

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)**

CLAIM NO. ANUHCv2025/0200

BETWEEN:

- 1. SINOVAC BIOTECH LTD. (a company registered in Antigua and Barbuda)**
- 2. ORBIMED PARTNERS MASTER FUND LIMITED (a company registered in Bermuda)**
- 3. 1GLOBE CAPITAL, LLC (a company registered in Delaware, United States of America)**

Applicants/Claimants

and

- 1. VIVO CAPITAL LLC (a company registered in California, United States of America)**
- 2. VIVO CAPITAL FUND VIII, L.P. (a limited partnership registered in Delaware, United States of America)**
- 3. VIVO CAPITAL SURPLUS FUND VIII, L.P. (a limited partnership registered in Delaware, United States of America)**
- 4. VIVO CAPITAL FUND IX, L.P. (a limited partnership registered in Delaware, United States of America)**
- 5. PRIME SUCCESS, L.P. (a limited partnership registered in Cayman Islands)**
- 6. CEDE & CO (a limited partnership registered in New York, United States of America)**

Respondents/Defendants

Appearances:

Mr. Edward Davies KC, with him, Anna Scharnetzky and Mr. Craig Jacas, Counsel for the Applicants

Mr. Alexander Cooke KC, with him, Dr. David Dorsett, Counsel for the 2nd, 3rd, and 4th Respondents

Mr. Stephen Gee KC, with him, Stacey Richards, Counsel for the 5th Respondent

2025: June 30th ;
July 2nd.

JURISDICTION TO MAKE INTERIM PRESERVATIVE ORDER

- [1] **BAKRE, J.:** This ruling stems from a preliminary issue based on the application for interim injunction filed by the Claimants/Applicants in the application dated 30th day of May, 2025. The application was supported with an affidavit of urgency stating why the matter is of extreme urgency and needed the Court's attention for it to be heard expeditiously.
- [2] The application came up before Master Carlos Michael on the 20th day of June, 2025 and upon being confronted with another application filed by each set of the Respondents' challenging the jurisdiction of the Court to hear and determine the matter, Master Carlos indicated that it would be impossible to hear the issues at that point and would rather the Parties agree on a date for the hearing of all pending applications.
- [3] In the bid to adjourn the matter, the Applicants sought for an interim order to preserve the subject matter but the Respondents' opposed on the ground that where an issue of jurisdiction has been raised, the Court could not go ahead and make any order without the determination of its jurisdiction.
- [4] The learned Master considered whether he actually could make a preservative order in this regard but did not make a decision in this regard but rather ordered that the Parties should agree on a date for the hearing of the applications in view of the fact that there was an important meeting scheduled for the 8th day of July, 2025 which according to the Applicants would affect their interest and change the case entirely.
- [5] Master Carlos upon adjourning the matter made the following orders:- (I shall endeavor to set out the Orders as made by Master Carlos):-

SETTLED DRAFT ORDER

UPON READING this matter coming on for the hearing of an application by the Claimants for interim relief;

UPON READING the claim form and statement of claim filed by the Claimants on 6th May 2025 and the amended claim form and statement of claim filed by the Claimant on 17th June 2025;

UPON READING the notice of application filed by the Claimants on 30th May 2025 together with an affidavit in support, exhibits, certificate of urgency and a draft order for the following orders:

- (1) *Until final determination of the Applicants' claim (Claim No. ANUHCV 2025/0200) or further Order of the Court, each Respondent:*

 - (a) *must not dispose of or in any way deal with the legal or beneficial interest in any of the PIPE Shares (defined below).*
 - (b) *must preserve and must not dispose of or part with possession of any document which relates to the transfer or receipt of any interest in any of the PIPE Shares.*
 - (c) *must not cause or permit any votes to be cast or counted in respect of any PIPE Shares in respect of which it claims to have any interest (legal, beneficial, direct, indirect or otherwise), whether at any shareholders' meeting of the First Applicant or otherwise.*
 - (d) *must refrain from purporting to exercise any right to requisition a shareholders' meeting of the First Applicant in reliance upon its purported ownership of any of the PIPE Shares.*
- (2) *The Applicants also seek the following declarations of the Court, that until final determination of the Applicants' claim (Claim No. ANUHCV 2025/0200) or further Order of the Court:*

