

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv2014/0577

BETWEEN:

LUX LOCATIONS LIMITED

Claimant/Applicant

and

YIDA ZHANG

Defendant/Respondent

Appearances:

Mr. Andrew O’Kola Esq., instructed by Mr. Thomas Roe, K.C. for the
Claimant/Applicant

Dr. David Dorsett for the Defendant/Respondent

2023: March 28; April 17
November 7

DECISION

- [1] **GEORGE, J (AG).**: On 29th July, 2022, the Claimant/Applicant filed an application for a worldwide freezing order against the Defendant, to prohibit him from dissipating certain assets owned or controlled by him until satisfaction of a judgment debt. The application was ventilated on 17th April, 2023 and judgment was reserved. This is the decision of the Court.

Background

- [2] The parties entered into an agency agreement dated 20th August, 2013, wherein the Claimant acted as estate agent of the Defendant to assist in buying property in Antigua and Barbuda. It was agreed that Mr. Yida would pay the Claimant a commission of 9% of the purchase price, out of which the Claimant would pay any

other commissions pre-agreed. The property was purchased in 2014 for US\$60,000,000.00 by the Defendant's company, Yida International Investment Antigua Ltd. ("Yida International"). The Defendant did not pay the commission as agreed. He instead offered the Claimant a new agreement whereby the commission would be replaced with a grant of exclusive right to the Claimant to act as the Defendant's estate agent for the sale of any land. This offer and another similar offer were rejected, and the Claimant made a formal demand for the payment of the 9% commission. The Defendant failed to pay as demanded.

- [3] Consequently, the Claimant sued for the 9% commission amounting to US\$5,400,000.00 per the agency agreement. The Defendant raised a defence of, *inter alia*, fraudulent misrepresentation. On the day of trial, the parties settled the matter, and a consent order was entered in favour of the Claimant for a compromised sum of US\$3,000,000.00 plus interest and legal costs, to be paid within 21 days.
- [4] When the Defendant did not pay, the Claimant moved to enforce the judgment. The Claimant obtained a provisional charging order against the Defendant over his shares held in Yida International. Eventually, the Defendant paid US\$705,496.39 to the Claimant towards the judgment debt, the only payment made to date. A final charging order was obtained, unless payment of the balance was made within 14 days.
- [5] In 2017, the Defendant commenced a claim against the Claimant and other defendants for damages for conspiracy in the sum of US\$6,350,555.98. The Claimant applied to strike out those proceedings and continued its enforcement proceedings in the initial claim. On 14th December, 2017, when the Claimant's enforcement proceedings came up for hearing, neither the Defendant nor his legal practitioner was present in Court. An order was made in favour of the Claimant for a valuation of the property and shares, sale of the shares and payment of the judgment debt from the proceeds of sale.
- [6] Despite the Order of the Court, the Defendant failed to comply, and the Claimant again had to resort to the Court for further relief to enable the sale of the shares. The Defendant in response applied for a stay on the basis that he had instructed his Attorneys to apply for a striking out of the consent order and if he were to be successful, then there would be little chance of recovering any sums paid. The application for stay was dismissed by Wilkinson, J. on 19th April, 2018.
- [7] On 28th June, 2018, the Claimant successfully applied to strike out the claim brought by the Defendant in 2017 (Claim ANUHCv 2017/0402).

- [8] Subsequently, in 2018, the Defendant commenced another action to set aside the consent order and for repayment of the monies paid pursuant thereto Claim Number ANUHCv2018/0534. The Consent Order was set aside in the instant claim (ANUHCv2014/0577) and the Court ordered repayment of any sums paid under the terms of the Consent Order. The Claimant appealed that Order, but the appeal was dismissed by the Court of Appeal. The Claimant sought and was granted leave to appeal to the Privy Council. In its decision delivered 31st January, 2023, the Privy Council allowed the appeal and confirmed the legitimacy of the 2017 Consent Order.
- [9] The instant application, which was initially filed on 29th July, 2022, came on for hearing on 17th November, 2022, before Robertson, J. However, as appears from the Order of even date, the matter was adjourned to be heard on 9th February, 2023. The application did not proceed on the adjourned date due to scheduling issues.
- [10] The application initially came on before me *ex parte* on 28th March, 2023 after the Claimant applied for a renewal of its July, 2022 application. However, this Court took the view that since there is a record of the matter coming on before Robertson, J. *inter partes* on a previous occasion, it was in the interest of justice to maintain that status quo. In fact, it is the record of the Court that when the matter first came on for hearing on 17th November, 2022, both parties were present and ready to argue, but the parties came to a consent position leading to an adjournment of the hearing to 9th February, 2023. The intended *inter partes* hearing of 9th February, 2023 was rescheduled to 17th April, 2023.

Preliminary Matters

- [11] When the matter came on for hearing on 17th April, 2023, the Claimant was represented by its Director, Ms. Nadia Dyson. The Defendant was also present, accompanied by two other persons, Ms. Trista Xiong and Mr. Kim Liu. Though no evidence was presented as to Ms. Xiong's formal qualifications as a translator, she was introduced as such by Counsel Dr. Dorsett, who assured the Court that he knew of her as the Defendant's translator, who had been present in Court on prior occasions to assist him. Counsel Dr. Dorsett also assured the Court that the Defendant sufficiently understood the proceedings and would be adequately assisted by Ms. Xiong. On that basis, the Court proceeded as it did.

- [12] Counsel Dr. Dorsett also made an oral application that the presiding judge recuse himself on the basis of apparent bias. Although no formal written application was made from which the Court might have had the benefit of an affidavit in support, the Court felt it necessary to hear Counsel's application in light of a judge's duty to ensure that he does not adjudicate upon matters in which he ought rightfully to recuse himself.
- [13] Counsel argued that there is apparent bias in this case warranting the presiding judge's recusal because both had appeared as co-Counsel before the Privy Council in 2017 and have had subsequent interactions. Due to this past association, Counsel argued, the presiding judge, in an effort not to appear to tilt the scale in favour of the Defendant, may inadvertently swing the scale the other way and be particularly harsh to Counsel, ultimately ruling against the Defendant.
- [14] Counsel relied, amongst other authorities, on the learning of the CCJ in its appellate jurisdiction in **Walsh et al v Ward et al**¹, where the Court helpfully reiterated the law on apparent bias as follows:

*[95] The law on apparent bias is well settled. In determining whether, in instances such as these a judge is disqualified from hearing a case, the reviewing Court must place itself in the position of an objective and fair-minded lay observer fully informed of the facts. The pertinent question is whether such an observer would conclude that there was a real **possibility** of bias. What matters is not so much the reality of bias or prejudice on the part of the judge but its appearance. This test is aimed at preserving confidence in the administration of justice and not censure of the judge. If an objective by-stander thought that there was a real (as opposed to fanciful) possibility a judge might be biased, justice delivery is compromised. This remains the case even when the judge himself, and his peers, might confidently consider that the judge was a competent and impartial judge. What is at stake is not the integrity of the judicial officer but that of the administration of justice. It is important to stress that for a judge to recuse herself, or to be asked to do so, does not negatively reflect on the probity or competence of the judge.*

[96] The matters raised...could be divided into two categories, namely, the conduct of the judges in court and the matters that took place outside of the courtroom. As to the former, it must be said that judicial decisions and rulings that could form the basis of an appeal would ordinarily be insufficient

¹ CCJ Appeal No.BBCV2013/001; 002; 003; BB Civil Appeal No. 20 of 2005

to constitute a valid ground for recusal. Moreover, judges are human and “expressions of impatience, dissatisfaction, annoyance, and even anger that are within the bounds of what imperfect men and women, even after being confirmed as ...judges, sometimes display” may rarely arise to a level that could successfully ground an application to recuse. If, on the other hand, it is evident that there is animosity on the part of the judge towards someone involved in the case, including counsel, then that would constitute grounds for recusal.

