

**EASTERN CARIBBEAN SUPREME COURT  
TERRITORY OF THE VIRGIN ISLANDS**

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

**Claim No. BVIHCV 2011/222**

**BETWEEN**

**LIAO HWANG HSIANG  
CLAIMANT/FIRST DEFENDANT TO COUNTERCLAIM  
FIRST RESPONDENT**

**AND**

**LIAO CHEN TOH  
DEFENDANT/COUNTERCLAIMANT  
APPLICANT**

**AND**

**LIAO WEN TOH  
SECOND DEFENDANT TO COUNTERCLAIM  
SECOND RESPONDENT**

**Appearances:** Elspeth Talbot Rice KC, Eleanor Morgan and William Barnes for the Applicant  
Paul Dennis KC, Nadine Whyte Laing, Paul Edwards for the Respondents

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**2024: July 18<sup>th</sup>**  
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**DECISION**

[1] **YOUNG J:** This decision concerns the removal and replacement of the administrator of an estate. Liao Yo-Chang (Senior Liao) died intestate and domiciled in Taiwan on 12<sup>th</sup> June, 2010. He left substantial assets worldwide including the British Virgin Islands (the BVI). The administrator of the BVI estate is the First Respondent (Madam Liao). She is Senior Liao's widow and the mother of the Applicant and the Second Respondent. Senior Liao is their father and they, with Madam Liao, are his only heirs.

- [2] After a contested hearing, Madam Liao's full appointment was made by court order dated the 2<sup>nd</sup> July, 2013 of Ellis J as she then was (the Ellis order). It was made conditional upon Madam Liao's waiver of her spousal entitlement under Taiwan law.
- [3] The Applicant states that he has lost trust and confidence in Madam Liao's ability to administer the estate. He numbers four breaches which he says ought to be sufficient for her removal.
- [4] She has failed to render any account of her administration for eight years since her appointment; she has distributed the BVI estate without complying with the applicable law of succession, being Taiwan; she has placed herself in a position of irremediable conflict in relation to the collection of a debt that she must collect as administrator while being a director of the company owing the debt and most importantly she has triggered the automatic replacement provision of the Ellis order by not expressly waiving her spousal entitlement claim to all assets of the BVI estate and/or disavowing or withdrawing her waiver.
- [5] In her defence, the First Respondent denies each allegation of breach as being either unfounded, untrue or in relation to the debt - still under dispute. She asks that the application be dismissed with costs.

**A brief history of the matter:**

- [6] The dispute over this estate has dragged on for years both in the BVI Court and the Taiwanese Courts. Here in the BVI Madam Liao was appointed administrator ad colligenda bona defuncti in 2011 and was by the Ellis order subsequently allowed a grant of letters of administration.
- [7] The relevant section of the Ellis order states:
- “i. The applicant for Letters of Administration is hereby granted to the Claimant/First Defendant to the Counterclaim Liao Hwang Hsiang conditional upon her express waiver of her spousal entitlement under Taiwan law as it relates to the Deceased's British Virgin Islands Estate and subject to her furnishing the necessary administration bond and oath.

- ii. In the event that such waiver is disavowed, withdrawn or otherwise deemed to have no legal effect, then the Court will upon notice immediately order the appointment of an independent administrator domiciled with(in) the BVI.”

- [8] On 29<sup>th</sup> January, 2014 Madam Liao distributed the shares in 3 of the BVI companies as Nation Success Corp ((Nation Success) the company of interest in these proceedings) was not then included as a BVI company. The Applicant on 7<sup>th</sup> February, 2014 applied for an order directing Madam Liao to refrain from distribution of the BVI estate until a method had been determined by the Taiwan court.
- [9] By 18<sup>th</sup> February, 2014 he again approached the court seeking an injunction restraining the Respondents from dealing with the 3 BVI companies. That injunction application was dismissed but Madam Liao was directed to take no further steps to distribute the estate until a method of distribution had been decided in the Taiwan proceedings.
- [10] The Applicant appealed and the direction was set aside by the Court of Appeal in the interest of justice. Both the injunction application and the application for directions were ordered to be reheard before a different judge. They have never been reheard.
- [11] The matter has now returned more than nine years after those transfers had been made.