 - (a) *the chairman of any shareholders' meeting of the First Applicant may adjourn the shareholders' meeting if the chairman is unable to determine whether the interim injunction in paragraph 2(3) above is being complied with; and*
 - (b) *the PIPE Shares in respect of which any of the Respondents claim to have any interest (legal, beneficial, direct, indirect or otherwise), shall not be counted towards the quorum at any shareholders' meeting of the Company for the purposes of by-law 7.5 of the Company's by-laws.*
- (3) *And other orders.*

UPON NOTING the notice of application filed by the 5th Defendant on 12th June, 2025 for a stay of proceedings and other orders;

UPON NOTING the notice of application filed by the 2nd, 3rd, and 4th Defendants on 13th June 2025 to set aside service out of the jurisdiction on the 2nd, 3rd and 4th Defendants and for other orders;

UPON NOTING the notice of application filed by the 2nd, 3rd, and 4th Defendants on 13th June, 2025 for an adjournment and other orders;

UPON HEARING Counsel for the Parties;

AND UPON NOTING the indication from Counsel for the Parties of their availability for a two-day hearing as follows: the Claimants – 23rd to 26th June, 2025 and 30th June to 3rd July 2025; the 2nd, 3rd and 4th Defendants – 30th June to 2nd July, 2025; and the 5th Defendants – any date set by the Court;

IT IS HEREBY ORDERED THAT:

- 1. The matter shall be set down for hearing of the Claimants' application for interim relief including the issue of whether the Court has the jurisdiction to grant the relief, on a date to be fixed by the Registrar of the High Court on notice to the Parties.**
- 2. The Claimants shall file an agreed indexed and paginated hearing bundle no less than three days before the date fixed for the hearing of the matter.**
- 3. The Claimants shall have carriage of this Order. (My Emphasis)**

- [6] Subsequent to the making of this Order, the matter was reassigned to this court on the ground that Master Carlos's calendar was unable to accommodate the date chosen by the Parties for the hearing of the applications based on the urgency.
- [7] On the 30th day of June, 2025 when the matter came up, this Honorable Court directed that all the applications before the Court would be taken together in view of the urgency of the matter.
- [8] The Court proposed that the issue of the jurisdiction of the Court raised by the Respondents would be heard first and it would be responded to by the Claimants/Applicants who would then in turn argue the application for injunction to which the Respondents would also have a right of response. It was proposed that the Court will now consider and rule on the issue of the jurisdiction first which would now determine whether there will be the need for a consideration of the application for injunction or not.
- [9] In response to this proposal, Counsel for the Applicants, Edward Davies KC, stated that the only issue for determination that morning was the simple issue that Master Carlos had raised on whether the Court could make an order in the interim to preserve the res pending the hearing of the issue of jurisdiction raised by the Respondents to his application. Counsel stated that the Respondents had not obtained a date for their application to challenge jurisdiction and that he had an agreement with them to file his response to the issue of jurisdiction outside the time created by the Rules.
- [10] It was the position of learned King's Counsel, Mr. Davies KC, that what was fixed for hearing is to determine whether this Court could make an interim preservative order pending the hearing of the application challenging the jurisdiction of the Court.

- [11] In response to this, the Court stated that it would be a waste of time and resources to determine such a moot issue in the face of the big elephant in the room which is the issue of the Court's jurisdiction to hear the matter and the need to preserve the res pending the determination of the entire suit in view of the urgency affidavit. The Court stated that it was ready to hear the application for jurisdiction and the application for Interim preservative orders.
- [12] The Court inquired further from Counsel for the Respondents, Alexander Cooke KC, if he agreed that the issue before the Court was the determination of whether an order could be made pending the determination of the issue of jurisdiction raised by him. Mr. Cooke KC agreed with Counsel to the Claimants/Applicants and said the Court is mainly to determine whether a preservative order may be made while a challenge to jurisdiction is pending. He confirmed that he had agreed that the Counsel to the Applicants may file his response to the issue of jurisdiction later.
- [13] On the part of learned King's Counsel, Mr. Stephen Gee KC, he said he would go with whatever direction the Court gives.
- [14] Seeing the insistence on arguing the sub issue, the Court at this point directed Counsel, Edward Davis KC, to go ahead and address on whether there is a jurisdiction to grant such a preservative order. Counsel started by saying the Court may grant an interim order in all cases notwithstanding the jurisdiction challenge.