- [15] Mr. Roe, K.C, Counsel for the Claimant, expressed scepticism at the Defendant’s application and the timing of it. He argued that a recusal would work to the Defendant’s benefit in that there would be more delay. He indicated that while there is no dispute as to the applicable legal principles, the application was an unusual one, and that what matters is the underlying reason therefor. Counsel felt it was absurd to suggest that it is a sufficient reason that the presiding judge was a junior to Dr. Dorsett in a matter before the Privy Council. In support of his arguments in opposition, he relied on the cases of **Almazeedi v Penner and Another**² and **Dobbs v Triodos Bank NV**³. In essence, the Courts in those matters applied the relevant principles for recusal and felt that there should be cogent evidence that a reasonable fair-minded observer would feel that there was a real risk of apparent bias. In the words of Lord Justice Chadwick in **Dobbs**⁴:

[7] It is always tempting for a judge against whom criticisms are made to say that he would prefer not to hear further proceedings in which the critic is involved. It is tempting to take that course because the judge will know that the critic is likely to go away with a sense of grievance if the decision goes against him. Rightly or wrongly, a litigant who does not have confidence in the judge who hears his case will feel that, if he loses, he has in some way been discriminated against. But it is important for a judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is this. If judges were to recuse themselves whenever a litigant -- whether it be a represented litigant or a litigant in person -- criticised them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select judges to hear their cases simply by criticising all the judges that they did not want to hear their cases. It would be easy for a litigant to

² [2018] UKPC 3; Privy Council Appeal No. 0054 of 2016 per Lord Sumption, dissenting at [36]-[37]

³ [2005] EWCA Civ 468 per Lord Justice Chadwick at [7]-[8].

⁴ [2005] EWCA Civ 468 per Lord Justice Chadwick at [7]

produce a situation in which a judge felt obliged to recuse himself simply because he had been criticised -- whether that criticism was justified or not. That would apply, not only to the individual judge, but to all judges in this court; if the criticism is indeed that there is no judge of this court who can give Mr Dobbs a fair hearing because he is criticising the system generally. Mr Dobbs' appeal could never be heard.

[16] This Court has carefully considered the arguments of the parties on whether a recusal is necessary. The Court felt, having considered the reasons proffered by Counsel, Dr. Dorsett on their previous association, Counsel did not satisfy the required test and/or applicable legal principles. Respectfully, the Court determined that the application must be dismissed for the following reasons:

[17] For one thing, an application for recusal made in the usual manner includes a formal application under the Civil Procedure Rules, with affidavit evidence in support. Nevertheless, the arguments were advanced and considered by the Court.

[18] In this Court's view, Dr. Dorsett had not advanced any reasonable grounds or provided any cogent evidence to suggest that an objective, fair-minded by-stander would think that there is apparent bias in this case because of previous interactions.

[19] In ***R v Glenville Nkomo Kenyatta Hodge***⁵, Innocent, J. heard an application for him to recuse himself on the basis that the defendant/applicant had filed complaints against him concerning his decision to refuse bail for the said defendant/applicant in two other claims. Dismissing the application, learned judge opined that:

[37] An important aspect of meeting the real possibility test, which bears on its support of public confidence in the judicial system, is the requirement to be specific concerning the perceived connection between the circumstances giving rise to concern and whether they establish the reasonable possibility of apparent bias or impartiality.

[38] ...Establishing the existence of an association is never of itself enough to disqualify a judge. It must be shown that its nature is such as to cause concern objectively that it may influence the judge's decision making.

[20] This Court finds that Dr. Dorsett's suggestions that due to the fact that he was lead Counsel in a matter in which this presiding judge also appeared as co-Counsel

⁵ AXAHCR2020/0009, delivered 8th December, 2020

before the Privy Council, and that he had two other interactions with the presiding judge as members of the legal fraternity, are not good enough reasons for recusal from the instant proceedings. As was disclosed at the hearing, the other two occasions in which there was interaction with Dr. Dorsett were both matters of professional courtesy: The first was on the request of Dr. Dorsett to receive a judgment from the Court of Appeal sitting in Saint Lucia and the second was to move his call to the Bar Association of Saint Lucia to facilitate his handling of a matter on behalf of the Government of Saint Lucia. It is inevitable that members of the bar and members of the bench will have interactions of such or similar nature. It is common practice that attorneys hold papers for each other or move their calls across jurisdictions within the OECS. These cannot be sufficient reasons for recusal. Additionally, there are no separate professional pathways to become a judge or an attorney - it may verily well be, as in this case, that an attorney-at-law, if he has the opportunity, will sit on the bench at some point, and will have to face his [former] colleagues in that capacity.

- [21] If Counsel Dr. Dorsett's position is correctly understood, he is advancing the position that the mere fact that this judge appeared with Counsel in an unrelated matter several years ago, and has interacted with him twice as members of the legal fraternity, then this would cause a fair-minded and informed observer who is aware of those facts, to conclude that there exists a real possibility that this judge might be biased and decide this application other than on its merits. If the Court's interpretation is accurate, this Court respectfully fails to connect those dots. In any event, from the **Hodge** and **Walsh** cases, it can be gleaned that it is not enough to make such a connection, but even where a connection has sufficiently been established, it must be shown that the nature of the connection is such as to objectively cause concern that it may influence the judge's decision making. In **Hodge**, Justice Innocent observes (and this Court agrees):

[41] The Court is mindful of the fact that our judicial system functions on the basis of deciding between litigants irrespective of the merits or demerits of their counsel. In short, counsel are not judged. They are rather, a trusted element of the judicial process.

- [22] This Court respectfully adopts the above reasoning unreservedly. It could also help to add that this Court is well aware of its object to safeguard the justice of the case, regardless of any prior interactions with Counsel, and endeavours to direct its mind to that goal. The application for freezing order is a matter to be decided between the parties on its merits.

- [23] I now turn to the merits of the application for freezing order.

