unconvincing evidence that de factor partners called themselves “cousins” in public in China “because of Chinese culture”. But even if the meaning or use of the word “cousin” in Chinese differs from its meaning or use in English, the word was used by Ms Wang/Ms Lee in an English language document to be lodged with a government agency in Queensland (and Ms Wang admitted that she knew its meaning in English). As above, I find that its use was intended to add legitimacy to the “gift” of the property.

[74] Also lodged was the dutiable transaction statement, which recorded the dutiable value of the property as $1.15 million, supported by the false UHome appraisal.

[75] At 10.43 pm, Ms Wang asked Mr Ou if she could "remit" at the "real time exchange rate" and checked his account number. She told him some would be remitted from her father's, or her parents', bank account and that she would then use her account.

[76] Ms Wang's parents provided funds for three separate payments into Mr Ou's bank account:

Chinese RMB (Yuan)	Funds traced from
¥113,000	Defendant's Mother's bank account (Industrial and Commercial Bank of China (**ICBC**)) to the plaintiff's bank account (China Merchants Bank (**CMB**)). Time stamp: 2023-03-29-00.25.20.000638
¥805,000	Defendant's Father's bank account (ICBC) to the plaintiff's bank account (CMB). Time stamp: 2023-03-29-00.13.03.000352
¥922,000	Defendant's Father's bank account (ICBC) to defendant's bank account (ICBC) to the plaintiff's bank account (CMB). Time stamp for transfer to defendant's bank account: 2023-03-29-15.35.42.000229 Time stamp for transfer from defendant to plaintiff: 2023-03-29-15.40.45.000282

[77] Mr Ou confirmed his receipt of the 805,000 and 113,000 RMB. At 12.42 am on 29 March 2023, Ms Wang asked Mr Ou whether she could "sort out the remaining $200,000 tomorrow morning". She then transferred "another $200,000" and Mr Ou confirmed the receipt of 922,000 RMB. The Australian dollar equivalent of the total RMB transferred was $399,648.

[78] Ms Wang then told Mr Ou that there would be no more RMB. He checked with her that there was still $1.1 million outstanding on the purchase price. At 3.43 pm on 29 March 2023, she confirmed that amount was outstanding and told Mr Ou that he would receive "$400,000 in about 30 days, the rest before June".

[79] Meanwhile, Ms Wang's mother, Ms Yi Chen had arranged to sell a property she owned at Robina, Gold Coast.

[80] On 12 April 2023, Ms Chen signed a "Letter of Authorisation" addressed to her solicitor, to deposit all settlement proceeds into the Oz Faith bank account and "further authorise[d] UHome to transfer the proceeds into Ms Wang's bank account". The letter concluded with the sentence, "The use of the funds shall require my prior consent".

[81] On 13 April 2023, Ms Chen engaged Abigail Lee to represent her in the sale of the Robina property.

[82] On 2 May 2023, Mr Ou followed up on payment for the property with a message "Umm, you said at the end of April another amount" (a reference to the "$400,000 in about 30 days", foreshadowed by Ms Wang on 29 March 2023). Ms Wang said she would give him $200,000 "first", then told him her bank's transfer limit was $50,000 per day.

[83] The Robina property settled on 4 May 2023. On that day, Ms Chen authorised LinkLaw to transfer all the settlement proceeds from the sale ($606,717.65) into Oz Faith's bank account.

[84] The transfer was made to Oz Faith's bank account. Then, on 9 May 2023, $579,217.65 was transferred from Oz Faith's bank account into Ms Wang's bank account.

[85] On 9 May 2023, Ms Wang made a payment in Hong Kong dollars ($254,730) to Mr Ou – the equivalent of about $50,000 AUD. She noted as the reason for the transfer "Loan Repayment".

[86] On 11 May 2023, Ms Wang told Mr Ou that her bank was asking her a lot of questions about the money.

[87] On 19 May 2023, Ms Wang transferred $50,000 to Mr Ou.

[88] On 26 May 2023, Ms Wang transferred $50,000 to Mr Ou.

[89] On 30 May 2023, Ms Wang transferred $50,000 to Mr Ou.

[90] On 31 May 2025, Mr Ou sought to confirm with Ms Wang that there was still $900,000 owing on the property. Ms Wang agreed by way of her "Uh-huh" in reply. She added, "There are no funds left. Now it is all adding to the liabilities".

[91] At that point, Mr Ou expressed surprise that Ms Wang had no "plan" for payment. Ms Wang proposed several options, including her borrowing against the St Lucia property, or renting it out and moving to a smaller apartment. She also referred to a piece of land in the process of settlement. She told Mr Ou that she might be able "to gather $100K by the end of June".

[92] When Mr Ou pressed her for the payment of *something*, Ms Wang called him a scumbag and a playboy and spoke about the past, including Mr Ou's refusal to marry her and the abortion of their baby.

[93] During this part of their conversation, Ms Wang referred to herself as Mr Ou's "ex-girlfriend" and someone he "messed around" with after she was married. These statements by her were inconsistent with her insistent and repeated assertions that they were, and had been since 2018, in a de facto relationship.

[94] Mr Ou asked Ms Wang whether she was going to default on the debt and she said her parents would not let her. After more berating from Ms Wang, Mr Ou told her that he did not want to talk about the outstanding funds anymore and that he would find "other ways" to solve the problem.

[95] At the end of their WeChat exchange, Ms Wang referred to the property settlement she mentioned earlier. She told Mr Ou that "we [I infer, UHome] are selling 27 hectares on the Gold Coast". She told him that the reserve price was $5.5 million and that "commission for the part exceeding the limit" was 20%. I find that she was suggesting to Mr Ou that she could pay the outstanding portion of the purchase price of the St Lucia property with the commission she would make on this potential sale. She said to him, "If you have channels, help me. If you don't, don't make trouble for me". I find that Ms Wang was thereby conveying to Mr Ou that it would help him if he could refer a buyer for the property to her. She told him not to "mess" with her. She also said, "You'd better not rush me. If you rush me, I would say I don't have. I will tell you when I have it". I find that, by that message, she was informing Mr Ou that she would pay him when she could and that if he put any pressure on her for the money, she would not pay him anything.