Applicants' Submissions

- [15] He stated that the Court has a broad discretionary power to do so. Counsel referred the Court to the CPR at Rule 9.7 which is what the Respondents relied on to challenge the jurisdiction of the Court. Counsel stated that there is nothing in Rule 9.7 of CPR that stops the Court from granting a preservative order.
- [16] Counsel stated, that the right to preserve the res is an inherent right of the Court to ensure that the res is not destroyed and that there is nothing in all the authorities cited by the Respondents to show that the Court could not.
- [17] Mr. Davies KC argued that this is a special situation of extreme urgency as the company has a requisitioned meeting fixed for Monday 8th of July, 2025 and if the Court does not make an order now, the whole subject matter which is to restrain the Respondents would be destroyed irreversibly.
- [18] It was submitted that having shown the Court's wide powers to grant interim injunction, it is the responsibility of the Respondents to show the Court why it should not grant the order and that the mere raising of an issue of jurisdiction should not immediately tie the hands of the Court from making an interim order.
- [19] Mr. Davies KC referred to the case of **St. Kitts Nevis Anguilla National bank vs. Caribbean 6/49 Ltd** Caribbean Court of appeal, Civil Appeal no. 6 of 2002. and stated that the case makes no

pronouncement that an order of injunction would not be granted by the court merely because there is a challenge to Court's jurisdiction.

- [20] Counsel also referred the Court to the case of **The Attorney General of St Lucia vs. Darrel Montrope SLUHCVP 2019/0021**. He stated that it is not in all cases that a motion to strike brought under Rule 9.7 prevents the court from giving an advantage to the claimant. He stated further that if these cases are read in that line, it will mean a defendant would only just need to bring any frivolous motion to strike to take a prejudicial advantage over the claimant.
- [21] Mr. Davies KC urged the Court to hold that it has jurisdiction to grant a preservative order notwithstanding the application to strike brought under Order 9 rule 7.
- [22] In furtherance of the application, Mr. Davies KC attempted to discuss the requirements for the grant of an interim injunction but the Court disallowed him as it was agreed that the issue at hand was whether the Court had any jurisdiction to grant any such order and it would be at the determination of such issue in his favor that the Court could consider the grant of otherwise of such an order.

Respondents' Submissions

- [23] At this point, learned senior Counsel Alexander Cooke KC, addressed the Court to oppose the application that the Judge has the jurisdiction to make an order pending the determination of the application to strike filed by the 2nd to 4th Respondents on the 13th day of June, 2025.
- [24] He stated that the legal effect of the jurisdictional issue raised is that the Court is not able to make any further order until the said issue is determined. He said the Counsel to the Claimants approached him and he agreed that the issue of jurisdiction he had raised in his application be delayed for the Claimants to address it at a later date. He however said, in view of this, this Court has no jurisdiction to make any order until it has ensured that it has requisite jurisdiction.
- [25] He said the issue of jurisdiction is a threshold issue and could not be put in abeyance while other issues relating to the case are being determined.
- [26] Counsel referred to the case of **Jessy James Khouly and Ors vs. Mount St. Johns Medical Centre Board ANUHCVP 2023/0034** at paragraph 18 where the Court reemphasized the effect of the motion to strike brought under Order 9 Rule 7 of the CPR. The case is a consideration of the pronouncement in **St. Kitts Nevis Anguilla National bank vs. Caribbean 6/49 Ltd** and **The Attorney General of St Lucia vs. Darrel Montrope** earlier cited and a confirmation that where there is an application to strike under Order 9 rule 7, it operates as a stay until the issues therein are determined.
- [27] Mr. Cooke KC relied on the case of **Asot Micheal vs. The Speaker of House of Representatives ANUHCVP 2023/0209**. In this case, there was an application to strike filed by the Defendant in the suit and a subsequent application to amend was made by the claimant. The Court in refusing to

recognize the application to amend relied on the case of **The Attorney General of St Lucia vs. Darrel Montrope (Supra)** held that the effect of an application to strike is that it operates as a stay until the issues are determined.