The application dated 29th July, 2022

[24] The substantive application is for a worldwide freezing order against the Defendant judgment debtor. Counsel for the Claimant thoroughly advanced arguments in support of the application, which the Court will attempt to summarize below:

Claimant's arguments in support of application

[25] Counsel for the Claimant argued that the application is concerned with the Defendant's history of disregard for the Court's numerous orders, which he claims to be 'remarkable'. Counsel posited that the Defendant has ignored the Court's Orders and in reality, does not do anything unless forced. Counsel stated the Defendant's alleged breaches as follows:

- a. The Defendant failed to pay the judgment debt under the first order of the Court dated 7th March, 2017. In fact, save for the payment of US\$705,496.39, the Defendant has failed and/or neglected to pay the judgment debt, which is a material breach of the said Order of 7th March, 2017.
- b. The Defendant's second breach was his failure or neglect to permit the valuator access to the land pursuant to the Order of the Court dated 14th December, 2017, which was required to give effect to a charging order. This breach was recited by Wilkinson, J. in her Order of 19th April, 2018.
- c. The Defendant was required to file into Court updated financial statements of Yida International Investment Antigua Ltd. ("Yida International"), which he failed to do. This was the third breach.
- d. The fourth breach was the Defendant's failure to file financial statements pursuant to the further order of the Court dated 19th April, 2018.
- e. Additionally, Counsel Mr. Roe claimed that the Defendant commenced two separate claims against the Claimant in 2017 and 2018 to avoid paying the judgment sums. The 2017 proceedings alleged a conspiracy between the Claimants, its directors and another party to defraud the Defendant. This was ultimately struck out as an abuse of process. The 2018 claim sought to set aside the consent order of 7th March, 2017 on the basis of mistake/inducement. At first instance Robertson, J. entered judgment in default of defence, but gave leave to appeal. On the Defendant's application

to strike out the notice of appeal on the ground that the CA had no jurisdiction to hear an appeal from a default judgment. By a majority decision, the CA held that the notice of appeal be struck out, and in the circumstances did not deal with the substantive merits of the appeal. The Claimant appealed to the Privy Council⁶, who allowed the appeal.

- f. The fifth breach by the Defendant was that he ignored the Order of 28th October, 2020 by which Robertson, J. stipulated that he was to give the Claimant fourteen days' prior written notice of any transaction on the land held by Yida International. The Claimant alleged that on 14th January, 2022, the Defendant caused Yida International to dispose of some 66 parcels of land for US\$300,000,000.00. The instant application arose after the Claimant got wind of the transaction, and was ultimately admitted by the Defendant⁷.
- g. The sixth breach occurred after directions were given at the hearing of 17th November, 2022 by Robertson, J. to the Defendant to provide an affidavit by 12th December, 2022 setting out all his assets in Antigua and Barbuda, whether in his own name or whether solely or jointly owned, giving the value, location and details of all such assets. A penal notice was attached. When it was not filed, the Claimant filed an application for a contempt order dated 21st December, 2022. The affidavit was not filed until 30th January, 2023 in response to the Claimant's application.

[26] Against the backdrop of those breaches, the Claimant submitted that all the requirements for the granting of a freezing injunction had been satisfied. Relying on the restatement of the relevant principles by Gross, L.J. in ***Emmott v Michael Wilson & Partners***⁸; Counsel for the Claimant reminded the Court of the rationale for the granting of such orders. In sum, such orders are granted to guard against a risk of dissipation over the period between the judgment and execution taking effect, and *'increase the pressure on a defendant to honour the judgment debt.'*

[27] Counsel further highlighted the factors to be considered on the application, to wit:-

- h. whether the applicant has a good arguable case;

⁶ See decision ***Lux Locations Limited v Yida Zhang***, Privy Council Appeal Number 0010 of 2022; [2023] UKPC 3 given on 31 January 2023.

⁷ See affidavit of Michael Li filed on 16th November, 2022.

⁸ [2019] EWCA Civ 219; [2019] 4 WLR 53 [209] at 53-54

- i. whether there is a real risk that judgment would go unsatisfied by reason of the disposal by the respondent of his assets; and
- j. whether it would be just and convenient in all the circumstances to grant the freezing order.

[28] Counsel Mr. Roe, K.C. for the Claimant argued in his submissions that it has already been determined by this Court that the Claimant has a good arguable case since the Court granted leave in Claim No. 2018/0543 to appeal the decision to set aside the consent order. It is his position that the dispute has also been escalated to the Privy Council, who, in their recent ruling of 31st January, 2023, ruled that there was no basis to set aside the consent order. In that case, then, he posits, the judgment order of 7th March, 2017 still stands and the Defendant is bound to pay it. A judgment has already been obtained and so it is unnecessary to show beyond this, that the Claimant has a good arguable case.

[29] Additionally, Counsel submitted that there is a high risk of dissipation should the application be refused. This, he said, was clear through the actions of the Defendant who has shown a determination not to comply with the orders of the Court. (See paragraph 25 above). Counsel opined that the Defendant's latest breach is the most 'astonishing' as, having been ordered by the Court to give the Claimant notice of **any** transaction on the land, the Defendant sold US\$300,000,000.00 worth of it without giving the requisite notice. This cements the long line of behaviour that *'makes clear the Respondent's contemptuous attitude to complying with his legal obligations.'*

[30] In the round, Counsel submitted that it is just and convenient to grant a freezing injunction. To the Claimant's mind, nothing less will suffice to protect the position of the applicant, as a 'softer approach' has been tried and failed. If a freezing order is granted, it will reduce the risk of dissipation as it will require the Defendant to give full disclosure of his assets. Alternatively, the Defendant could be required by the Court to pay into Court money as security, which would immediately cause the injunction to cease to have effect.

[31] Further, it was advanced on behalf of the Claimant that the freezing order should have global effect for the following reasons:

- i. The Defendant is an international businessman from China as evidenced by documents which form part of the record, with at least a bank account in the name of Yida International Holdings in Hong Kong. He is known to operate in Hong Kong.

- ii. The Claimant has no reason to believe that the Defendant has sufficient assets in Antigua and Barbuda to meet the judgment debt, as he has not provided details thereof as directed by the Court. Notably, he has failed to disclose his shareholding in Yida International in the said affidavit, even though the Court's order specifically required him to disclose assets held by him in his own name or otherwise, solely or jointly owned.
- iii. As director of Yida International, over which a charging order exists in favour of the Claimant, the Defendant has sold some of the property held by Yida International, without first giving notice of the transaction, and has not accounted for the proceeds of sale.

[32] In light of the aforementioned state of affairs, Counsel argued that a worldwide freezing order should be granted.

[33] Furthermore, Counsel Mr. Roe, K.C. reasoned that if the application is granted, the resulting order should not contain an 'ordinary course of business' exception. This is because this is a post-judgment application, and according to Gee on **Commercial Injunctions**⁹, such an exemption ought not to be granted where the judgment debtor is deliberately avoiding satisfying the judgment debt.

[34] Additionally, Counsel for the Claimant submitted that as the Claimant is a judgment creditor as opposed to a prospective judgment creditor, no undertaking as to damages is required from the Claimant. Per **Zuckerman on Civil Procedure**¹⁰, where a Defendant has already been held liable in final judgment, there is no risk that he may be found liable for something he does not owe and a cross undertaking in damages is not required.

[35] Finally, Counsel for the Claimant argued that if the Defendant relies on the stay which came into operation by virtue of the Order dated 23rd June, 2021, then that order expressly gives each party 'liberty to apply' and the Claimant is justified in the use of that liberty by virtue of the Defendant's breach of the Court Order dated 28th October, 2020.