[96] Mr Ou was still unaware that he had transferred the property to Spon.

[97] As mentioned above, probably unwittingly, Ms Wang said under cross-examination that she had the property transferred to Spon to "ring-fence" it from the plaintiff.

[98] Her rationale for "ring-fencing" the property from Mr Ou or why the property might need "protection" was not explored by the plaintiff's barrister with her. Regardless, Ms Wang's stated desire to ring-fence the property to protect it from Mr Ou was inconsistent with her evidence that she was in a de facto relationship with him and that the plan was for him to come to Australia to move into the St Lucia property with her and her son; or that he had generously gifted the property to her.

[99] As above, the execution of the Deed of Gift and the conveyance of the property was facilitated by Abigail Lee of LinkLaw who had been engaged by Ms Wang. LinkLaw purported to act for both Ms Wang and Mr Ou. Mr Ou was required to sign documents relating to his engagement of LinkLaw and the legal requirements for a lawful transfer of dutiable property. I find that he either did not read, or rushed to complete without reading/translating carefully, the documents sent to him before signing them.

[100] LinkLaw did not provide Mr Ou with any advice about the effect of the Deed of Gift. Nor did he ask for any. I find that he relied upon Ms Wang's assurances that –

notwithstanding what he signed – she would still pay him $1.5 million for the St Lucia property.

[101] I find that, intending to give effect to the agreement he had reached with Ms Wang to sell the property to her and, on the strength of her assurances, believing that he would be paid by Ms Wang for it, he ultimately did as Ms Wang told him to do, which included signing the Deed of Gift. I find that Mr Ou was indifferent to the dishonesty he participated in from the point of view of deceiving Queensland property and tax/duty authorities.

[102] I wholly reject Ms Wang's evidence that, being unable to sell (as agent) the St Lucia property because of the state it was in and being worried about Mr Ou's need for money, she first asked her parents to buy the St Lucia property and when they said no, she asked them to lend him money, or he turned to them for a loan, and they agreed.

[103] I wholly reject the evidence of Ms Wang's father that Mr Ou contacted him in 2023 – having not spoken to each other for several years – and asked the defendant's father to lend him whatever money the defendant's father could spare. I find the defendant's father's apparent recall of this conversation in oral evidence to be contrived and unconvincing. For what it is worth, I also reject the defendant's father's evidence that, during Covid, when the defendant's father was living only on leftover cucumbers, Mr Ou sent him seafood, which the defendant's father thanked Mr Ou for during the out-of-the-blue 2023 phone call. I reject the defendant's father's evidence that he agreed to lend Mr Ou whatever money he could but was too embarrassed to raise the topic of interest.

[104] It follows that I reject the evidence from Ms Wang's mother that Ms Wang's father contacted her after this (supposed) call from Mr Ou and told her that he had agreed to lend money to Mr Ou. (She was with Ms Wang in Australia at the time.) I reject Ms Wang's mother's evidence that she transferred money to Ms Wang to *lend* to Mr Ou.[8]

[105] I wholly reject Ms Wang's assertions that the payments made to Mr Ou, either from her parents' bank accounts or from her own, were loan moneys from her parents and not part payments of the purchase price of the St Lucia property. I wholly reject Ms Wang's assertion that there was some connection between a loan from her parents to Mr Ou and the Deed of Gift or that the loan/gift was, in effect, a variation of her agreement to purchase the St Lucia property.

[106] I find that Ms Wang was either unable or unwilling to make further payments of the purchase price to Mr Ou after 31 May 2023 (sourced from her parents or otherwise).

[107] On 11 September 2023, Mr Ou instructed his solicitors to write to Ms Wang, demanding that she return the property to him for failing to pay the purchase price. Mr Ou's

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8 Although it seems plain that the final $200,000 paid to Mr Ou by Ms Wang came from the proceeds of the sale of Ms Chen's Robina property.

solicitors told Ms Wang that, if the property were not transferred back to Mr Ou within 14 days, then they would seek Mr Ou's instructions to commence proceedings without further notice.

[108] The next day, 12 September 2023, Ms Wang attempted to call Mr Ou three times: at 10.24 am, 10.26 am and 10.52 am. He did not answer. At 2.23 pm, she left a WeChat message asking him to call her.

[109] At 5.34 pm, 5.40 pm 5.49 pm and 5.51 pm, she sent him the following messages (my emphasis). It may be noted that the messages do not mention the Deed of Gift, nor do they in any way suggest that Ms Wang believed that she received the property as a gift. Her references to falling behind; giving Mr Ou "$150,000 right away" then "the rest as soon as the loan goes through"; and being unable to obtain a loan are consistent with her agreement to purchase the property and inconsistent with the property being transferred to her/her company for no consideration:

> "Don't be mad, I didn't make you angry on purpose last time, originally, **it's my bad to fall behind**, please stop being angry with me, **I'll give you $150,000 right away, I will give you the rest as soon as the loan goes through**
>
> **Otherwise** for this matter, **each of us spends $200,000 on legal fees**, and still may not be able to end proceedings, that's not necessary
>
> Maybe your lawyers or friends say, this property can be easily sold for 2,000,000, however, under the circumstances at the time, the valuation company valued it at 1,800,000 and **a loan was not even approved**
>
> They say it to you this way, must have their agendas, but I can show you the report of the valuation company, valuation initiated by ANZ bank, I am not lying to you"

[110] These final messages, taken in combination with the whole of the WeChat conversations between Ms Wang and Mr Ou, and Ms Wang's payments to Mr Ou, clearly reveal an agreement between Mr Ou and Ms Wang that she would purchase the St Lucia property from him for $1.5 million, to be paid within three months. The Deed of Gift did not reflect the truth of their agreement. It was a device used in conjunction with a false market value appraisal to dishonestly reduce Ms Wang's/Spon's liability for stamp duty.

[111] On 13 September 2023, Mr Ou's solicitors lodged a caveat on the title of the property.

