

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 19/06/2020 4:21:54 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: NSD529/2016
File Title: Kwangho Kim v Hodgson Faraday Pty Ltd Limited ACN 130 606 987 & Ors
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 19/06/2020 4:21:57 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Third Respondent's Defence to the Third Amended Statement of Claim

No. NSD529 of 2016

Federal Court of Australia
District Registry: New South Wales
Division: General

Kwangho Kim

Applicant

Hodgson Faraday Pty Ltd ACN 130 606 987 and others

Respondents

1. In answer to the allegations in paragraph 1 of the Third Amended Statement of Claim (**TASOC**), Mr Wang:
 - (a) admits that the Applicant has purported to bring this proceeding as a representative proceeding for and on behalf of the Group Members pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth);
 - (b) refers to and repeats paragraphs 3 – 43 below; and
 - (c) otherwise denies the allegations in the paragraph.

2. In answer to the allegations in paragraph 2 of the TASOC, Mr Wang:
 - (a) admits that seven or more Group Members have made claims against the Respondents;
 - (b) refers to and repeats paragraphs 3 – 43 below; and
 - (c) otherwise denies the allegations in the paragraph.

Filed on behalf of (name & role of party) Yingjie Wang, Third Respondent
Prepared by (name of person/lawyer) James Charles Beaton
Law firm (if applicable) MinterEllison
Tel (02) 9921 4063 Fax (02) 9921 8123
Email james.beaton@minterellison.com
Address for service Governor Macquarie Tower, 1 Farrer Place, SYDNEY NSW 2000
(include state and postcode) Our reference: 1271882

Form approved 01/08/2011

3. In answer to the allegations in paragraph 3 of the TASOC, Mr Wang:
 - (a) refers to sub-paragraph (d) of the TASOC and says that the correct entity name was styled "*NZGFT Fund Management Limited*"; and
 - (b) otherwise admits the allegations in the paragraph.
4. In answer to the allegations in paragraph 4 of the TASOC, Mr Wang:
 - (a) refers to sub-paragraph 4(b) of the TASOC and says that the company commenced to be known as Fish Capital Securities Ltd on 14 February 2007;
 - (b) refers to sub-paragraph 4(c) of the TASOC and says that the correct entity name was styled "*TMK Index Limited*"; and
 - (c) otherwise admits the allegations in the paragraph.
5. In answer to the allegations in paragraph 5 of the TASOC, Mr Wang:
 - (a) admits that between 24 June 2014 and 8 October 2015 he was a director of TM Index; and
 - (b) says that in the period between 24 June 2014 and 19 February 2015, Guofei Chen and Shouxin Li were also directors of TM Index.
6. Mr Wang does not know and cannot admit the allegations in paragraph 6 of the TASOC.
7. Mr Wang does not know and cannot admit the allegations in paragraph 7 of the TASOC.
8. Mr Wang does not know and cannot admit the allegations in paragraph 8 of the TASOC.
9. Mr Wang does not know and cannot admit the allegations in paragraph 9 of the TASOC.
10. Mr Wang does not know and cannot admit the allegations in paragraph 10 of the TASOC.
11. Mr Wang does not know and cannot admit the allegations in paragraph 11 of the TASOC.
12. Mr Wang does not know and cannot admit the allegations in paragraph 12 of the TASOC.
13. Mr Wang does not know and cannot admit the allegations in paragraph 13 of the TASOC.