Defendant's arguments in opposition to application

⁹ S. Gee, **Commercial Injunctions** (7th ed, Sweet & Maxwell, London, 2022) para 3-026

¹⁰ A. Zuckerman, **Zuckerman on Civil Procedure: Principles of Practice** (4th ed, Sweet & Maxwell, London, 2021), Section 10.143

- [36] In response to the application, the Defendant filed Submissions in Opposition dated 16th November, 2022. In those submissions, it was posited by Counsel Dr. Dorsett on behalf of the Defendant that the Claimant's application came against the backdrop of part-heard applications yet to be concluded by the Court, such as the Defendant's part-heard application for security for costs to be provided by the Claimant. Counsel indicated that that application was part-heard due to the stay imposed by Order dated 23rd June, 2021.
- [37] It was further advanced on behalf of the Defendant that if any application was to be heard, then the security for costs application should be heard first, in keeping with the Court's position in **Attorney General of Saint Lucia v Montrope**¹¹ that an application first in time should be scheduled first.
- [38] The Defendant also argued that the application for injunctive relief is an equitable remedy, and the Court should refuse the application having regard to the 'clean hands' maxim. Counsel posited that the Court may refuse an injunction where the Claimant's past conduct has been so improper that the Claimant does not deserve to be helped by the Court's granting of an injunction. In this case, the Claimant's past conduct in question is the alleged refusal to obey an order to return more than US\$700,000.00 to the Defendant, and the Claimant's failure to disclose why it has not paid over that amount, notwithstanding enforcement proceedings initiated by the Defendant.
- [39] Instead, the Defendant submitted that the Claimant has persisted with appeals and further litigation against the Defendant, *'which has yet yielded any successes'*¹². Reference was made to a Claim ANUHCv2021/0103 which Counsel for the Defendant indicated is a claim by the Claimant to set aside judgment in Claim ANUHCv2018/0534, when Claim ANUHCv2018/0534 is part-heard and was stayed pending determination by the Privy Council. From the foregoing, it is clear to the Defendant what the Claimant's modus operandi is: consistently hounding the Defendant to tangle him in legal proceedings while stubbornly refusing to pay the sums ordered.
- [40] Counsel for the Defendant further advanced that a freezing order is a nuclear remedy which requires judicial restraint according to Andrews, L.J., **Les Ambassadeurs Club Ltd. v Yu**¹³. He also cited that authority for the position that *"the focus should be on whether, on the facts and circumstances of the particular*

¹¹ SLUHCvAP2019/0021 at [25]

¹² See paragraph 11 of the Defendant's submissions dated 16th November, 2022

¹³ [2021] EWCA Civ 1310, [2022] 4 WLR 1 at [14]

case, the evidence adduced before the court objectively demonstrated a risk of unjustified dissipation which was sufficient to make it just and convenient to grant a freezing order'. He also relied on **Al Assam v Tsouvelekakis**¹⁴ per Davis-White QC (sitting as a judge of the High Court) where he stated:

...the burden is on the applicants to satisfy the evidential threshold in relation to risk of improper or unjustified dissipation, that solid evidence, not mere inference or generalised assertion, is required, and that the question is whether there is a current risk of dissipation.

[41] Counsel for the Defendant submitted that having regard to the cited authorities, the present application was not triggered by a need to serve the *limited purpose* of a freezing injunction as stated by 'the highest authorities. Counsel explained that the purpose of the order stipulating that the Defendant give the Claimant notice of transaction was not to hinder the business activity of the Defendant, but to keep the Claimant informed of matters involving a non-party, Yida International. A freezing injunction does nothing to further that purpose.

[42] At the hearing, Dr. Dorsett emphasised that the current application is as between the Claimant and the Defendant, and not between the Claimant and Yida International. He said that was an important distinction because the Defendant and Yida International are two separate persons with separate legal identity and should be treated as such per the seminal case of **Saloman v A Saloman & Co. Ltd.**¹⁵. In that case, Counsel asserted, it was established that a shareholder has no legal or equitable interest in a company's assets.

[43] According to Counsel, the three considerations for the Court are:

- k. Whether judgment has been reinstated against the Defendant;
- l. Whether the Defendant has assets upon which judgment can be enforced; and
- m. Whether there is a real risk that unless a freezing order is granted, the Defendant will dispose of his assets removing them from the reach of the Court so that the Claimant would not be able to recover.

[44] To Counsel's mind, of the three criteria which must be satisfied, the second and third have not been met by the Claimant and resultantly, the application should be

¹⁴ [2022] EWHC 2137 (Ch) at [174]-[176]

¹⁵ [1896] UKHL 1, [1897] AC 22; See also **Prest v Petrodel Resources Ltd.** [2013] UKSC 34, [2013] 2 AC 415 and **Macaura v Northern Assurance Co. Ltd.** [1925] AC 619

refused. While he agreed that by virtue of the Privy Council's decision, a judgment has been reinstated against the Defendant, he expressed the following difficulties with the other criteria:

- i. The Defendant does not have cash in his immediate possession. The principal assets which the Defendant has and upon which judgment can be enforced are his shares in Yida International. There is nothing to show that the said shares or any other assets are likely to be dissipated or their value reduced.
- ii. Those said assets are not being sold, and the Defendant, if required, can give an undertaking to that effect. Up to the date of the hearing, the Defendant could not say whether the company had realised the US\$300,000,000.00 for sale of land since there have been some difficulties in the transaction. Further, the company, Yida International, is making efforts to realise a sale of the Defendant's shares/land, and once the sale is confirmed, the company is willing to advance sums to the Defendant.
- iii. Instead of a freezing order, the Defendant could pay into court a portion of the land pending the realisation of the sale, which proceeds can be advanced to the Defendant (for payment to the Claimant). The Defendant could also give an undertaking to that effect.

Claimant's Reply

[45] Counsel Mr. Roe, K.C., in his reply, reminded the Court of the starting point: whether the Defendant has done anything by way of disposing of assets. He pointed out that the Defendant, by his own Affidavits filed in these proceedings, has confirmed his non-compliance with the Orders of the Court. In fact, Counsel argued, the Defendant has known of the Privy Council's decision from January, 2023, and has done nothing to satisfy the judgment debt. He came forward only because of the Claimant's renewed application, and even his affidavit as to the statement of the value of his assets is lacking. Although Counsel for the Defendant indicated that there was no sale of the property as yet, he indicated that the said sale would be materialised by 30th June, 2023. As a matter of great concern, this contradicts the transfer statement that US\$300,000,000.00 has been received. The transaction was even executed before the Defendant's own Counsel, Dr. Dorsett. Otherwise, there has been no answer volunteered as to the Defendant's assets.

[46] Counsel further indicated that he was not in agreement with the proposed undertakings by the Defendant (see paragraph 36 above) as these would not be sufficient to compel the Defendant to comply. He reiterated that there is solid evidence before the Court of the risk of dissipation, coupled with the conduct of the Defendant which has given rise to uneasiness about the Defendant's commercial transactions. When dealing with the risk aspect of the test, a defendant's behaviour, in part, may sufficiently show how he might behave in the future and in this case, there is no need to persuade the Court that the Defendant intends to dissipate all his assets outside the reach of the Court. To underscore this point, Counsel invited the Court to take note of the Defendant's conduct, including his previous denial that he owes the Claimant, the evidence of fraud as contained in the transfer documents, and the Defendants' ignoring of the Court's Orders.

Defendant's undertaking

[47] At the end of arguments, the Defendant through his Counsel gave an undertaking not to deal with the land held by Yida International and/or the Defendant until further order of the Court.