### **The Issues:**

- 1. Preliminary Issues:
  - A. Procedural matter - Whether the matter should have commenced by a Fixed Date Claim Form
  - B. Submissions or Notes filed after Reply
- 2. Should the Administrator be removed and replaced:
  - A. Removal pursuant to the Ellis order:
    - a. Is there an automatic removal mechanism in the Ellis order and has it been triggered
  - B. Other Reasons for Removal:
    - a. Was the First Respondent's transfer of the BVI shares unlawful

- b. Is the First Respondent's distribution of the BVI estate unlawful
- c. Has the First Respondent placed herself in a place of irremediable conflict
- d. Consequence of the First Respondent's failure to Render Accounts for 8 years
- e. Has the relationship between the Applicant/beneficiary and the Administrator broken down irretrievably.

### **Preliminary Issues**

#### **Procedural matter - Whether the matter should have commenced by a Fixed Date Claim Form:**

- [12] Very early this Court raised with the parties that the procedure being followed of bringing an application for the removal of an administrator (not only on the court order but also on general grounds) may not be correct. Neither party made any applications or objections. The Claimant filed a claim form which forms no part of these proceedings.
- [13] The court again raised the matter at the conclusion of the hearing and both parties addressed the court. Having had no applications from the parties, this court will not act of its own volition but, in furtherance of the overriding objective, will proceed to determine the matter as it has been presented.

#### **Submissions or Notes filed after Reply:**

- [14] King's Counsel for the Respondent filed what was styled 'Note to correct errors in the Applicant's Reply Submission.' He sought no leave of the Court to do this. Subsequently, but before the Court had had sight of this Note, King's Counsel on the other side sought the Court's guidance on whether they could respond. The Court granted leave and indicated to both sides that the matter would be dealt with in its judgment.
- [15] Suffice it to say that the contents of both documents have been disregarded. Now on to the issues.

#### **Should the Administrator be removed and replaced:**

##### **A. Removal pursuant to the Ellis order:**

**Is there an automatic removal mechanism in the Ellis order and has it been triggered:**

- [16] Paragraph 2 of the Ellis order states that if the waiver is disavowed, withdrawn or otherwise deemed to have no legal effect then the Court upon notice would order the appointment of an independent administrator domiciled in the BVI.
- [17] The Applicant's position is that while Madam Liao excluded the shares in three other BVI companies she failed to exclude shares in Nation Success from her spousal entitlement until 16<sup>th</sup> October, 2014 during an oral hearing. They wholly reject her excuse of ignorance that it was a BVI company as she was a 50% shareholder in that company, had exhibited the share register prior and ought certainly to have known. This, they submit, ought to be sufficient to warrant her removal for failure to comply with the condition of appointment.
- [18] The Applicant adds that while that breach may have been cured, Madam Liao has to this day persisted with the inclusion of a debt owed by Nation Success in her spousal entitlement claim. He refers to this debt as the BVI debt. Consequently, she has failed to waive her spousal entitlement triggering the automatic removal and replacement mechanism embedded in the order.
- [19] Madam Liao does not deny that she did not exclude the Nation Success shares until the 16<sup>th</sup> October, 2014 or that she has included the Nation Success debt in her spousal entitlement claim in Taiwan. She insists that the existence of the debt is in dispute. On the advice of her Taiwanese lawyers she included it in her spousal entitlement claim but if this Court were to deem it to be a BVI asset, she would remove it. She urged the Court to accept that a disavowal or withdrawal is not an innocent or unintended act or failure to act but rather, is deliberate and entails actual knowledge.

**The Court's Consideration:**

**The Order:**

- [20] The Order is clear. The appointment as administrator could only be made where Madam Liao had expressly waived her right to the spousal entitlement. Had she not done so to the satisfaction of the Court, then she would not have been appointed. The condition was in relation to her appointment only. The removal mechanism is to be found solely in paragraph 2. Where the Court is notified of her disavowal or withdrawal of that waiver or it has been avoided, then her removal would be considered.

[21] There is no issue raised of avoidance of the waiver in these proceedings. However, her disavowal or withdrawal of that waiver could be gleaned from her conduct after having been appointed.