14. Mr Wang does not know and cannot admit the allegations in paragraph 14 of the TASOC.
15. Mr Wang does not know and cannot admit the allegations in paragraph 15 of the TASOC.
16. Mr Wang does not know and cannot admit the allegations in paragraph 16 of the TASOC.
17. Mr Wang does not know and cannot admit the allegations in paragraph 17 of the TASOC.
18. Mr Wang does not know and cannot admit the allegations in paragraph 18 of the TASOC.
19. Mr Wang does not know and cannot admit the allegations in paragraph 19 of the TASOC.
20. In answer to the allegations in paragraph 20 of the TASOC, Mr Wang:
 - (a) denies that TM Index received any of the funds alleged to have been transferred by the Applicant or Group Members into a Nominated Account;
 - (b) denies that any "Official Receipt" in respect of the funds alleged to have been transferred by the Applicant or Group Members into a Nominated Account was created, issued or authorised by TM Index; and
 - (c) otherwise does not know and cannot admit the allegations in the paragraph.
21. Mr Wang does not know and cannot admit the allegations in paragraph 21 of the TASOC.
22. In answer to the allegations in paragraph 22 of the TASOC, Mr Wang:
 - (a) admits sub-paragraphs 22 (a), (b), (c) and (d) insofar as those allegations relate to TM Index;
 - (b) in response to sub-paragraph 22(e), denies that TM Index received any money on behalf of investors in respect of 'T', 'M' or 'K' products or as otherwise alleged in the TASOC; and
 - (c) does not know and cannot admit sub-paragraphs 22(a) to (e) insofar as those allegations relate to TMK Index.

23. Mr Wang denies each allegation in paragraph 23 of the TASOC.
24. Mr Wang denies each allegation in paragraph 24 of the TASOC.
25. Mr Wang does not know and cannot admit the allegations in paragraph 25 of the TASOC.
26. In answer to the allegations in paragraph 26 of the TASOC, Mr Wang:
 - (a) refers to and repeats paragraphs 6 – 25 above;
 - (b) admits that representations to the effect of those listed in sub-paragraphs 26(a), (b), (c), (d), (e), (f) and (g), if made, would have been misleading or deceptive or likely to mislead or deceive; and
 - (c) otherwise does not know and cannot admit the allegations in the paragraph.
27. In answer to the allegations in paragraph 27 of the TASOC, Mr Wang:
 - (a) refers to and repeats paragraphs 6 – 26 above;
 - (b) says that the alleged Representations, if made, were conduct which occurred outside of Australia in the Republic of Korea and the Republic of the Philippines;
 - (c) says that the Applicant may only rely on the alleged conduct at a hearing where a claim under section 12GF of the ASIC Act is made, if the relevant Minister consents in writing to the reliance;
 - (d) says that, insofar as he is aware, the relevant consent has not been obtained; and
 - (e) otherwise does not know and cannot admit the allegations in the paragraph.
28. Mr Wang denies the allegations in paragraph 28 of the TASOC.
29. Mr Wang does not know and cannot admit the allegations in paragraph 29 of the TASOC.
30. In answer to the allegations in paragraph 30 of the TASOC, Mr Wang:
 - (a) says that on the assumption the paragraph intended to refer to TMK Index, he does not know and cannot admit the allegations; and
 - (b) otherwise denies the allegations.
31. Mr Wang denies the allegations in paragraph 31 of the TASOC.

32. Mr Wang does not know and cannot admit the allegations in paragraph 32 of the TASOC.
33. Mr Wang does not know and cannot admit the allegations in paragraph 33 of the TASOC.
34. In answer to the allegations in paragraph 34 of the TASOC, Mr Wang:
- (a) refers to and repeats paragraphs 6 – 21 above;
 - (b) otherwise does not know and cannot admit the allegations in the paragraph.
35. In answer to the allegations in paragraph 35 of the TASOC, Mr Wang:
- (a) refers to and repeats paragraphs 6 – 21 above;
 - (b) otherwise does not know and cannot admit the allegations in the paragraph.
36. In answer to the allegations in paragraph 36 of the TASOC, Mr Wang:
- (a) refers to and repeats paragraphs 6 – 21 above;
 - (b) otherwise does not know and cannot admit the allegations in the paragraph.
37. In answer to the allegations in paragraph 37 of the TASOC, Mr Wang:
- (a) refers to and repeats paragraphs 6 – 21 above;
 - (b) otherwise does not know and cannot admit the allegations in the paragraph.
38. In answer to the allegations in paragraph 38 of the TASOC, Mr Wang:
- (a) refers to and repeats paragraphs 6 – 21 above;
 - (b) otherwise does not know and cannot admit the allegations in the paragraph.
39. In answer to the allegations in paragraph 39 of the TASOC, Mr Wang:
- (a) refers to and repeats paragraphs 27 – 30 above;
 - (b) otherwise does not know and cannot admit the allegations in the paragraph.
40. In answer to the allegations in paragraph 40 of the TASOC, Mr Wang:
- (a) refers to and repeats paragraphs 27 – 30 above;
 - (b) otherwise does not know and cannot admit the allegations in the paragraph.