Discussion and Analysis

A. Evidence of the Parties

Claimant's/Applicant's Evidence in support of application

[48] The Claimant relied on the following affidavits in support of the application, as renewed in March, 2023:

Affidavit of Danielle Doorgen dated 29th September, 2022

[49] In her affidavit, Ms. Doorgen identified herself as Legal Secretary of OMO Law Chambers, legal representatives of the Claimant. She recited the history of the dispute between the parties, which she purported was gleaned from the 'papers in the proceedings and from instructions given by Lux's directors.' She asserted that the instant claim originated from an agreement between the parties and the resulting March, 2017 consent order which the Defendant has not paid except for the amount of US\$705,486.39. Her outline of the relevant events corresponded with the written and oral submissions of Counsel for the Claimant, and referred to the breaches of previous court orders by the Defendant. She said that although to her knowledge neither the firm nor Lux had received any notice of transactions concerning the land held by Yida International, she was informed by Ms. Nadia Dyson, director of Lux that on or about 20th July, 2022, Lux became aware of a

transfer of some parcels of land held in the name of Yida International to Heskey Capital Ltd. by the Defendant and witnessed by his Attorney-at-Law, Dr. Dorsett, dated January, 2022 for consideration of US\$300,000,000.00. A copy of the executed transfer document was annexed to her affidavit and marked “DD1”.

- [50] At the time of deponing her affidavit, the Privy Council had not yet ruled on the appeal arising from ANUHCV2018/0534, and she proffered a summary of the Defendant’s position at paragraph 10 of her affidavit as follows:

“10. The position in summary is therefore that Mr. Yida is facing the prospect of either losing the benefit of this court’s order of 20 March 2020, in which case the Consent Order will be back in force and Mr. Yida will face an immediate liability to pay the unpaid balance of the US \$3,950,598.04, plus nearly 6 years’ interest on that unpaid balance; or of keeping the benefit of the 20 March 2020 order, in which case the Consent Order remains ineffective and he therefore faces the prospect of having to go to trial in the original 2014 proceedings. The prospect of Lux succeeding in the Privy Council is clearly a realistic one since, as just mentioned, the Court of Appeal itself (presided over by the learned Chief Justice) has given leave for the appeal. And at no stage in these proceedings has there been any suggestion that Lux does not have a good arguable claim against Mr. Yida on the merits of the underlying dispute. Mr. Yida is accordingly a prospective judgment debtor.”

Affidavit of Danielle Doorgen dated 16th November, 2022

- [51] Ms. Doorgen deponed to a second affidavit on 16th November, 2022, wherein she referred to what she believed derived from correspondence between Counsels for the parties. She exhibited, again as “DD1”, snapshot of what appears to be a snippet from a WhatsApp conversation dated 29th October, 2022, in which Dr. Dorsett informs “*the Heskey Capital and Yida International Antigua Ltd are engaged in a land swap. Details to follow*”.

- [52] It is never encouraged that legal practitioners utilise their employees to make representations in litigation on behalf of clients, especially concerning facts outside of their immediate knowledge. However, as the facts contained in Ms. Doorgen’s affidavit remain largely unrefuted by the Defendant, and in some instances have been confirmed by the Defendant, the Court will refrain from any further comment thereon at this point.

Affidavit of Sam Dyson dated 24th March, 2023

[53] In his affidavit of 24th March, 2023, Mr. Dyson implored the Court to reignite the application, which was initiated in July, 2022, but without notice, having regard to certain developments since the hearing date of 17th November, 2022. To his mind, these developments warranted an urgent, without notice consideration of the application. For the reasons set out in paragraph 10 of this judgment, the Court did not hear the application without notice.

[54] The developments of which Mr. Dyson spoke are as follows:

- n. The Privy Council delivered its decision in the appeal on 31st January, 2023, effectively allowing the Claimant's appeal and ruling that the Consent Order was still in effect. This fact was acknowledged by the Defendant who, through his Attorney-at-Law, Dr. Dorsett, by email dated 7th February, 2023, also acknowledged that he was under an obligation to pay the judgment debt. Dr. Dorsett promised to revert with arrangements for payment.
- o. By email dated 11th March, 2023, Dr. Dorsett requested time on behalf of the Defendant to file submissions before the Privy Council regarding costs, and advised that the Defendant would wire funds on 13th March, 2023 to his chambers for onward forwarding to Counsel for the Claimant, which are yet to be received.
- p. He had become aware a few days before deponing to the affidavit that the Defendant had found a purchaser for the whole of the remaining land owned by Yida International and was in advanced negotiations. This was troubling because the land is located in the Special Economic Zone, and the formalities of sale were likely to be less onerous than would otherwise be the case.

[55] Mr. Dyson implored the Court to bear in mind the Defendant's '*proven dishonesty, his evident determination*' not to pay the judgment debt, his willingness to breach the orders of the Court, his tendency '*repeatedly to come up with false excuses for non-payment*', his abusive use of the Court's process and lack of transparency as to his assets. He expressed that he was '*deeply concerned*' that the Defendant was '*stringing us along until he can complete the sale and dissipate the proceedings, leaving us with nothing to show for six years of attempting to enforce the judgment*'.

[56] Finally, Mr. Dyson requested the Court to consider a worldwide freezing order in light of the foregoing, and posits that the Defendant is from China who had made

reference in the past to his company, Yida International Investment Holdings Limited with an address in Hong Kong and business dealings in Germany. He reasoned that in the absence of any credible, full response to the Court's order for disclosure of his assets in Antigua and Barbuda, the Claimant cannot be confident that the Defendant's assets here would be sufficient to satisfy the judgment debt.

Affidavit of Nadia Dyson dated 13th April, 2023

[57] Ms. Dyson, in her affidavit of 13th April, 2023, indicated that she is also a director of the Claimant. She said since the affidavit of 24th March, 2023, the Defendant still had not made any payment towards the judgment debt. She also averred to an email that Counsel Mr. O'Kola purportedly received from the Counsel Dr. Dorsett dated 31st March, 2023, advising that he had seen via WhatsApp a cheque written to his chambers for the prescribed costs in the Lux Locations case, and that Mr. O'Kola's office should be in receipt of the funds imminently. There was also the promise in that email to '*work to see that we can get some payment on the substantive judgment.*' Despite those assurances, Ms. Dyson affirmed that no payment as to costs or any further payment towards the substantive judgment was received. Ms. Dyson was of the view that the Defendant is well aware of his obligations, as reflected in the email of 13th March, 2023 from Dr. Dorsett.

[58] Ms. Dyson also reminded the Court of the Defendant's affidavit in which he indicated having assets in Antigua and Barbuda of over US\$300,000,000.00, and his continued attempts to dissipate his assets, as several persons had contacted her to inform that the Defendant was in advanced discussions to sell more of the land owned by Yida International. This state of affairs, she insisted, had the consequence that the Claimant would be unable to enforce judgment against the Defendant.