**Has the waiver been disavowed or withdrawn:**

[22] Two things are obvious to this Court. Madam Liao did not need to know the quantum of the debt to include it as part of her spousal entitlement any more than she needed to know the quantum to exclude it.

[23] It is also quite obvious that neither Madam Liao nor the Applicant were ever certain whether the Nation Success debt formed part of the BVI assets or not. Madam Liao characterised it as a “Domestic Inheritance of Decedent” in her spousal entitlement claim and the Applicant did not object to this characterisation. He loudly and rightly objected to Nation Success shares being similarly characterised, but he did not do this for the debt.

[24] It is more than interesting to this Court that the Applicant has battled the very existence of the debt in litigation in Taiwan. But he has suddenly realised, after so many years, that the debt exists, it is a BVI debt and the breach mechanism embedded in the Ellis order may have been triggered.

[25] His argument basically is that BVI law is the governing law of the Nation Success debt by virtue of section 245 of the Business Companies Act which provides:

“For purposes of determining matters relating to title and jurisdiction but not for purposes of taxation, the situs of the ownership of shares, debt obligations or other securities of a company is in the Virgin Islands.”

[26] He submits that the situs of the debt is the BVI. Yet, over these many years the Applicant has been unable to demonstrate even one instance when he challenged the debt in Taiwan on the basis that it was not a part of the Taiwan Estate. I agree with King’s Counsel for the First Respondent that this “creates a strong inference that none of the parties considered the NSC Debt to be an overseas asset.”

[27] Even the experts who came to assist this Court in determining certain issues were at odds. Dr. Lui the expert engaged by the Respondent opined that the applicable law is determined by the intention

of the parties. Where there is no expressed intention, then the law which is most closely connected with the juridical act would apply. He felt it was necessary to scrutinize the contractual documents. Those were not before the Court. The expert had not seen them either.

[28] But having scrutinized the various decisions coming out of the Taiwanese Courts and having considered the residence of all global parties and the focus of Senior Liao's business strategies, Dr. Lui concluded that Taiwanese law, rather than BVI law, should apply. He felt the connection to Taiwan was more substantial and Nation Success was somehow not a real party, it had just been used as a vehicle or a shell to circumvent Chinese law.

[29] Dr. Hong, on the other hand, felt that he had not been provided with sufficient evidence to be able to render a proper informed opinion.

[30] This Court faced the same difficulty as Dr. Hong. The allegations of a shell company or a vehicle is but that, an allegation. There has been no finding in any Court as far as this Court is aware which has made any such determination. The Court has not seen the governing documents but it has accepted on the basis of Article 20(2) of the Taiwanese Act Governing the Choice of Law in Civil Matters Involving Foreign Elements that in Taiwan the governing law is the law of the domicile of the party who has the characteristic obligation resulting from a juridical act.

[31] The obligation is on Nation Success to repay the loan. Therefore, the place most closely connected with that juridical act, is the BVI not Taiwan. This supports this Court's finding that the debt is a BVI asset in accordance with section 245 of the Business Companies Act.

[32] It is disturbing to this Court that Madam Liao who was under order of this Court to conduct herself in a particular manner, did not think this a perfect question to raise with the Court in an administration claim, rather than to take the advice of Taiwanese lawyers or any lawyers for that matter.

- [33] But it was also open to the Applicant to bring a similar claim to determine this question prior to attempting to remove the administrator. Again, the Court is compelled to consider the number of years which have passed since either party was aware that the debt had been included in the spousal entitlement claim.
- [34] While this Court finds that the debt is a BVI debt there is great reluctance to remove the administrator for this reason. Indeed, there was more that she could have done but her pattern of behavior must have value. She has relinquished claim to most BVI assets, save one, as part of her spousal entitlement. She has offered to relinquish claim to this debt if it is found to be a BVI asset and that too has value.
- [35] King's Counsel for the Applicant says there is a fallacy in the argument that a disavowal or withdrawal has to be deliberate and intentional. For the order to work as intended any disavowal or withdrawal would suffice since the order sought a full waiver. While this seems attractive at first blush, it cannot be accurate. A disavowal is a denial of a responsibility, a withdrawal is the action of withdrawing. They are both conscious deliberate acts and nothing less.
- [36] Where the fallacy may lie is in the Applicant's assumption that notice of an act is all that was needed. There must still be judicial scrutiny to determine that the act, of which it has been given notice, amounts to a disavowal or a withdrawal and this Court cannot find that Madam Liao's inclusion of the debt amounts to this in all the circumstances.
- [37] The Respondent will not be removed for having disavowed or withdrawn her waiver once she relinquishes claim to the Nation Success debt as part of her spousal entitlement. This decision will impact costs as this is not considered a complete success on this particular issue.