41. In answer to the allegations in paragraph 41 of the TASOC, Mr Wang:
- (a) denies each of the allegations in sub-paragraphs 41(a) and (c); and
 - (b) does not know and cannot admit the allegations in sub-paragraph 41(b).
42. Further and in the alternative, if the Applicant or any Group Member has suffered loss or damage pleaded in paragraphs 39 and 40 of the TASOC:
- (a) that loss or damage was suffered as a result of the Applicant's and Group Members' failure to take reasonable care;

Particulars

Mr Wang refers to and relies upon the facts, matters and circumstances detailed in the Judgment of the Seoul Central District Court dated 28 April 2016 in Case 2015DODAN7028, 7788, 8256, 8257 (Combined) against the Defendants: Mi Sook PARK, Seong Yeol LEE, Geun Soo HA, Se Nam LEE and Min Seok KIM, particularly:

- i. any investment made by the Applicant and Group Members in the T, M or K products was made contrary to the laws of South Korea;*
- ii. to avoid tax, moneys said to have been invested were transferred into personal accounts held in a bank in South Korea; and*
- iii. the high risk nature and unrealistic returns said to have been promised in connection with the investment each claims to have made.*

Further particulars will be provided following discovery.

- (b) Mr Wang did not intend to cause the loss or damage or fraudulently cause the loss or damage; and
- (c) in the premises, the damages (if any) that the Applicant and Group Members may recover from Mr Wang in relation to that loss and damage are to be reduced to the extent to which the court thinks just and equitable having regard to the Applicant's and the Group Members' share in the responsibility for that loss or damage.

Particulars

Section 12GF(1B) of the ASIC Act

43. Further and in the alternative if, which is denied, the Applicant or any Group Member is entitled to recover any amount of loss or damage from Mr Wang by reason of the matters pleaded in paragraphs 6 – 41 of the TASOC:

- (a) the claim made against Mr Wang in the Proceeding is an apportionable claim for the purpose of section 12GP of the *ASIC Act*;
- (b) the loss or damage suffered by the Applicant or any Group Member was caused by the acts or omissions of:

- (i) TM Index;

Particulars

Mr Wang refers to and repeats (without admission) the allegations made by the Applicant against TM Index in the TASOC.

- (ii) TMK Index;

Particulars

Mr Wang refers to and repeats (without admission) the allegations made by the Applicant against TM Index in the TASOC.

- (iii) Mi Sook PARK, Seong Yeol LEE, Geun Soo HA, Se Nam LEE and Min Seok KIM;

Particulars

Mr Wang refers to and relies on the findings detailed in the Judgment of the Seoul Central District Court dated 28 April 2016 in Case 2015DODAN7028, 7788, 8256, 8257 (Combined) against the Defendants: Mi Sook PARK, Seong Yeol LEE, Geun Soo HA, Se Nam LEE and Min Seok KIM.

Mr Wang also refers to and repeats the matters pleaded by the Applicant in paragraphs 6 and 7 of the TASOC.

- (c) each of the persons and entities in sub-paragraph (b) above are concurrent wrongdoers for the purpose of section 12GP(3) of the *ASIC Act*;
- (d) in the premises, the liability (if any) of Mr Wang in relation to the claim made against him in the TASOC is limited to an amount reflecting that proportion of the

damage or loss claimed by the Applicant or any Group Member that the Court considers just having regard to the extent of his responsibility for it.

Particulars

Section 12GR of the ASIC Act.

Date: 19 June 2020

A handwritten signature in black ink, appearing to be 'J. Beaton', written over a dotted horizontal line.

Signed by James Charles Beaton
Lawyer for the Third Respondent

This pleading was prepared by James Charles Beaton, lawyer.

Certificate of lawyer

I James Charles Beaton certify to the Court that, in relation to the defence filed on behalf of the Third Respondent the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 19 June 2020



Signed by James Charles Beaton
Lawyer for the Third Respondent