Defendant's/Respondent's evidence in opposition to the application

[59] The Defendant relied on the following affidavit evidence in opposition to the application:

Affidavit of Michael Li dated 16th November, 2022

[60] Mr. Michael Li purported to be a translator working with the Defendant and who was intimately familiar with the business dealings of Yida International. He admitted on the Defendant's behalf that Yida International had entered a business relationship with Heskey Capital Ltd. to develop the Special Economic Zone and that various parcels of land once held by Yida International had been transferred to Heskey for the 'economic benefit of the Zone'. He also admitted that the Claimant

was not given notice of this, but it was a mistake for which the Defendant was 'deeply sorry' and would not be repeated.

[61] Mr. Li also assured the Court that all dealings involving the assets of Yida International were done in the ordinary course of business and that there was no intent to disable the Defendant from satisfying any possible judgment. Notably, Mr. Li does not confirm whether the business relationship with Heskey involved the payment of monetary consideration as alleged, and if yes, what has happened to the proceeds.

[62] Mr. Li also asserted that the Claimant had failed to repay over US\$700,000.00 to the Defendant per order of the Court and that the Defendant intended to apply for a variation of the 'reporting order' once the stay was lifted. He asked on behalf of the Defendant that the application be dismissed with costs.

Affidavit of Yida Zhang dated 30th January, 2023

[63] The Defendant himself deponed to an Affidavit dated 30th January, 2023 asserting that he is a businessman. He deponed that he did not comply with the order for a statement as to his assets in Antigua and Barbuda due to his lawyer being unwell for the greater part of December, 2022.

[64] He listed his assets in Antigua and Barbuda as:

- q. Shares in Yida International estimated to be the value of land held by the company at US\$300,000,000.00;
- r. Two used motor vehicles estimated at EC\$50,000.00 in total;
- s. Clothes, if sold as used estimated at EC\$1,500.00; and
- t. Two cell phones estimated at EC\$800.00.

[65] He asserted that he does not own any personal bank accounts, and the Court notes that there is no mention of any accounts held by Yida international or otherwise.

B. Relevant Law and Application

[66] Part 17 of the Eastern Caribbean Civil Procedure Rules 2000 as amended, deals with interim remedies, including the Court's power to grant freezing orders¹⁶, restraining a party from dealing with any asset whether located within the jurisdiction or not, or from removing from the jurisdiction assets located there.

¹⁶ CPR r. 17.1(1)(j)

[67] Per CPR rule 17.1(4), the Court may grant an interim remedy whether or not there has been a claim for a final judgment of that kind, and it is well settled that an order for interim remedy may be made at any time, including after judgment has been given or before a claim has been made¹⁷.

[68] The minimum considerations for the granting of a freezing order are well settled. Simply put, an applicant must show that: (i) at the lowest, he has a “good arguable case” and (ii) there is a “risk or danger that the assets sought to be frozen by the injunction and in respect of which the restraining jurisdiction of the Court is prayed against the defendant will be dissipated outside the reach of the Court by the defendant thus depriving the plaintiff of the fruits of his judgment.”¹⁸

[69] Over the years, the two abovementioned requirements have sometimes been ‘enlarged’ in application, to include the existence of assets belonging to or under the control of the respondent against which judgment could be enforced, and that the order is just and convenient.

Good, arguable case

[70] A good, arguable case is one that is more than barely capable of serious argument, but not necessarily one which has a greater than 50% chance of success at trial¹⁹. This has been interpreted to mean that at its core, the applicant must show that there is a ‘*plausible evidential basis*’²⁰ for bringing the claim, regardless of which party has the better argument.

[71] Furthermore, while a good arguable case often references a cause of action as against the respondent to the application, the Privy Council has held in **Broad Idea v Convoy Collateral Ltd.**²¹ that this is not a requirement. The Board was of the view [obiter] that ‘*Once it is appreciated that the essential purpose of a freezing injunction is to facilitate the enforcement of a judgment or other order to pay a sum of money, it is apparent that there is no reason in principle to link the grant of such an injunction to the existence of a cause of action.*’

¹⁷ CPR r. 17.2(1). See also **Broad Idea v Convoy Collateral Ltd.** [2021] UKPC 24 at [91]

¹⁸ See the Jamaican Court of Appeal decision of **Jamaica Citizens Bank Ltd. v Dalton Tap** (1994) 21 JLR 42; **Broad Idea v Convoy Collateral Ltd.** [2021] UKPC 24

¹⁹ See **The Niedersachsen** [1983] 1 WLR 1412

²⁰ See **Lakatamia Shipping Co. Ltd. v Morimoto** [2019] EWCA Civ 2003

²¹ [2021] UKPC 24 at [90]

[72] A good arguable case needs also not be against the respondent, though it often is, provided that the substantive relief in the term of a judgment will be enforceable against the respondent by the Court from whom the injunction is sought²².

[73] The Court in **Broad Idea**²³ seems to suggest that the requirement for a good, arguable case would be made out if an applicant has already been granted a judgment or order for the payment of money that is or will be enforceable through the process of the Court. Respectfully, this Court wishes to adopt that reasoning in the present case.

[74] Having regarded the evidence before the Court, the Court finds that judgment was granted in these proceedings as early as 7th March, 2017, when the parties entered into consent and a Consent Order of that date was made an order of the Court. Although the Defendant sought to set aside that consent order by mounting his case ANUHCv2018/0534, that case has ultimately been determined by the Privy Council in its decision of 31st January, 2023 to have been unmeritorious. The result is that the Consent Order is live, and the Defendant is liable to pay the amount due pursuant thereto. It is important to note that the unrefuted evidence of the Claimant, at least as advanced by Counsel Dr. Dorsett in his correspondence of 7th February, 2023, 13th March, 2023 and 31st March, 2023 that the Defendant recognizes his obligations to pay consequent to the Privy Council's decision.

[75] Even if the Privy Council had ruled otherwise, and the Consent Order was ruled to have been void, this would in my view have revived the substantive claim in these proceedings, and the parties would have had to advance the claim on its merits to trial. On examination of the claim and statement of claim, there is a prima facie case as alleged by the Claimant, which appears more than 'fanciful'. There is therefore enough before the Court to satisfy the requirement of a good, arguable case in the circumstances.

Risk of dissipation of [existing] assets

[76] The starting point is to identify the assets of a respondent over which a potential freezing order should be granted. In other words, the appellant must show that the respondent holds assets against which a relevant judgment could be enforced. Per the Court in **Ras al Khaimah Investment Authority & Ors. v Bestford Development LLP & Ors.**²⁴, in the case of a domestic freezing order, the applicant

²² [2021] UKPC 24 at [92]

²³ [2021] UKPC 24 at [101]

²⁴ [2018] 1 WLR 1099 at [29] - [32]

must convince the Court that there are grounds to believe that assets exist within the jurisdiction that are subject to enforcement. Where, however, a worldwide injunction is sought, the applicant must show that there are no assets or insufficient assets within the jurisdiction to satisfy the claim, or that there are grounds to believe that there are assets outside the jurisdiction.

[77] It should be noted that a standard freezing order usually contains a clause preventing a respondent from removing or disposing of or dealing with assets, 'whether or not they are in his own name and whether or not they are jointly owned' and assets 'which the respondent has the power, directly or indirectly, to dispose of or deal with as if they were his own'. There is therefore the strong suggestion that once the assets are identified as such, they may become subject to a freezing order regardless of whether the respondent's interest in them is legal, beneficial or otherwise. A classic example would be assets held in a company where that company is controlled solely by the respondent. This is important in the case at bar in light of the Defendant's declaration of his shares in Yida International, his alleged disposal of land held by that company and Counsel's arguments about separate legal identity as summarised herein at paragraph [42].