[112] On 14 September 2023, by email to Mr Ou's solicitor, Mr Guo, Ms Wang asserted that Mr Ou knew she did not have the money to buy the property and that the Deed of Gift was genuine. She told Mr Guo that her parents were involved in the "fund transaction". This was Ms Wang's first mention of the property having been gifted by Mr Ou to Spon or to her parents' involvement.

[113] I accept that, sometime in September 2023, after Mr Ou's lawyers contacted Ms Wang, Ms Wang's parents rang Mr Ou and asked him not to sue her. I accept that this was the first time they had spoken to him in years. I accept that they offered to sell their property in China to pay him what he was owed. I accept that he refused their offer. I accept therefore that they made prior statements inconsistent with their present testimony, damaging their credibility.

[114] On 29 November 2023, Spon, through its solicitors, demanded that the caveat be withdrawn.

[115] On 2 May 2024, the caveat was withdrawn. I did not find, as Ms Wang asserted, that its withdrawal amounted to an admission by Mr Ou that the property was transferred as a gift, nor did I consider it to amount to his abandoning any claim in equity.

[116] On 21 August 2024, Spon sold the property, unencumbered, for $1,950.000 AUD.

The plaintiff and defendant's cases

[117] Mr Ou's starting position was based on the assumption that I would find that Mr Ou and Ms Wang reached an enforceable "WeChat agreement" for the sale of the St Lucia property. On that basis, Mr Ou sought specific performance of the WeChat agreement by way of Ms Wang paying to him the balance of the purchase price. He sought, in the alternative, equitable compensation in the amount outstanding.

[118] In her defence, Ms Wang –

(a) denied the existence of an agreement to purchase on the basis that the WeChat communications were only casual discussions of potential solutions to Mr Ou's financial difficulties;

(b) asserted that any concluded WeChat agreement, if I were to find one, was unenforceable for non-compliance with section 59 of the *Property Law Act 1974* (Qld) (now section 7 of the *Property Law Act 2023* (Qld)), which states that contracts for the sale or disposition of land are unenforceable unless they are in writing (the *Statute of Frauds'* point);

(c) contended that the agreement to purchase had been, in effect, varied or superseded by the agreement between Mr Ou and her parents for her parents to lend him money in combination with the execution of the Deed of Gift;

and

(d) asserted that the property was knowingly transferred by Mr Ou as a gift and that he ought to be bound by the Deed of Gift which he signed, as an educated businessman, who had good English language skills; access to legal advice (from Ms Lee) before signing it; and regardless, understood it. Ms Wang asserted that any money she paid to Mr Ou was money lent to him by her parents – not part payments of the purchase price of the property.

[119] In reply, Mr Ou acknowledged that the WeChat agreement to sell the property to Ms Wang did not meet the requirements of section 59 of the *Property Law Act 1974*. However, he relied upon the doctrine of part performance to obtain specific performance of the agreement, despite the *Stature of Frauds'* point. The act of part performance pleaded was his transfer of the property to Spon.

[120] He further contended that he ought not be bound by the Deed of Gift because it was a sham and could be ignored, relying on *Raftland Pty Ltd as Trustee of Raftland Trust v Commissioner of Taxation* (2008) 238 CLR 516 (***Raftland***).

Observation

[121] Complications abound in this matter. In addition to my having to rely upon English language translations of the WeChat messages, matters were further complicated by (but not only):

(a) Mr Ou's casual, if not careless, approach to negotiations and the documents presented to him for execution;

(b) Ms Wang's duplicity, including –

    (i) having Mr Ou transfer the property to Spon – not to her – without drawing his attention to that fact;

    (ii) having stamp duty on the transfer assessed on the basis of an undervaluation of the property; and

    (iii) disguising the transaction as a gift;

(c) Mr Ou retaining a solicitor for the purposes of a *conveyance by sale* to Spon but the solicitor providing him *not* with a Contract of Sale for execution but instead with a Deed of Gift *and the solicitor facilitating the conveyance of the property in pursuance of the Deed of Gift without a variation to the retainer or without expressly confirming with Mr Ou that he intended to transfer the property as a gift*;

(d) Ms Wang's self-representation because, while she was clever, and made some viable submissions on the law, she was not as helpful as a lawyer could be in identifying and making arguments about the legal complexities of the matter;

and

(e) Mr Ou not addressing the matters identified as problematic for him by Freeburn J in his Honour's interlocutory decisions in *Junjie Ou v Xuefei Wang* [2025] QSC 52 and *Junjie Ou v Xuefei Wang (No 2)* [2025] QSC 306, including the *Masters v Cameron* issue and issues around the WeChat messages not being a sufficient memorandum of the essential terms of an agreement to sell the property as to amount to a concluded bargain.

What was the nature of the WeChat agreement between Mr Ou and Ms Wang?

[122] I find that Ms Wang made a genuine offer to purchase the St Lucia property from Mr Ou. While there is a brevity to the WeChat communications and a possibility that something may be lost in translation, I find that Ms Wang's WeChat messages set out broadly the terms of her offer – namely, $1.5 million, to be paid within three months, in part in RMB. I find that Mr Ou accepted that offer on those vague terms. But Ms Wang and Mr Ou did not agree upon a deposit or a payment plan or even a handover date. Nor were they precise about the amount of the purchase price to be paid in RMB. Nor did they discuss what would happen if payment were not made within three months. Nor did they discuss whether the agreement to purchase was conditional upon Ms Wang being able to obtain the loan to which she referred. Nor was Spon, the actual transferee of the property, mentioned at all.

[123] After Mr Ou accepted Ms Wang's offer, Ms Wang obtained his agreement to provide instructions to a lawyer to draw up a document giving effect to their WeChat agreement. In the light of that evidence, as Freeburn J identified, one of the first matters requiring resolution is a *Masters v Cameron* point – that is, whether Mr Ou and Ms Wang intended to be immediately bound by their WeChat agreement – a concluded agreement being critical to the plaintiff's part performance claim.