#### **Other Reasons for Removal:**

##### **The Law:**

- [38] The welfare of the beneficiaries is paramount as it is for their benefit that the trust was created. The court's duty is to see that the estate is being properly administered and to intervene to protect the trust even if that requires removal of the trustee. But the removal of the trustee is not a simple matter.



[39] This Court is grateful for King's Counsel for the Applicant's helpful distillation of the principles which ought to guide a court when considering the removal of a trustee, as contained in **Letterstedt v Broers**<sup>1</sup>:

- a. In cases of positive misconduct the court has no difficulty in removing a trustee who has abused his trust where the acts or omissions endanger the trust property or show a want of honesty or a want of proper capacity to execute the duties or a want of reasonable fidelity.
- b. Even if charges of misconduct are not made out or are greatly exaggerated, if the court is satisfied that the continuance of the trustee would prevent the trusts being properly executed, the trustee might be removed: trustees exist for the benefit of those to whom the creator of the trust has given the trust estate (the beneficiaries).
- c. If it appears clear that the continuation of the trustee would be detrimental to the execution of the trusts, even if for no other reason than that human infirmity would prevent those beneficially interested or those who act for them from working in harmony with the trustees, the trustee is always advised by his own counsel to resign and does so; if he refuses, the court might think it proper to remove him.
- d. The main guide is the welfare of the beneficiaries.
- e. Friction or hostility between trustee and beneficiary which is grounded on the mode in which the trust has been administered is certainly not to be disregarded.

[40] King's Counsel for the Respondent also summarized what he described as the modern position gleaned from **Harris v Earwicker**<sup>2</sup> and I shall reproduce this as it is quite instructive and I need not reinvent the wheel:

- a. It is unnecessary for the court to find wrongdoing or fault on the part of the personal representatives. The guiding principle is whether the administration of the estate is being carried out properly. Put another way, when looking at the welfare of the

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<sup>1</sup> (1884) 9 App Cas 371

<sup>2</sup> [2015] EWHC 1915

beneficiaries, is it in their best interests to replace one or more of the personal representatives?

- b. If there is wrongdoing or fault and it is material such as to endanger the estate the court is very likely to exercise its powers under section 50. If, however, there may be some proper criticism of the personal representatives, but it is minor and will not affect the administration of the estate or its assets, it may well not be necessary to exercise the power.
- c. The wishes of the testator, as reflected in the will, concerning the identity of the personal representatives is a factor to take into account.
- d. The wishes of the beneficiaries may also be relevant. However, the beneficiaries, or some of them, have no right to demand replacement and the court has to make a balanced judgment taking a broad view about what is in the interests of the beneficiaries as a whole. This is particularly important where, as here, there are competing points of view.
- e. The court needs to consider whether, in the absence of significant wrongdoing or fault, it has become impossible or difficult for the personal representatives to complete the administration of the estate or administer the will trusts. The court must review what has been done to administer the estate and what remains to be done.
- f. A breakdown of the relationship between some or all of the beneficiaries and the personal representatives will not without more justify their replacement. If, however, the breakdown of relations makes the task of the personal representatives difficult or impossible, replacement may be the only option.

- g. The additional cost of replacing some or all of the personal representatives, particularly where it is proposed to appoint professional persons, is a material consideration. The size of estate and the scope and cost of the work which will be needed will have to be considered.”

**A. Was the Respondent’s transfer of the BVI shares unlawful:**

[41] The Applicant’s case is that Madam Liao distributed the BVI estate in breach of Taiwanese law of succession - the applicable law. And dealing with the assets of an estate in a manner contrary to the law of succession is a plain ground for removal.