[78] Assets have been identified in the instant case that would prima facie be subject to any order made by this Court. It is not disputed that the Defendant has shares in Yida International, in whose name certain parcels of land are/have been registered. This he has admitted in his affidavit of 30th January, 2023. It is also not disputed that he is a director of Yida International with power to dispose of or deal with the assets of that company, even if those assets are not registered in the name of the Defendant, and even if it turns out that they are jointly owned with others. It follows then, that Counsel Dr. Dorsett's argument about separate legal personality would not help him as a valid point of objection to the application. However, it remains to be determined whether the assets identified within the jurisdiction are sufficient in value to satisfy the claim - this is relevant to determination as to whether a worldwide freezing order is warranted. It is to be noted that even though there are on record previous orders of the Court for the Defendant to disclose the value of his assets including the value of his shares in Yida international, he has failed to provide this information.

[79] From there, the relevant question is whether the assets so identified, are in danger of being dissipated by the Defendant to put them outside the reach of the Court, thus justifying the granting of the freezing order. Put another way, if the freezing order is not granted, there should be a real risk that a judgment or award will go unsatisfied as the assets are likely to be disposed of or dissipated by the Defendant otherwise than in the ordinary course of business.

[80] Per the Court in ***Les Ambassadeurs Club Ltd. v Songvo Yu***²⁵, the test is whether there is a *real* risk, that is to say, “*something more than fanciful*”. Notably, this should not be confused with the need to prove a high probability of dissipation, but is objectively asserted based on solid supporting evidence. In assessing the risk of dissipation, the Court may consider factors such as the respondent’s conduct in relation to the present or a previous related dispute, his lack of ties in the jurisdiction, any statement made by the respondent as to how he will deal with his assets, his act of moving assets out of the jurisdiction, among other things.

[81] Is it more than *fanciful* that if a freezing order is not granted in this instance, the relevant assets will be dissipated?

[82] As outlined in this judgment at paragraphs [36] - [44], Counsel Dr. Dorsett advances that this is not the case. In his view, the Court can make an order for monies to be paid into court and/or for an undertaking from the Defendant that the funds would be available when required. At the end of the hearing, the Defendant undertook not to transfer any more lands belonging to Yida International until the determination of the application. But, is this - or would this - be enough to ease the Claimant’s fear that no assets will be available to satisfy the judgment?

[83] Counsel Mr. Roe, K.C. is of the view that Dr. Dorsett’s suggestion has been tried without success. He advances that only a worldwide freezing order can assist in the circumstances as outlined in paragraph [31] of this judgment.

[84] This Court prefers the Claimant’s position in respect of the risk of dissipation. The Court finds that objectively, there is more than a fanciful risk of dissipation for the following reasons:

- i. The Defendant has been shown to disregard previous orders of the Court, particularly those requiring him to give notice of transactions dealing with the land registered in the name of Yida International, and to disclose his assets and the value thereof in Antigua and Barbuda. When he did disclose the assets, the disclosure left more questions than answers. In fact, the Defendant’s Affidavit of 30th January, 2023 is not as wholesome as one would expect, given the Court’s order for disclosure. For instance, while the Defendant asserts that he has no personal bank accounts in Antigua and Barbuda, he does not make clear whether he holds any other

²⁵[2022] 4 WLR 1; [2021] EWCA Civ 1310 at [17]

account, whether by himself or jointly with another, or whether in any other name such as in the name of Yida International, which he states he holds shares in. Neither is there any precise indication as to the actual value of any of the assets mentioned in the affidavit. Instead, he gives estimates of the value of each asset throughout the said Affidavit.

- ii. The Defendant purports to be a Chinese national and businessman as indicated in the affidavits filed in this Court on his behalf. Given the nature of his assets in Antigua and Barbuda as indicated in his Affidavit of 30th January, 2023, the Court is not satisfied that he has sufficient ties to the jurisdiction to warrant the refusal of the application for a freezing order.
- iii. The Defendant's past conduct, both in relation to these proceedings and other related proceedings, suggests that there is at least some resistance on his part to satisfying the judgment debt. In this respect, the Court has already mentioned the Defendant's attempt to invalidate the Consent Order of 7th March, 2017, by commencing two separate claims, and the resulting decision of the Privy Council of 31st January, 2023. The Court has also mentioned the evidence of failure to make payments despite numerous assurances to do so.
- iv. Lastly, the Court is concerned about the apparent lack of transparency surrounding the disposal or transfer of 66 acres of property registered in the name of Yida International by the Defendant. Even though the affidavit of Mr. Michael Li confirmed that the Defendant has in fact disposed of certain lands registered in the name of Yida International, the Defendant claims in his later filed affidavit that the estimated value of his shares in Yida International amount to US\$300,000,000.00. It is unclear whether the transfer has taken place, or whether the transfer was for value. It is also a mystery where the proceeds of sale, if any, are located, given that the Defendant did not list any bank accounts in Antigua and Barbuda belonging to Yida International or himself. This is particularly troubling in light of the evidence that the Defendant signed the transfer as a director of Yida International, and this was witnessed by his Attorney-at-law, Dr. Dorsett. He therefore has the means and the opportunity to manipulate the assets in his control to the exclusion of the Claimant.

[85] In light of the foregoing, there appears to be more than a fanciful risk of dissipation of the assets under the control of the Defendant, and against which the Claimant could enforce judgment. The Court also holds the view that given all that has transpired, this Court is not confident that assets will be available for recovery without the Court's intervention at this stage. The Claimant has therefore satisfied the second limb of the requirement for a freezing order.

Should a worldwide freezing order be granted?

[86] The relevant question now turns on whether the Claimant has shown that there is reason to believe that either there are no or no sufficient assets within the jurisdiction to satisfy the claim, or that there are assets outside the jurisdiction.

[87] As summarised at paragraph 31 of this judgment, it is the Claimant's position that it has reason to believe that there are insufficient assets within the jurisdiction to satisfy the judgment debt. This is demonstrated by the lacking nature of the statement as to the value of the Defendant's within the jurisdiction, which has in any event not been fully disclosed by the Defendant. The Claimant also argues that there are grounds to believe that there are assets outside the jurisdiction, since the Defendant is known to operate in Hong Kong and Germany through Yida International Holdings Limited with a bank account in Hong Kong, as evidenced by documents from the previous transfer of funds when the Defendant made his only payment towards the debt. The suggestion is that in light of the absence of details as to sufficient assets within this jurisdiction, then the test for the granting of an order with global effect is satisfied.

[88] The Court agrees with the submissions of the Claimant in respect of the reasons to grant a worldwide freezing order in this instance.

Just and convenient

[89] The practice has been that if the above criteria are satisfied, then the Court will consider that it is just and convenient to grant the order²⁶.