- [28] Mr. Cooke KC submitted that the Applicants knew that there was a meeting scheduled for Monday 8th of July, 2025 when he chose not to address the issue of the challenge to jurisdiction and requested for it to be deferred. He stated that all the cases cited by the Applicants were mere general authorities for the grant of an injunction and thus bears no special support for his application.
- [29] Mr. Cooke KC brought to the attention of the Court the provisions of the **English Civil Jurisdiction and Judgment Act 1982** at Section 24 which seeks to empower a court to grant an interim relief in the face of a challenge to court's jurisdiction. He reminded the Court that this law does not apply to the Caribbean jurisdiction and the extant position in the Caribbean is the position in **Asot Michael vs. The Speaker of house of Representative.**
- [30] He urged the Court to hold that it has no jurisdiction to make any order until the issue of jurisdiction is determined.
- [31] Mr. Stephen Gee KC, Counsel on behalf of the 5th Defendant also addressed the Court. He relied on the submissions of Mr. Cooke KC and aligned himself with the submissions. He stated that if there was any urgency at all, it was self-induced. He submitted that the Applicants knew about the meeting fixed for the 8th day of July, 2025 when he decided to request that the hearing of the application for jurisdiction under Order 9 be deferred.
- [32] He also urged the Court to follow the precedents in **St. Kitts Nevis Anguilla National Bank vs. Caribbean 6/49 Ltd, The Attorney General of St Lucia vs. Darrel Montrope** and **Asot Michael vs. The Speaker of the House of Representative** which are all authorities particularly interpreting the CPR Order 9 Rule 7.

Applicants' Reply

- [33] In reply to the submissions of the respondent Counsel, Mr. Davies KC stated that the fact of the case is unique as it relates to the urgency based on the meeting fixed for the 8th of July, 2025. He narrated the timing for each of the steps leading to this situation and stated that there was no delay on their part that led to this unfortunate urgency. He emphasized that if the Court does not make an order to preserve the subject matter herein, there will be nothing left to litigate as the Respondents would wrestle the company out of the current managers with the use of the shares they are alleged to have acquired wrongfully.

Further Intervention by the Court

- [34] At this point, the Court made a proposal to the Parties to hear the main issue of the jurisdiction and the substantive application for injunction the next date to accommodate all the Parties but the Counsel to the 2nd to the 4th Respondents argued that this will be prejudicial to his client as they were not prepared to argue the application for injunction in view of the request of the Applicants to have it delayed. He said it is in view of the request that they did not file their submission to be relied on for that application and it will be an injustice to force the Respondents to argue the application without adequate notice.
- [35] The Court further suggested the possibility of making an order to defer the meeting fixed for the 8th day of July, 2025 but this also was met with an argument that majority of the shareholders and particularly the shareholder that requisitioned for the meeting are not a part of this case and such an order will unfairly prejudice the interest of other shareholders not Parties in this case.

Analysis and Consideration

- [36] Now it is clear that the issue to be determined by this Court at this stage is whether there is a jurisdiction to make an interim order in the face of a pending challenge to the jurisdiction of the Court.
- [37] I have considered the authorities and submission of Counsel submitted before the Court in relation to the case. It is clear that the subject matter of the application at this stage is whether this Court can make an order to preserve the subject matter pending the determination of the challenge to its jurisdiction in the applications dated 13th of June, 2025 by the two various sets of Respondents.
- [38] It is trite, that the determination of jurisdiction of the Court is a threshold matter upon which all other powers of the Court are derived. In the instant case, the jurisdiction of the Court was challenged by virtue of Order 9 rule 7.
- [39] Without doubt, the provisions of Order 9 rule 7 has been tested in several authorities already cited in this case. I took time to read order 9 rule 7, I also took time to read all the cases cited in respect of this application.
- [40] I have considered the fundamental powers of the Court in granting an interim injunction in the preservation of the res. I considered that a court can make preservative orders in relevant cases but this must be done with extreme caution with the consideration of each peculiar case.
- [41] The power of court to make preservative orders is not only intrinsic, it is also inherent to maintain status quo and prevent injustice in relevant cases. The purpose of such order is usual to prevent irreversible harm or dissipation of assets, to avoid rendering nugatory the eventual court decision or preserve the subject matter to be litigated.