[42] King’s Counsel for the Applicant submitted that Madam Liao, as the BVI administrator, failed to approach the distribution in one of three possible ways:

1. Preserve the assets until the Taiwanese court made a final determination on partition and distribution of the assets and then be guided thereby;
2. Transfer the assets to the heirs to hold as joint tenants until the Taiwanese court made a final determination on partition and distribution of the assets and then be guided thereby; or
3. Seek the direction of the BVI court as to how to proceed.

[43] Madam Liao on the other hand insists that she has breached no law. As the administrator of the BVI estate, the order and grant of letters of administration authorized her to both administer and distribute the estate. She had a duty to do both and she has done nothing more. She distributed the estate in accordance with the succession law of Taiwan and a failure to distribute would have amounted to a breach of her duty in the BVI. In any event, distribution before a final Taiwanese court judgment on partition and distribution of the deceased’s worldwide assets is allowed.

**The Court’s Consideration**

[44] There could really be no dispute that once a grant is issued, in the BVI, the personal representative may administer and distribute the estate according to the will or the law of succession. Both parties seem to be ad idem on this point. Both parties also recognised the fundamental difference between

administration (the paying off of estate debts, duties and expenses) and distribution (appropriately dividing what is left among the beneficiaries). This Court need spend no additional time here.

[45] It would appear to me, however, that the full thrust of the Applicant's case was that although Madam Liao, as the BVI administrator, has the right to distribute the BVI estate, she was to have done so in accordance with the law of succession of Taiwan where the deceased died domiciled.

[46] King's Counsel for the Applicant relied on both Dicey and Williams Sunnucks and Mortimer for her proposition that the applicable law in the circumstances was that of the *lex domicilii* (*domicile*). Again, there could be no issue with this, as that is the accurate legal position.

[47] The Respondent took no issue and accepted that the administration in the BVI is ancillary to that of Taiwan where the lead estate exists and Madam Liao's job as BVI Administrator was to collect in all the BVI assets, pay any debts, distribute them in accordance with the law of succession of Taiwan or seek the direction of the BVI court.

[48] The real issue is what is the law of succession in Taiwan in relation to distribution. Here the parties presented expert opinions which parted ways at a most crucial point. Both experts accepted that under Taiwanese law the worldwide assets (of which the BVI assets form a part) are owned in common by the heirs.

[49] This ownership can only be terminated by agreement of the heirs or by order of the court sought through a claim for partition and distribution of the worldwide estate. Madam Liao has filed such a claim in Taiwan. The BVI estate is included and must be included in that claim or it would fail. There has not yet been a final order made as a retrial is pending.

[50] Dr. Hong opined that the worldwide assets cannot lawfully be distributed without the consent of the heirs or a final order of the Taiwan Court on the partition and distribution of those assets. He provided a number of cases which stated and confirmed this "capsule" principle in relation to domestic assets. In essence, before the estate is divided, each heir is a co-owner of all the property as a whole. The capsule remains sealed until an order of the Taiwan court or agreement of the heirs.

- [51] Those cases however, made no distinction between assets in Taiwan or in foreign jurisdictions and most dealt with assets in Taiwan only. There was one which included foreign assets but had been dismissed, not because the foreign assets had been unlawfully distributed or distributed at all but because certain assets had not been included in the claim. I did not find this case of any particular assistance in determining the issue.
- [52] What was made clear on considering these cases, however, was that the Taiwan court had a wide discretion in determining how to divide the assets and it was not bound by a party's petition. It would seem to me that perhaps such a discretion would be wide enough to include accepting the distribution already made by a lawfully appointed administrator in a foreign jurisdiction.
- [53] Dr. Lui informed that while he agreed with Dr. Hong's statement of the law in relation to assets located within Taiwan, he was unable to find any specific law which prohibited the distribution of worldwide assets before the final order or before the unanimous consent of the heirs. Nor could he find any decisions where the Taiwan courts have declared any such distributions, conducted in accordance with the foreign law and procedures, to be unlawful.
- [54] To my mind, the mere fact that all of the deceased's assets are to be included in the partition claim or it is rejected, is a clear indication that the Taiwan courts accept full authority over all of the assets. The judgments presented by Dr. Lui also speak to the foreign assets even though they would already have been distributed.
- [55] Those cases all related to matters where there was court involvement in the distribution of the assets in the foreign jurisdiction. There were none where an administrator simply proceeded to distribute the estate independently. But what these cases showed was that the Taiwan Courts have accepted the distribution of foreign assets and even while doing so have been able to make partition and distribution orders in relation to those assets. So Dr. Hong's opinion that it does not work cannot be correct. It has worked in those cases.