²⁶ See the summary of current practice as recited in *Broad Idea v Convoy Collateral Ltd.* [2021] UKPC 24 at [101]-[102]

[90] Having determined that there is a good, arguable case and that there is a real risk of dissipation of assets, it follows that the Court finds that it is just and convenient to grant the worldwide freezing injunction sought. The Court finds support for this position in the **Les Ambassadeurs Club Ltd. v Songvo Yu**²⁷, where Andrews L.J. opined:

[17] It makes no difference in terms of the risk that must be established whether the freezing injunction is sought before or after judgment, though post-judgment injunctions may be easier in practice to obtain. The policy of the law is to enforce judgments, and for that reason it may be right that when a judgment creditor has satisfied the court there is a real risk of dissipation, it would require particularly strong grounds for refusing to grant him a freezing order on the basis of justice and convenience.

Other considerations

[91] I have also considered the following issues raised in argument by the parties and which to dispose of them cursorily:

[92] Counsel for the Defendant in his written submissions raised the issue as to whether the Defendant's application for security for costs should have been heard before the instant application. While the Court notes that the position in **Montrope**²⁸ may be of general application, the Court of Appeal has held that it is not a hard and fast rule, but rather, when faced with that dilemma, the interests of justice should prevail. This is especially true when the later filed application, once determined, will obviate the need for the first filed. This was not a deciding factor for the Court on this occasion, as the only application before the Court was the instant application for a worldwide freezing order. Also, it cannot rightfully be said that there were two applications filed since the Order of 23rd June, 2021. Therefore, it has not been shown by the Defendant that this is an appropriate time to seek to advance that rule.

[93] The Court has already dealt with the Defendant's argument as to separate legal personality as a ground of objection to the instant application. The Court will only say further that if the Court were to properly regard that rule in the instant proceedings, it could possibly be justifiable to lift the corporate veil to bind Yida International if it is found that separate legal identity is being emphasised to avoid

²⁷[2022] 4 WLR 1; [2021] EWCA Civ 1310 at [17]

²⁸ SLUHCVP2019/0021 at [25]

payment by the Defendant or to defraud the Claimant. However, this Court makes no pronouncements on this point considering the instant application.

[94] Is there a need for a cross-undertaking by the Claimants as to costs? From the authorities, it can be distilled that the reason for such an undertaking is to protect a respondent from having to bear an unjustifiable loss, in the event that the applicant does not ultimately obtain judgment. However, in this case, where it has been proven that there is a legitimate judgment debt which remains unsatisfied, there is no such risk for the Defendant, especially as there is evidence before the Court that the Defendant has acknowledged/accepted his obligation to pay. Resultantly, the Claimant needs not be so compelled to give any such undertaking.

[95] Should the Court include provisions for an 'in the course of business' exception? This is a standard clause in a freezing order, and is usually included to ensure that a respondent is allowed to carry out its obligations to third parties with whom he shares a business relationship. The idea is that a freezing order should not inordinately intrude on those obligations as its purpose is to preserve and protect assets which may then be used for enforcement, and nothing more. On the other hand, however, there are instances where courts have departed from this view. One such view, as advanced by the Claimant, relying on *Gee on Commercial Injunctions*, is in post-judgment applications where the respondent is deliberately avoiding payment. Having regard to the evidence, the Court can find no legitimate reason for the Defendant's delay in paying the judgment debt, whether this is viewed from the 2017 Consent Order or from the affirmation of the legitimacy of that Order by the Privy Council in its January, 2023 decision. I am therefore of the view that there is sufficient evidence to support the contention that the Defendant has been deliberate and/or consistent in avoiding payment, and this is a suitable case in which to exclude the 'in the course of business' exception.

CONCLUSION AND DISPOSAL:

[96] In all the circumstances, the Court is minded to grant a worldwide freezing order and the accompanying ancillary relief in the following terms:

1. Until further order of the court, the Defendant must not –
 - (a) remove from Antigua and Barbuda any of his assets which are in Antigua and Barbuda up to the value of US\$5,400,000.00; or
 - (b) in any way dispose of, deal with or diminish the value of any of his assets whether they are in or outside Antigua and Barbuda up to the same value.

2. Paragraph 1 applies to all the Defendant's assets whether or not they are in his own name and whether they are solely or jointly owned. For the purpose of this order the Defendant's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Defendant is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.
3. If the total value free of charges or other securities ('unencumbered value') of the Defendant's assets in Antigua and Barbuda exceeds US\$5,400,000.00, the Defendant may remove any of those assets from Antigua and Barbuda or may dispose of or deal with them so long as the total unencumbered value of the Defendant's assets still in Antigua and Barbuda remains above US\$5,400,000.00.
4. If the total unencumbered value of the Defendant's assets in Antigua and Barbuda does not exceed US\$5,400,000.00, the Defendant must not remove any of those assets from Antigua and Barbuda and must not dispose of or deal with any of them. If the Respondent has other assets outside Antigua and Barbuda, he may dispose of or deal with those assets outside Antigua and Barbuda so long as the total unencumbered value of all his assets whether in or outside Antigua and Barbuda remains above US\$5,400,000.00.
5. (1) The Defendant must within 14 days of the date of this Order, swear and serve on the Claimant's Attorney-at-Law, an affidavit setting out to the best of his ability inform the Applicant's solicitors of all his assets worldwide whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.

(2) If the provision of any of this information is likely to incriminate the Defendant, he may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of court and may render the Defendant liable to be imprisoned, fined or have his assets seized.
6. This order does not prohibit the Defendant from spending a reasonable sum a week towards his ordinary living expenses and also a reasonable sum on legal advice and representation. [But before spending any money the Defendant must tell the Claimant's legal representatives where the money is to come from.]
7. The Defendant may agree with the Claimant's legal representatives to consider or vary the spending limits mentioned in the preceding paragraph, but any agreement must be in writing.

8. This order will cease to have effect if the Defendant –
 - (a) provides security by paying the sum of US\$5,400,000.00 into court, to be held to the order of the court; or
 - (b) makes provision for security in that sum by another method agreed with the Claimant's legal representatives.
9. Anyone served with or notified of this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Claimant's legal representatives. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Claimant's legal representatives in advance.
10. The Defendant must not do things he is forbidden by this order to do himself or in any other way. He must not do them through others acting on his behalf or on his instructions or with his encouragement.
11. It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.
12. This injunction does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the Defendant before it was notified of this order.
13. No bank need enquire as to the application or proposed application of any money withdrawn by the Respondent if the withdrawal appears to be permitted by this order.
14. (1) Except as provided in sub-paragraph (2) below, the terms of this order do not affect or concern anyone outside the jurisdiction of this court.

(2) The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court –
 - (a) the Defendant or his officer or agent appointed by power of attorney;
 - (b) any person who –
 - (i) is subject to the jurisdiction of this court;
 - (ii) has been given written notice of this order at his residence or place of business within the jurisdiction of this court; and
 - (iii) is able to prevent acts or omissions outside the jurisdiction of this court which constitute or assist in a breach of the terms of this order; and

(c) any other person, only to the extent that this order is declared enforceable by or is enforced by a court in that country or state.

15. Nothing in this order shall, in respect of assets located outside Antigua and Barbuda, prevent any third party from complying with –

(1) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the Respondent; and

(2) any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the Claimant's legal representatives.

16. Costs reserved.

[97] The Court is grateful to Counsel for their able arguments and helpful submissions.

Andie George

High Court Judge (Ag.)

By the Court

Registrar