[124] The starting point is the well-known passage from *Masters v Cameron* (1954) 91 CLR 353 at 360:

> "Where parties who have been in negotiation reach agreement upon terms of a contractual nature and also agree that the matter of their negotiation shall be dealt with by a formal contract, the case may belong to any of three classes. It may be one in which the parties have reached finality in arranging all the terms of the bargain and intend to be immediately bound to the performance of those terms, but at the same time propose to have the terms restated in a form which will be fuller or more precise but not different in effect. Or, secondly, it may be a case in which the parties have completely agreed upon all of the terms of their bargain and intend no departure from or addition to that which their agreed terms express or imply, but nevertheless have made performance of one of more of the terms conditional upon the execution of a formal document. Or, thirdly, the case may be one in which the intention of the parties is not to make a concluded bargain at all, unless and until they execute a formal contract."

[125] A fourth category was suggested in *Baulkham Hills Private Hospital Pty Ltd v GR Securities Pty Ltd* (1986) 40 NSWLR 622 at 628 by McLelland J – namely a case in which the parties were content to be bound immediately and exclusively by the terms

upon which they agreed, but expected to make a further contract, containing additional terms, in substitution for the first.

[126] To which of the four categories the WeChat agreement belongs depends on the intention of Mr Ou and Ms Wang, ascertained *objectively* from their acts and statements.

[127] In his submissions, Mr Ou has simply assumed that the WeChat agreement provided a sufficient basis for the application of the doctrine of part performance. He did not ever address Freeburn J's view that the WeChat agreement fell within the third category of *Masters v Cameron* (not a concluded bargain until a written contract was executed) nor did he address his Honour's view that there was no certainty of essential terms in the WeChat agreement.

[128] Mr Ou's affidavit evidence does not grapple with what he understood to be the significance of a lawyer-prepared contract, which, while not determinative, may have been relevant: see Mahoney JA in *Air Great Lakes Pty Ltd v K S Easter (Holdings) Pty Ltd* (1985) 2 NSWLR 309 at 330-332.

[129] Clearly though, there were outstanding matters of importance which had not been agreed, such as the date upon which the property transfer would occur, the timing of Ms Wang's payments, the significance of her ability to obtain a loan, and what would happen if payments were not made.

[130] It may be reasonably inferred that, as the owner of a real estate business, Ms Wang was aware of the requirements for the lawful transfer of property in Queensland and understood the importance of a written, executed contract containing essential terms.

[131] I respectfully agree with Freeburn J's inclination that the WeChat agreement fell within the third *Masters v Cameron* category. I find that Ms Wang understood that the WeChat agreement would not be binding. I find that Mr Ou was probably of the same understanding and relied upon Ms Wang to provide him with the relevant paperwork to give effect to their WeChat agreement that she would buy the property from him. I find that the parties did not intend to be immediately bound by their WeChat agreement.

[132] Another issue of concern with the WeChat agreement is the uncertainty of its terms. The agreement pleaded by the plaintiff – that he would sell the property to Ms Wang for $1.5 million, to be paid by her to him within three months of his transferring it to her – did not deal with what was to happen if the money were not paid by Ms Wang within that timeframe. It was at least incomplete on that front – even if it might be argued that the price to be paid and the time within which it had to be paid were sufficiently certain. Nor did it consider the significance of the loan that she proposed. But more critically – he did not transfer the property *to her*, he transferred it to Spon, an entity which was never mentioned during the WeChat conversations.

[133] In his closing submissions, the plaintiff attempted to play down the significance of the fact that the property was transferred to Spon by reliance on *Fu Tian Fortune Pty Ltd v Park Cho Pty Ltd* [2018] NSWCA 282 and a purchaser's common law right to nominate a transferee. Given the other limitations of the WeChat agreement, I did not consider that it could be "saved" as a contract by the vendor's reliance on this right.

[134] I find that the WeChat agreement did not amount to a binding contract for Ms Wang to purchase the property from Mr Ou.

[135] Nevertheless, I have gone on to consider Mr Ou's part performance argument, taking the case at its best for Mr Ou.

Part Performance

[136] For the purposes of considering Mr Ou's part performance case, I *assumed*, contrary to my findings, that the WeChat agreement amounted to a sufficiently detailed contract and that it was intended by the parties to be a "concluded bargain" even though it was to be reduced in writing (thereby side-stepping, for this purpose, the certainty of terms and *Masters v Cameron* issues).

[137] The basis for the doctrine of part performance is that a defendant, who allows a plaintiff to commit themselves in some material way by performing an obligation under an oral contract, would be acting unconscionably if they (the defendant) sought to escape the contract by resort to the *Statute of Frauds*.[9] It is said that the defendant is charged with the equities resulting from acts done by the plaintiff in execution of, or because of, the contract: see *Cheshire and Fifoot's Law of Contract* 11th edition, [16.58].

[138] As per Isaacs and Rich JJ from *McBride v Sandland* (1918) 25 CLR 69 at 78 – 79, the elements of part performance essential to raise the equitable defence include that –

(a) the act relied upon as the act of part performance is unequivocally, and of its own nature, referable to some such agreement as that alleged. In other words, the act must be one which could only be done with a view to performing the agreement;

(b) the act was done by the plaintiff on the faith of the agreement;

(c) the defendant permitted the act to be done on the faith of the agreement (otherwise there would be no fraud):

(d) the parties had reached a *completed* agreement;

(e) the act was done under the terms of that agreement, by force of that agreement.

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9 Mr Ou relied upon the doctrine of part performance to overcome non-compliance with section 59 of the *Property Law Act* 1974. The doctrine of part performance was preserved by section 6 of the 1974 Act (and section 10 of the 2023 Act).

[139] As to (a): The act must be judged by reference to the circumstances in which it was performed to determine whether it was unequivocally referable to the agreement alleged. It is not enough for the act of part performance to be judged merely by its *consistency* with the oral agreement. In other words, one does not start with the terms of the oral (or here, WeChat) bargain and determine whether the acts of part performance are consistent with it. The act itself must imply a contract of the type asserted.

[140] The act of part performance relied upon was Mr Ou's transfer of the property to Spon – see paragraph 6(c)(i) of the Further Amended Reply and Answer.