- [56] What is uncertain, however, is whether the law in the United States requires that these matters be distributed in accordance with an order of the court. Because that is not the law in the BVI. Even Williams Mortimer and Sunnucks at paragraph 45-10, on which the Applicant relies, states that the administrator if he elects to distribute the residue of movables after administration, would be “well advised to obtain the direction of the English courts, which is often the only proper course.”
- [57] Certainly, the authors are not saying it is the only course. But, they are definitely accepting that the English law, as with the BVI law, does not require court intervention for the distribution of the estate.
- [58] So making an assumption that the Taiwan Courts accepted the foreign distribution only because it was done pursuant to a court order seems to be a quantum leap and nothing less. A statement to this effect could not be found in any of the decisions and no specific law was cited or presented. This Court remained uncertain of the Taiwan law even after two experts had expounded.
- [59] Moreover, it seemed to this Court that rather than bring the fight to the BVI it would have been wiser to contain it in Taiwan and have the Taiwan court rule on whether the distribution was legal or not in accordance with their laws. That court would be well aware of and more than capable of applying its own laws. While King’s Counsel for the Applicant made every effort to blush over the fact that the issue could really have been raised in the partition claim in Taiwan and describing this as neither here nor there, I do not accept this to be so.
- [60] It worries this Court greatly that rather than make an issue in Taiwan in ongoing proceedings and await a determination there, the Applicant seeks now to make an issue here. In essence, foisting upon this Court a matter which it is obvious could be properly determined in Taiwan with the same effect in the BVI after determination there.
- [61] From what has been presented to this Court I do not feel able to make the determination required beyond the declaration that any distribution of assets in the BVI is to be made in accordance with the law of succession of Taiwan where Senior Liao died domiciled.

[62] This Court's uncertainty increases particularly where even the binding effect of precedent in Taiwan seems to be a point of contention between the experts. How is this Court then being asked to look at cases which may or may not have a binding effect on the Taiwan Court to discern how that Court would view the distribution already made in the BVI. If the distribution is found to be illegal in Taiwan then this could then be a ground on which removal could be sought.

[63] The application on this ground seems premature at best and must fail.

**Has the first Respondent placed herself in a place of irremediable conflict**

[64] The Applicant asserts that Madam Liao is now a director of Nation Success. Nation Success owes a debt to the estate. Thus, she is now both the creditor (administrator of the estate) and controls the debtor (director of the company).

[65] There is dispute as to the exact quantum of the debt but not the existence of the debt. The sum is placed between US\$5 million and US\$15 million and the debt has not been collected over the 12 years Madam Liao has been the Administrator. The Applicant maintains that the failure to do this must rest at Madam Liao's feet as should the damage caused to the value of the estate where this sum could have been invested. He concluded that unless Madam Liao is removed this conflict cannot be resolved.

[66] Madam Liao counters that because there has been ongoing litigation in Taiwan about the existence and quantum of the debt there would have been serious cost implications for the estate in attempting to pursue this debt against Nation Success before a final determination in Taiwan. The issue has now been sent back to the Taipei High Court for retrial so that the very existence of the debt remains an issue yet to be resolved.

[67] As a director her duty is not to minimize or extinguish the company's liability as alleged but to conduct the company's business which includes paying legitimate debts. Nation Success has never denied the existence of the debt and does not dispute the quantum.

