AUSTRALIA / JUDGMENT

Zhu v Wen

[2026] NSWSC 1071

COURT	DECIDED
Supreme Court	08 September 2026
BEFORE	**CASE / FILE NUMBER**
Harrison AJ	2026/156602

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Supreme Court
New South Wales

Medium Neutral Citation:	Zhu v Wen [2026] NSWSC 1071
Hearing dates:	04 September 2026
Date of orders:	04 September 2026
Decision date:	08 September 2026
Jurisdiction:	Equity - Real Property List
Before:	Harrison AJ
Decision:	(1) Direct the third defendant to file and serve by no later than 11 September 2026 her defence to the statement of claim and any cross-claim upon which she proposes to rely. (2) Direct the plaintiff to file and serve by no later than 9 October 2026 any reply to the defence and any defence to the cross-claim upon which she proposes to rely. (3) Order the third defendant to pay forthwith the costs thrown away or occasioned by the adjournment of the plaintiff's notice of motion. (4) Stand over the proceedings and the plaintiff's notice of motion for mention before me at 9.30am on Friday 16 October 2026.
Catchwords:	CIVIL PROCEDURE – default judgment – where the third defendant foreshadows filing a defence and cross-claim – whether the delay has been adequately explained
Legislation Cited:	Australian Securities and Investments Commission Act 2001 (Cth), ss 12CA, 12DA Civil Procedure Act 2005 (NSW), ss 56, 57, 58, 59 Competition and Consumer Act 2010 (Cth), Sch 2 – Australian Consumer Law, ss 18, 20, 21
Category:	Procedural rulings
Parties:	Xiaoyu Zhu (Plaintiff) Lijuan Wen (Third Defendant)

Representation:

Counsel:	L McIntyre (Third Defendant)
Solicitors:	EXC Law (Plaintiff) JurisBridge Legal (Third Defendant)
File Number(s):	2026/156602
Publication restriction:	Nil

JUDGMENT

HIS HONOUR: By statement of claim filed on 8 May 2026, the plaintiff sues to recover a total of $331,591.78 advanced in three smaller amounts to the first and second defendants pursuant to the terms of three loan agreements entered into in August 2023, January 2024 and July 2024. The plaintiff alleges that the third defendant unconditionally and irrevocably guaranteed the performance of the first and second defendants' obligations under these agreements. Moreover, the plaintiff alleges that all of the defendants granted the plaintiff a fixed charge over their property to secure the complete and punctual payment of the monies advanced to the first and second defendants.

The defendants have all failed to file a defence to the claim. In those circumstances, the plaintiff sought and obtained leave to file a notice of motion seeking judgment by default against the third defendant on the guarantees and a declaration that she has an equitable charge over the land situated at XX Burton Place, Lindfield owned by the third defendant securing the payment of any judgment against the defendants.

The motion came before me today. There was no appearance for the first or second defendants. Mr McIntyre of counsel appeared for the third defendant. He sought leave to file a defence to the statement of claim and a cross-claim on behalf of the third defendant against the plaintiff and Xiongming Xie. A draft of the proposed defence contains a denial by the third defendant that she was ever a party to the first and second loan agreements. The third defendant otherwise denies that she owes any money to the plaintiff. The third defendant denies that she has any liability pursuant to the guarantee for monies advanced to the first and second defendants or that the Lindfield property is charged with any associated obligation on her part.

The proposed cross-claim alleges that the plaintiff and Xiongming Xie engaged in misleading and deceptive conduct and made statements in contravention of s 12DA of the Australian Securities and Investments Commission Act 2001 (Cth) and/or s 18 of the Competition and Consumer Act 2010 (Cth), Sch 2 – Australian Consumer Law. The proposed cross-claimants also allege that those cross-defendants engaged in unconscionable conduct in contravention of s 12CA of the Australian Securities and Investments Commission Act and/or ss 20 and 21 of the Australian Consumer Law. Relief framed upon the basis that these allegations are made out is claimed accordingly.

It will be apparent that the merits of the prosed defence and cross-claim remain to be determined. It seems clear enough, however, that the third defendant has foreshadowed a defence on the merits and a potentially viable cross-claim. The third defendant explains her failure to comply with the rules relating the filing of her defence and her corresponding failure to comply with directions made by Pike J on 10 July 2026 upon the basis of her need to translate a significant body of correspondence between or among the parties to these proceedings from Mandarin into English. This correspondence is said to exist in the form of WeChat conversations dealing with the agreements upon which the plaintiff sues. Despite attempts since about mid-July to secure translations of this material, that task is yet fully to be completed. I am satisfied that the third defendant's failure to file her defence and the delay in doing so have been satisfactorily explained.

The third defendant has indicated that she can file and serve her defence and cross-claim by 11 September 2026. Having regard to the state of preparation of those documents, it might confidently be anticipated that the third defendant will do so by that date.

I note in passing that the proposed draft defence contains a series of denials and non-admissions. Some of these appear to put in issue even the existence and execution of the very documents upon which the plaintiff sues. I have indicated to counsel for the third defendant that it might be appropriate in reviewing the form and structure of that document, as well as the proposed cross-claim, closely to keep in mind the terms of ss 56, 57, 58 and 59 of the Civil Procedure Act 2005 and the identification of what are or should be the real issues in dispute.

The plaintiff asked for 4 weeks to file any reply to the defence and her defence to the cross-claim. That was not unreasonable in the circumstances. I gleaned that the terms of the WeChat correspondence is, or may well be, important material to which the plaintiff will want or need to have regard in this respect.

Finally, the plaintiff asked that I enter judgment by default against the second defendant in accordance with her motion. I accept that there does not appear to be any procedural or factual impediment to doing so. However, as the third defendant is potentially liable as a guarantor of the second defendant's obligations pursuant to the loan agreements, it may be preferrable to postpone dealing with that discrete aspect of the plaintiff's motion until the matter returns to me for directions on 16 October 2026.

I indicated that I would in the circumstances make the following orders, which I confirm should be in these terms:

Direct the third defendant to file and serve by no later than 11 September 2026 her defence to the statement of claim and any cross-claim upon which she proposes to rely.

Direct the plaintiff to file and serve by no later than 9 October 2026 any reply to the defence and any defence to the cross-claim upon which she proposes to rely.

Order the third defendant to pay forthwith the costs thrown away or occasioned by the adjournment of the plaintiff's notice of motion.

Stand over the proceedings and the plaintiff's notice of motion for mention before me at 9.30am on Friday 16 October 2026.

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Decision last updated:

08 September 2026

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Prepared on 29 October 2026 · Esheria