[141] The proof of Mr Ou's transfer to Spon lay in evidence of the transfer document itself, found at exhibit BG-5 to the affidavit of Ben Guo (Mr Ou's solicitor). The transfer document was executed on behalf of Mr Ou by Yu Shih of LinkLaw. The evidence of Mr Ou authorising Yu Shih to execute the transfer document on his behalf is weak but there was no doubt that Mr Ou transferred the property to Spon, so the weakness of the evidence of his authorising Yu Shin to execute the transfer had no bearing on his claim.[10]

[142] However, in the circumstances in which the transfer was performed, the transfer to Spon was not unequivocally and of its own nature referable to a contract of sale of the property to Ms Wang for consideration. The *content* of the transfer document was only consistent with the property being transferred as a gift. And the actual transfer itself was just as referable to a transfer by way of a gift as it was to a transfer by way of sale. In my view, Mr Ou could not succeed on a part performance case even if I were persuaded that the WeChat agreement amounted to an immediately binding enforceable contract.

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10 Mr Ou does not mention such an authorisation. That he gave it may be gleaned from the inclusion of photographs of his laptop screen portraying two partial documents in the WeChat conversations, exhibited to Mr Ou's affidavit filed 7 November 2024 at pages 52 and 53.

Ms Wang told Mr Ou that she "emailed an authority" to him on 21 March 2023. She followed him up about completing it on 22 March 2023 at 5.21 pm. Mr Ou told her it needed "VPN" and that he would look for it. At 2.45 pm on 23 March 2023, he sent Ms Wang by WeChat what looks like a screen shot or photograph of part of the authority (the authority being on another device). Mr Ou asked Ms Wang, "What does it mean? Copy it?". Ms Wang said, 'If it's wrong, change it. If the information is right, let it be. Just go to the next step" (essentially, instructions on how to complete the form electronically).

I infer from the partial document sent to Ms Wang at 2.50 pm (see page 53 of the exhibits) that Mr Ou electronically signed the Client Authorisation form, and it was thereafter sent electronically to the "Representative" for them to complete. Despite the scrappiness of the evidence, I am prepared to infer that the partial document that appears on page 52 is the "Client Authorisation" form contained in Schedule 4 of the *Participation Rules (Queensland)* – Version 6 – dated April 2021.

The *Participation Rules (Queensland)* contain all the requirements for digitally signing and certifying eConveyancing documents in Queensland. Rule 6.3 obliged Yu Shih (as a Subscriber to Queensland's eConveyancing platform) to obtain valid client authorisation from Mr Ou and Ms Wang before signing or certifying any documents on their behalf. Valid client authorisation is obtained where the client or their agent has filled in the "Client Authorisation" and the Subscriber (here, Yu Shih) has taken reasonable steps to verify the authority of the signatory to the form. As the form itself explains, when it is signed, "the Representative is authorised to act for the Client in a Conveyancing Transaction(s)".

Equitable arguments

[143] In the alternative to his part performance case, Mr Ou relied upon "equitable promissory estoppel" or "conventional estoppel".

[144] His pleaded case was as follows:

> **"Estoppel**
>
> Equitable promissory estoppel
>
> 28. In the premises of paragraphs 10 to 13 above, Ms Wang represented to the plaintiff by her conduct in entering the Agreement and retaining LinkLaw, and by subsequently giving the Assurances, that:
>
>   (a) if he transferred the Property pursuant to the Deed of Gift, ~~to her or to company, Spon,~~ she would pay him AUD $1.5 million within three months of the transfer of the Property (~~**Promise**);~~ and that
>
>   (b) notwithstanding that the Deed of Gift did not reflect the terms of their agreed sale of the Property, and that the true agreement (being the Agreement) had not been reduced to a signed contract of sale, she would not deny the existence of enforceability of the Agreement.
>
>   (together, **Representations**).
>
> 29. In reliance on the Representations ~~Promise~~, the plaintiff:
>
>   (a) adopted an assumption as to the terms of his legal relationship with Ms Wang in accordance with the matters pleaded in paragraphs 28(a) and 28(b) above (**Assumption**); [and]
>
>   (b) transferred the Property to Spon.
>
> 29.A In the premises of paragraphs 10 to 13 above, Ms Wang induced, or acquiesced in, the plaintiff's adoption of the Assumption.
>
> 29B. In the premises of paragraphs 10 to 13 above, it may be inferred that Ms Wang knew or intended that the plaintiff would transfer the Property to Spon in reliance on the Assumption.
>
> 30. In the premises of paragraphs 23 and 24 above, Ms Wang has refused to pay the Balance Purchase Price and denied the existence and enforceability of the

Agreement, and thereby departed from the Representations and failed to fulfil the Assumption. ~~her Promise.~~

31. In the premises of paragraphs 28 to 30 above, the plaintiff has been deprived of the Balance Purchase Price and thereby suffered detriment as a consequence of Ms Wang's departure from the Representations and her failure to fulfil the Assumption. ~~her Promise.~~

31. In the premises of paragraphs 28 to 31 above, it would be unconscionable for Ms Wang to be permitted to depart from the Representations and to fail to fulfil the Assumption, and she is estopped from: ~~by her Promise:~~

(a) failing to pay the Balance Purchase Price;

(b) denying the existence of the Agreement;

(c) relying on s 59 of the PLA to deny the enforceability of the Agreement;

(d) asserting that the Deed of Gift is valid, binding and documents the true agreement between the parties.

Conventional estoppel

32A. Further or alternatively to paragraphs 28 to 32 above:

(a) a conventional estoppel arises between the plaintiff and MS Wang in that:

(i) the plaintiff adopted the Assumption;

(ii) Ms Wang adopted the Assumption;

(iii) the parties conducted their relationship on the basis of the mutual Assumption;

(iv) it may be inferred that each party knew or intended that the other would act on the basis of the Assumption;

(v) departure from the Assumption would cause detriment to the plaintiff;

(b) in the circumstances, Ms Wang is estopped from:

(i) <u>failing to pay the Balance Purchase Price;</u>

(ii) <u>denying the existence of the Agreement;</u>

(iii) <u>relying on s 59 of the PLA to deny the enforceability of the Agreement;</u>

(iv) <u>asserting that the Deed of Gift is valid, binding and documents the true agreement between the parties."</u>

<u>Equitable compensation</u>

33. In the premises of paragraphs 28 to 32 <u>or alternatively paragraphs 28 to 32A above,</u> the plaintiff is entitled to equitable compensation as against Ms Wang in the sum of $900,346, being the amount of the Balance Purchase Price.