### **The Court's Consideration:**

- [68] The conflict alleged is difficult to comprehend. Madam Liao may be the creditor as the administrator of the estate and she is bound as a fiduciary to administer the estate for the benefit of the beneficiaries. She is not the debtor or a party against whom a claim could be brought for that debt. She may have some control of the debtor as a director but this is not an unknown position for an administrator or a trustee for that matter.
- [69] Further, this court is unable to find that Madam Liao failed to collect in this debt because of some conflict of interest. She failed to collect it because it was never before determined or considered to be a BVI asset. It was not disclosed in the BVI proceedings as such and it was referred to in the Taiwan proceedings as a domestic asset. She failed to collect it because it was not considered part of her duty as the BVI administrator to do so.
- [70] The fact remains that these parties have been in litigation during this time about this debt in one form or the other. The question again arises as to why this Applicant, himself, did not move sooner to have the administrator pursue the debt or to have her removed because of this conflict once she became director. He has always been as aware as the administrator of its existence and as a beneficiary he has the right to do so.
- [71] Madam Liao also drew the Court's attention to **BTI 2014 LLC (Appellant) v Sequana SA**<sup>3</sup> per Lord Reed at paragraph 47 and reminded that "the directors also have to be mindful of creditors if they are going to act in the company's interests, since the payment of its debts as they fall due forms part of the conduct of its business. The company will suffer a loss of reputation and creditworthiness, and ultimately will be unable to continue its business, if its debts are not paid."
- [72] This court finds this ground to be without merit and it too must fail.

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<sup>3</sup> [2022] UKSC 25



**Failure to Render any account until 2022:**

- [73] An administrator is required to render an account when required by law to do so, this is usually within one year of the grant. The failure to render an account for 8 years may be considered a breach in certain circumstances. But it had been remedied since 2022 and no issue was raised then that she ought to have been removed. The estate then had three assets, this was increased to four and now five. Four of the assets have already been distributed. I do not consider this remedied breach sufficient on its own to remove the administrator at this time.

**Has the relationship between the Applicant/beneficiary and the Administrator broken down irretrievably**

- [74] The Applicant has failed to find complete success on any of his grounds. He alleges that there is a relationship of suspicion and distrust arising out of the manner in which Madam Liao has administered the estate. And this has impacted and will continue to impact the administration of the BVI estate.
- [75] An administrator is expected to exercise a “high degree of care, diligence..” **Wheatley v Blyden**<sup>4</sup>. The history of this matter shows that Madam Liao has for the most part conducted herself as she ought. There may have been steps she could have taken which could have avoided making errors such as an administration claim to determine whether or not the Nation Success debt was a BVI or a Taiwanese debt. She could certainly have accounted prior to the expiration of eight years. But being faithful to duty does not mean that an administrator may not make a mistake at all.
- [76] In **Eileen Papone v Laurie Anthony and another**<sup>5</sup> Justice Hariprashad (as she then was) informed that it was unlikely that the removal of a personal representative would be ordered except for a clear and compelling reason. While she accepted friction and a breakdown of the relationship between the personal representative and the beneficiaries to be a possible ground for removal she concluded that the friction should have a detrimental effect on the administration itself.

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<sup>4</sup> Claim No. BVIHCV2012/0302

<sup>5</sup> Claim No. BVIHCV2010/0113

[77] **Estelle Wheatley v Darwin Blyden** (*ibid*) assured that there must be clear and persuasive evidence and speculation was insufficient. The cost of the substitution, though not determinative in any way, was also a factor to be considered.

[78] This Court has also looked at the Applicant's own history and how he engages the Court earnestly though not always promptly when he perceives there may be an issue. He has not often met with success. This does not demonstrate a mistrust but rather an intent to ensure that the Administration remains in order. This Court has no concerns serious or otherwise that the administration could not be completed without replacing the administrator.

[79] Moreover, the estate in the BVI has for the most part been administered save for the calling in of the debt from Nation Success. This Court can see no good reason why Madam Liao ought to be removed and why there should be the incurring of some additional expense for the appointment of an independent professional administrator at this time.

[80] This Court echoes the sentiments expressed by Justice Olivetti in her judgment on the *ad colligenda bona* application those many years ago. I take the liberty to paraphrase liberally that one ought to be careful as each court battle has a cost.

**Disposition:**

[81] The Respondent will not be removed for having disavowed or withdrawn her waiver once she relinquishes claim to the Nation Success debt as part of her spousal entitlement in Taiwan.

[82] The application is otherwise dismissed with 70% costs to the Respondents to be assessed by the Master if not agreed within 60 days.

**Sonya Young  
High Court Judge**

**By the Court**

**Registrar**