Federal Court of Australia

Hankuk Carbon Co, Ltd v Energy World Corporation Ltd (No 2) [2024] FCA 366

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| File number: |  |
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| Judgment of: | **STEWART J** |
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| Date of judgment: | 12 April 2024 |
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| Catchwords: | **ARBITRATION** – second hearing of application for enforcement of foreign arbitral awards – whether respondent had notice of the hearing – dissolution of stay of judgment previously ordered  |
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| Legislation: | *Corporations Act 2001* (Cth) s 109X(1)(a)  |
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| Cases cited: | *Hankuk Carbon Co, Ltd v Energy World Corporation Ltd* [2024] FCA 232  |
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| Division: |  |
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| Registry: |  |
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| National Practice Area: |  |
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| Sub-area: |  |
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| Number of paragraphs: | 11 |
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| Date of hearing: | 12 April 2024  |
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| Counsel for the Applicant: | P Santucci  |
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| Solicitor for the Applicant: | Marque Lawyers |
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| Counsel for the Respondent: | The Respondent did not appear. |

ORDERS

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|  | NSD 136 of 2024 |
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| BETWEEN: | HANKUK CARBON CO, LTDApplicant |
| AND: | ENERGY WORLD CORPORATION LTDRespondent |

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| order made by: | STEWART J |
| DATE OF ORDER: | 12 APRIL 2024 |

THE COURT NOTES THAT:

1. The applicant has provided evidence establishing to the satisfaction of the Court that notice of the orders made on 12 March 2024 was given to the respondent by 5:00 pm on 13 March 2024.
2. Order 8 of the 12 March 2024 orders staying orders 1 to 6 of the orders expires at 5:00 pm today as no application has been made by the respondent to set aside the orders.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

(Delivered *ex tempore*, revised from transcript)

STEWART J:

1. On 12 March 2024, I made orders in this matter including entering judgment in various amounts for the applicant against the respondent: *Hankuk Carbon Co, Ltd v Energy World Corporation Ltd* [2024] FCA 232. I also made an order staying the judgment until 5:00 pm on the return date, which is today, that the applicant provide notice of the orders to the respondent by 5:00 pm on Wednesday, 13 March 2024, and that the respondent file any application to set aside the judgment by 9 April 2024. No such application has been filed.
2. On the matter being called today, there is no appearance by the respondent.
3. Mr Santucci for the applicant has read two affidavits for the purpose of proving the five different ways in which the respondent has been served or otherwise given notice of the orders of 12 March 2024.
4. First, and most notably, service was effected by a process server serving the orders and other required documents at the registered office of the respondent. That appears from the affidavit of Mr Sturzaker and the contemporaneous documents annexed thereto to have occurred before 5:00 pm on 13 March 2024. Somewhat bizarrely, the process server in his affidavit records it to have occurred on Friday, 23 February 2024 which is nearly a month before the orders, the covering letter and the other documents referred to. That date seems to be a clear error by the process server in the preparation of his affidavit.
5. I note that s 109X(1)(a) of the *Corporations Act 2001* (Cth) provides that for the purpose of any law, a document may be served on a company by leaving it at, or posting it to, the company’s registered office. The registered office of the respondent company has been proved with reference to the records of ASIC and that is the address at which the documents were left.
6. Secondly, there has also been postal service of the documents to that address.
7. Thirdly, notice was given by way of email to the Hong Kong lawyers of the respondent, being the lawyers who acted for the respondent in the arbitration proceedings which led to the award which is in turn the basis for the judgment.
8. Fourthly, notice was given by email to the Sydney corporate lawyers of the respondent referred to in the respondent’s annual report. Of course, that is not proper service in the sense that there is nothing to show that those lawyers had authority to accept service, but it does indicate the extent to which the applicant has gone to try and ensure that the respondent received notice of the orders. It is not known whether those lawyers passed on the documents that they received.
9. Finally, notice was given by email to the respondent at the respondent’s email address published in its annual report.
10. Given those extensive efforts gone to by the applicant to ensure that the respondent has notice of the orders and has access to the underlying documents, I am satisfied that adequate notice has been given. It is surprising that a listed company should apparently not monitor its registered office for mail, that being shown by a photograph taken by the process server which shows a pile of unopened mail at the respondent’s registered office.
11. Be that as it may, the result is that at 5:00 pm today, the stay on the judgment that I entered will come to an end. For the sake of clarity it seems appropriate to make a formal order that notes as follows:
12. The applicant has provided evidence establishing to the satisfaction of the Court that notice of the orders made on 12 March 2024 was given to the respondent by 5:00 pm on 13 March 2024.
13. Order 8 of the 12 March 2024 orders staying orders 1 to 6 of the orders expires at 5:00 pm today as no application has been made by the respondent to set aside the orders.

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| I certify that the preceding eleven (11) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Stewart. |

Associate:

Dated: 12 April 2024