[145] The "Agreement" was the WeChat agreement that Ms Wang would purchase the St Lucia property for $1.5 million, to be paid within three months.

[146] The "Assurances" were Ms Wang's assurance on 16 March 2023 that, if Mr Ou executed the Deed of Gift and transferred the property by way of gift, he would be paid $1.5 million.

[147] To adapt as it was put in Evans, Power and Power, *Equity and Trusts 5th edition*[11] at [18.49], the plaintiff was relying on the doctrine of promissory estoppel to prevent Ms Wang from departing unconscientiously from the assumption she had induced Mr Ou to adopt and to act in reliance upon to his detriment.

[148] Ms Wang submitted that the plaintiff's estoppel arguments were an attempt to evade the *Statute of Frauds* and ought not be upheld. She contended that equity followed the law and would not enforce an agreement which was invalid at common law. She asserted that, by withdrawing the caveat, the plaintiff abandoned "all equitable interests" in the property. She relied upon estoppel by deed and submitted that Mr Ou was estopped from denying the truth of the facts stated in the deed. She argued that Mr Ou could not rely upon any Assurances by her to deny the effect of the Deed of Gift. She further contended that Mr Ou was not coming to equity with clean hands – in that he sought to deny the truth of the contents of the Deed of Gift. She argued that there was something deceitful in the plaintiff not referring to the Deed of Gift at all in his original pleading.

[149] There were some misconceptions in Ms Wang's submissions, including (but not only) as to the significance of there not being a reference to the Deed of Gift in the plaintiff's original pleading and her understanding of the notion of "clean hands".

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[11] Lexis Nexis Australia, 2024.

[150] The essential criteria to establish the estoppel, as per Brennan J in *Walton Stores (Interstate) Ltd v Maher* (1988) 164 CLR 387 at 428-429, and adopted in *Wright v Hamilton Island Enterprises* Ltd [2003] QCA 36 (***Wright***), were articulated by the learned authors of *Equity and Trusts* at [18.51] as follows:

1. Assumption – The plaintiff assumed a particular legal relationship existed, or would come to exist, between the plaintiff and the defendant.
2. Inducement – The defendant induced the plaintiff to adopt that assumption or expectation.
3. Reliance – The plaintiff acted or abstained from acting on the faith of the assumption or expectation.
4. Knowledge – The defendant knew of the plaintiff's action or intended the plaintiff to act in such a way.
5. Detriment – The plaintiff's action or inaction will cause him or her to suffer detriment if the assumption or expectation is not fulfilled.
6. Failure to avoid detriment – The defendant has failed to act to avoid the detriment by fulfilling the expectation or otherwise.

[151] To those matters may be added the further requirement of establishing that it would be unconscionable to permit the defendant to depart from the assumption (see [41] of *Wright*).

[152] In my view, each essential criterion is met in this case, and equity must intervene as a matter of conscience.

[153] The plaintiff assumed that he and Ms Wang were in a relationship of vendor and purchaser for consideration of the St Lucia property – notwithstanding the contents of the Deed of Gift or the transfer document. He held or adopted that assumption on the basis of Ms Wang's statements to him, including (but not only) her statement made at 3.44 pm on 16 March 2023, when Mr Ou was hesitant to sign the Deed of Gift, that she would "definitely give it [the $1.5 million] to you". Her statements were sufficiently clear and provided the basis for the assumption upon which Mr Ou acted. In other words, Ms Wang induced Mr Ou to adopt the assumption.

[154] On the assumption, he signed the Deed of Gift and facilitated the transfer of the property to Spon – as Ms Wang intended.

[155] If Ms Wang does not fulfill her obligations to him, Mr Ou will suffer obvious detriment and Ms Wang has done nothing to avoid that detriment.

[156] It would clearly be unconscionable to allow Ms Wang to fail to fulfill the assumption – that is, to fail to complete the purchase as agreed. This is so even though the property was transferred to her company and not to her personally.

[157] As a consequence, an equity arises from Mr Ou's reliance on Ms Wang's representations, and he is entitled to relief.

[158] In reply to Ms Wang's arguments: The plaintiff's estoppel argument was an *alternative* to his part performance/*Statute of Frauds* argument. It was not an attempt to "evade the *Statute of Frauds*". While it is correct that the WeChat agreement was unenforceable, that did not mean that an equity could not otherwise arise that Mr Ou could enforce – in addition to the equity which might have (but on my findings did not) arise upon part performance.

[159] As to Ms Wang's estoppel by deed argument, it was only because Mr Ou relied upon the assumption that he signed the Deed of Gift, by which she asserts he is bound. I find that the equitable relief to which Mr Ou is entitled precludes Ms Wang's reliance on estoppel by deed. In other words, the estoppel prevails.

[160] As McMurdo P said in *Wright* at [18], "… where the necessary requirements of promissory estoppel are established, including unconscionability if the promise is not met, then the subsequent inconsistent written contract will not preclude a finding of promissory estoppel: see *SRA NSW Health v Health Outdoor Pty Ltd* [(1986) 7 NSWLR 170, McHugh 193-194)". See also Jerrard JA at [42] – [55] of *Wright*; and Holmes JA, as her Honour then was, at [118] – [119] of *Equuscorp Pty Ltd v Glengallan Investments Pty Ltd & Ors* [2006] QCA 194 (***Equuscorp***). As her Honour explained, the court in *Wright* held that a promissory estoppel could be made out, notwithstanding the existence of a subsequent inconsistent written contract, provided the evidence was sufficient to support the requirements of an estoppel. Her Honour noted that in *Wright* there was a promise, offered as an inducement to enter an agreement, not to enforce all of the terms of the agreement.

[161] I understand Ms Wang to be asserting an estoppel by deed in relation to the recitals as well as the operative provisions of the Deed of Gift. In the equitable context, I find no good reason to differentiate between a subsequent deed and a subsequent contract; or between the recitals in a deed and contractual terms.