- [42] Cases like The Siskina (Owners of cargo lately laden on board) vs. Distos Cia Naviera SA (1979) AC 210 and Mercedes Benz AG vs. Leiduck (1996) AC 284 had over a long period created shackles that prevented courts from granting injunctions relative to jurisdiction on the substantive subject matter.
- [43] It is interesting to note however that more recent cases like the Convoy Collateral Ltd. vs. Broad Idea a case emanating from the British virgin island and decided by the Privy Council in 2021 seem to have broaden the scope and moved on from The Siskina principle. The new position seems to be that in some instances, where clearly a court has no direct jurisdiction to try a substantive matter, the Court may still have a duty to exercise some powers to preserve the res.
- [44] I should state that I know that those cases are with respect to territorial jurisdictions, however the principle guiding a grant of preservative orders should not be considered on a narrow perspective. In the instant case, the Court is yet to determine if it has jurisdiction or not, that issue was agreed by the Parties here to be put in abeyance.
- [45] I have also given a thought to the English statute referred to this Court by the learned senior Counsel Alexander Cooke KC, I am in agreement with him that the said **Civil Jurisdiction and Judgment Act 1982** is not applicable in Antigua and Barbuda not being part of the received laws and not yet adopted by the Parliament in Antigua as applicable. It however gives an insight as to the development of that issue in other jurisdictions and the jurisprudence of it all.
- [46] In the text Spry's Equitable Remedies at page 57. The learned author stated as follows:-

“The powers of courts with equitable jurisdiction to grant injunctions are, subject to any relevant statutory restrictions, unlimited.

Injunctions are granted only when to do so accords with equitable principles, but this restriction involves, not a defect of powers, but an adoption of doctrines and practices that change from time to time. Unfortunately, there have sometimes been made observations of judges that tend to confuse questions of jurisdictions or of powers with questions of discretions or of practice. The preferable analysis involves a recognition of the great width of equitable powers, an historical appraisal of the categories of injunctions that have been established and an acceptance that pursuant to general equitable principles injunctions may issue in new categories when this course appears appropriate” (My Emphasis)

- [47] I am extremely concerned, with the facts of this case having become familiar based of the documents filed and submissions made by each of the Counsel. It is my understanding, at least on the face of it until I am properly addressed, that there might be an irreversible situation is certain situations if a court does not make an order to preserve the res.

- [48] I have read again and again the cases of St. Kitts Nevis Anguilla National bank vs. Caribbean 6/49 Ltd, The Attorney General of St Lucia vs. Darrel Montrope and Asot Michael vs. The Speaker of the House of Representative while I see some similarities; I also see some distinguishing factors.
- [49] In each of the cases, there was an attempt to change the face of the case by a subsequent application in the face of a pending application to strike. In this case, there is no such attempt; rather at this stage the request of the Applicants is to hold the reins until when the Court is to determine its jurisdiction. The issue of jurisdiction herein unlike in The Siskin case cited above is yet to be determined. The position of the Applicants is also not to move the goal post in the course of the game (but hold it firm) unlike what was attempted in Asot Michael and other cases.
- [50] Let me make bold to mention, that in my view, it was a total case of procedural indiscretion for the Applicants' Counsel to propose, agree or even concede to defer the hearing of the application for jurisdiction, however, I am not convinced that such a procedural indiscretion should be visited with such possible irreversible situation that may lead to a complete destruction of the res.
- [51] I am quick to point out that this Court is not sure of the outcome of any subsequent application to be made in this case, but it would be totally inequitable to refuse to consider making a preservative order at this stage.
- [52] I have listed above the reasons why a court would ordinarily grant a preservative order. I am convinced beyond peradventure that such an order may be considered in this case if all requirements of such are met.
- [53] It is in view of this that I hold that this Court in this instance has the jurisdiction to consider making a preservative order to hold the reins until the hearing of the application on jurisdiction.
- [54] It was mentioned in this Court that a refusal to hold the reins would snowball into an irreversible act that will in itself put paid to the subject matter of this case without it being resolved.
- [55] It will be proper to consider if there is before this Court a fundamental reason why the order of interim injunction may not be granted.
- [56] It is in view of the above that I shall proceed to listen to the Applicants' Counsel on why the Court should make this interim order. I hold that this Court has the jurisdiction so to do.



Tunde A. Bakre
High Court Judge

By the Court

Registrar