[162] My own research revealed a case similar to this one in that it also involved an agreement which did not represent the true position of the parties, which had been signed by one of them (aware of its contents) on the strength of an assurance by the other: that is, *Anaconda Nickel Ltd v Edensor Nominees Pty Ltd and Joseph Isaac Gutnick* [2004] VSCA 167; 50 ACSR 679 (***Anaconda***).

[163] Briefly, Edensor held shares in a company, Centaur. Centaur's principal asset was a nickel mine in Cawse, Western Australia. Anaconda wanted to be the dominant nickel miner in an area which included Centaur's nickel mine.

[164] Anaconda and Centaur entered into an agreement to conduct a feasibility study into the expansion of nickel production in Cawse. The agreement contemplated that they would enter into a joint venture to develop the Cawse project.

[165] Centaur issued bonds, securing a loan of US$225 million, to construct a plant at Cawse. Centaur then fell into serious financial difficulty.

[166] On 3 August 2000, Joseph Gutnick, for Edensor and Centaur, raised with John Forrest, for Anaconda, the possible sale by Edensor of its Centaur shares to Anaconda.

[167] On 23 August 2000, Gutnick and Forrest executed a share sale deed. As per the deed:

(a) Edensor agreed to sell its shares in Centaur to Anaconda.

(b) The completion date was 4 September 2000.

(c) The price was payable by way of a deposit of $3.5 million (which was paid), with the balance to be paid on the completion date.

(d) By clause 4.1(a) the completion of the sale was conditional upon (*inter alia*) Anaconda completing a satisfactory due diligence investigation of the assets, trading position and liability of Centaur.

[168] Anaconda's due diligence investigation was conducted by Stephen Dennis. On 29 August 2000, Dennis advised Forrest *not* to go ahead. Dennis advised Forrest that Anaconda should: (i) persuade Centaur not to deal with anyone else; (ii) come to an agreement with the bondholders who were the key to controlling the Cawse tenements; and (iii) strike a fresh bargain with Centaur.

[169] On 4 September 2000, Forrest (Anaconda) telephoned Gutnick (Edensor and Centaur) and said that he wanted to delay settlement. He told Gutnick that he needed Gutnick to co-operate, and said, "… I give you my word that I'm going to settle. I give you my word Joseph. I just need time to fuck the bondholders. I need a 6 month extension … You can trust me. We've known each other for many years and I have never let you down". Forrest promised that the share price would be paid that day, and that the payment was to be *described as a loan* until the extended date of settlement, with interest at 5% per annum. Gutnick agreed.

[170] By way of a letter agreement between the parties (the "variation agreement" of 4 September 2000):

(a) 5 March 2001 became the new completion date.

(b) Anaconda was to *forthwith* pay Edensor the balance price of the shares, with that sum and the deposit (which came to more than $10 million) to be treated as a loan to Edensor for six months at 5% per annum.

(c) Gutnick guaranteed repayment of the loan.

(d) "Completion of the Sale Agreement as amended by this letter was subject to the same condition as is set out in clause 4.1(a) of the Sale Agreement …"

[171] Shortly thereafter, the relationship between the parties deteriorated and, at the same time, Centaur's financial difficulties increased.

[172] On 16 November 2000, Gutnick wrote to Forrest, complaining that Anaconda had not acquired Edensor's shares in Centaur, despite its binding commitment to do so.

[173] On 17 November 2000, Anaconda publicly announced that it had determined not to proceed with the acquisition of shares in Centaur. On 1 December 2000, Anaconda wrote formally to Edensor stating that it did not intend to complete the agreement of 4 September 2000, and that the loan was repayable on 5 March 2001

[174] Edensor and Gutnick sued Anaconda, asserting (*inter alia*) that Forrest's representation to Gutnick on 4 September 2000, that Anaconda would settle the purchase on the extended date, constituted an equitable estoppel that obliged Anaconda to complete the original agreement.

[175] Anaconda relied on the agreements of 23 August 2000 and 4 September 2000 and claimed repayment of the loan.

[176] The primary judge held that Edensor and Gutnick had established the elements of promissory estoppel. The primary judge found that –

(a) Anaconda induced Edensor and Gutnick to assume that Anaconda would not withdraw from the legal relationship with Edensor of purchaser and vendor and would complete the purchase on 5 March 2001.

(b) Edensor and Gutnick relied on the representation by (among other things) accepting the delay in settlement and agreeing to treat the payment of the share price as a loan with an obligation to pay interest.

(c) Anaconda intended that Gutnick and Edensor would act in reliance upon the representations made by Forrest.

(d) Detriment would be occasioned to both Edensor and Gutnick if the assumption or expectation induced in them was not fulfilled.

[177] The primary judge considered that the appropriate relief was a declaration that Anaconda was estopped from contending that it was entitled to not complete the share sale agreement on 5 March 2001 and that the sum of more than $10 million was due and payable by Edensor to Anaconda.

[178] Anaconda unsuccessfully appealed.

[179] The Court of Appeal (Buchanan JA, with whom Eames JA and Coldrey AJA agreed) noted at [20] that the letter of 4 September 2000 (the variation agreement) was entirely at odds with an assurance given by Forrest, and accepted by Gutnick, that Anaconda would complete the transaction on 5 March 2001. Anaconda could not be obliged to complete the purchase and at the same time elect not to if it was not satisfied by its due

diligence investigation. Also, if Anaconda was obliged to complete the purchase, then its pre-payment of the purchase price could not be viewed as a loan. There was no question of repayment of principal or interest by Edensor and no need for a guarantee by Gutnick.

[180] His Honour speculated at [21] that the inclusion of clause 4.1(a) in the variation agreement and "dressing up" the payment of the purchase price as a loan may have been to "fuck the bondholders" (who stood between Anaconda and Centaur's nickel assets) by serving to apparently preserve Anaconda's ability to refuse to complete. But no party argued that the variation agreement was intended to deceive the shareholders, and the primary judge made no finding as to whether the variation agreement was a sham. At [23], his Honour observed that the reluctance of the parties to explore or rely upon a scheme to deceive the bondholders lent an artificial atmosphere to the proceeding. Nevertheless, a desire not to reveal a relationship of committed buyer and seller remained available as a basis for not regarding the variation agreement as fatal to the respondent's case.

[181] One of the arguments on appeal (but not at trial) by Anaconda was that, because the variation agreement of 4 September 2000 had been made to deceive the bondholders by inducing them to believe that Anaconda had not committed to acquiring shares in Centaur, the respondents should have been denied equitable relief as their claim was predicated on the basis that they had knowingly participated in a fraudulent scheme.

[182] I thought it necessary to consider this argument of Anaconda's in the present matter – that is, whether Mr Ou's complicity in Ms Wang's dishonesty affected his claim, even though neither party mentioned it. (I appreciate that Ms Wang claimed that the Deed of Gift reflected the genuine arrangement reached between the parties. I will deal with this shortly.)

[183] Anaconda's argument did not succeed. As Buchanan JA explained at [36]:

> "In advancing this argument Anaconda overlooked the fact that, if Gutnick's evidence was accepted, Anaconda had proposed the scheme and the denial of relief sought by the respondent entailed the vindication of legal rights conferred upon Anaconda in a document which was brought into existence to enable Anaconda to deceive the bondholders. Unmeritorious or immoral conduct will not disentitle a plaintiff from equitable relief unless it has "an immediate and necessary relationship to the equity sued for [*Dering v Earl of Winchelsea* (1787) 1 Cox Eq Cas 318 and 219 per Lord Chief Baron Eyre] in that the conduct gave rise to the transaction sued upon.

[184] After considering other relevant authority, his Honour said at [38] – [40]:

> "In the present case the equity sued upon arose from the assumption induced in the respondents by Anaconda that it would complete the purchase of the shares. Its

promise to do so was not induced by any anterior wrongdoing on the part of the respondents. The variation agreement was directed, not to Anaconda, but to the bondholders. Further, even if the variation agreement was bought into existence with the aim of deceit, in fact no deceit was practiced. The unmeritorious conduct now relied upon by Anaconda did not bear the requisite necessary relation to the equity sued for by the respondents to found refusal of relief.

Once it was found that Forrest induced in Gutnick the belief that Anaconda would not invoke its legal entitlement to refuse to complete the purchase of the shares on the ground that [its due diligence investigation was not satisfied]… and, acting on that belief, the respondents agreed to postpone the settlement [and did other things]… the elements of promissory estoppel could be readily established."

[185] The same may be said in this case: Even on the assumption that Mr Ou participated in Ms Wang's deception, that participation did not bear the necessary relation to the equity sued upon by Mr Ou to found refusal of relief.

The Deed of Gift

[186] For completeness, I will deal with the Deed of Gift argument which dominated Ms Wang's submissions.

[187] Ms Wang contended that Mr Ou ought to be bound by the Deed of Gift. Mr Ou contended (although it was not pleaded) that it was a sham – to be ignored.

[188] The test for determining whether an agreement is a sham is subjective. In the present case, there is evidence of conduct contemporaneous with the execution of the deed which reflects upon the subjective intention of its parties. Additionally, evidence of their subsequent conduct is also admissible to determine the parties' subjective intention at the time of its execution.

[189] Although the parties to the deed are Mr Ou and Spon, as Spon's only director it is Ms Wang's intention that is relevant.

[190] I find that Ms Wang intended that the Deed of Gift be used to *conceal* the reality of the property transaction to improve her stamp duty position. By *pretending* that the property was to be transferred by way of gift, rather than pursuant to a contract of sale, Ms Wang assumed that less attention would be paid to the genuineness of its nominated market value, allowing her to pay less stamp duty than that which she would be required to pay on the transfer for $1.5 million.[12]

[191] I find that Mr Ou's subjective intention, at the time of execution of the deed, was not that it was to take effect in accordance with its terms. I find that he understood that it was a

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12 It seems she was right because duty was calculated and paid on the undervalue.

façade, designed to disguise their real transaction. I find that he signed it to permit Ms Wang to deceive the authorities by means of whatever mechanism she chose – although he may not have understood that she intended to use it in combination with the false undervaluation: see *Scott v Federal Commissioner for Taxation (No 2)* (1966) 40 ALJR 265 at 279. Indeed, he admitted to "reckless indifference" in misleading the Queensland Revenue Office in his Further Amended Reply and Answer.

[192] I find that Ms Wang did not intend the Deed of Gift to operate in accordance with its terms *when* it was executed. I find that her attempt to rely upon it to defeat the plaintiff's claim was a *post hoc* reconstruction of events.

[193] If her subjective intention at the time of the execution of the deed had genuinely been that it was to operate in accordance with its terms, then she would not have transferred what were obviously part payments of the $1.5 million sale price to Mr Ou; nor would she have made the statements she made on 12 September 2023, which included:

(a) her apology for "fall[ing] behind" – clearly a reference to her falling behind in part payments of the purchase price;

(b) her offering to pay $150,000 "right away" and "the rest as soon as the loan goes through" – clearly referring to the amount outstanding of the $1.5 million purchase price; and

(c) her acknowledgment that the plaintiff had a claim that he could bring against her (by way of her reference to them each potentially spending $200,000 on legal fees).

[194] I find that the Deed of Gift was a "sham" – taking care to use that word correctly to denote that it was created with the objective of deliberately deceiving third parties: see *Raftland* at 531 – 532.

[195] But in any event, as above, any attempt by Ms Wang to hold Mr Ou to the (sham) Deed of Gift was overridden by the equity that arose upon his adoption of her assurance to him.

Conclusion and orders

[196] There will be judgment for the plaintiff.

[197] The appropriate remedial response to the detriment arising from Mr Ou's reliance upon the unfulfilled Assumption is to order that Ms Wang pay to Mr Ou equitable compensation in the sum of $900,346 plus interest.

[198] As to costs: If either party contends that an order should be made, *other than an order that the defendant is to pay the plaintiff's costs*, then that party must contact my associate (copying in the other party) within 7 days of the delivery of my reasons, and I will set a

timetable for the delivery of written submissions on costs. Otherwise, the defendant is to pay the plaintiff's costs.