

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION**

CLAIM NO. BVIHCM 2019/0113

BETWEEN:

[1] **MOLECULAR DYNAMICS LIMITED**
[2] **SDBM LIMITED**
[3] **CHAUNCEY CAPITAL CORP**

Applicants

and

[1] **SPECTRUM DYNAMICS MEDICAL LIMITED**

Respondent

Appearances:

Mr. Michael Green, QC with him Mr. Jonathan Addo and Mr. Christopher Pease for the Applicants

Mr. Alex Hall Taylor, with him Ms. Akesha Adonis for the Respondent

2020: January 29;
March 26;
April 8.

JUDGMENT

[1] **WALLBANK, J. (Ag.):** This judgment concerns a return date hearing in respect of a worldwide freezing order ('WFO') obtained by the Applicants in respect of the Respondent and its assets on 31st July 2019. This was at an *ex parte* hearing before this Court. It also concerns an application by the Respondent filed on 25th September 2019 to discharge that injunction. For the reasons below I am persuaded that the WFO should be discharged, on grounds that there was and is insufficient evidence of a risk of dissipation.

Background

- [2] It is fair to say that this is a complicated dispute. The underlying facts concern the highly technical, costly and lucrative world of development and marketing of sophisticated medical imaging cameras. The parties are far apart in their respective interpretations of even the basic facts. The following summary comprises only those facts pertinent to the basis upon which the Court makes this decision.
- [3] The Second Applicant, SDBM, is a company specialising in designing, developing and distributing nuclear medicine imaging systems and technology. Basically, medical cameras. The Third Applicant, 'Chauncey', is a venture capital investor. Another company, called Biosensors, also develops medical cameras. In May 2013 SDBM sold substantially all of its assets to Biosensors in return for payment of approximately US\$51 million. The First Applicant, Molecular Dynamics or 'MD', was a corporate vehicle created for a joint venture between SDBM and Biosensors. A suite of contractual agreements was entered into between Biosensors, SDBM, MD and other connected entities in October 2013. This allowed MD exclusive use of certain of the intellectual property rights that had been transferred from SDBM to Biosensors. The contracts governed the way in which MD was to be managed, funded and assisted by the parties.
- [4] One of the key agreements was a license agreement. By this, Biosensors licensed to MD exclusive rights to design, develop, produce and distribute a 'whole-body general purpose camera' that would include medical imaging applications in the field of oncology and certain other fields. Excluded from this were certain applications which Biosensors reserved to itself, in particular cardiac applications. Very basically, for present purposes, Biosensors' particular interest was in cardiac imaging, whereas SDBM's particular interest was in oncology.
- [5] For MD to succeed, it required finance and technical assistance. Biosensors and Chauncey would provide start-up financing and Biosensors would provide engineering and technical assistance.
- [6] Some four years later, on 31st May 2017, Biosensors entered into an assignment agreement with a company incorporated in the Territory of the Virgin Islands ('BVI'), the Respondent, 'SDBVI'. By this Biosensors assigned all of its benefits, rights and obligations relating to the

agreements concerning MD to SDBVI. Biosensors did this without giving prior notice of the assignment to the Applicants. The Applicants accepted at the *ex parte* hearing that no such notice was 'technically' required. The contractual provisions concerning the MD joint venture included an express term which permitted Biosensors to effect such an assignment without giving notice.

- [7] There is a dispute about this assignment for present purposes. The Applicants refer to it and the wider immediate circumstances as evidence supporting the existence of a risk of dissipation, as a measure designed to protect Biosensors from liability or the risks of enforcement of a contrary judgment or award. SDBVI contends however that the assignment cannot be taken as evidence of a risk of dissipation because it was expressly permitted and provided for as part of the contractual matrix governing the joint venture. The clause in question was not a standard form 'boiler-plate' clause. It specifically provided that 'Biosensors may freely assign this Agreement to its Subsidiaries or Affiliates'. Moreover, says SDBVI, the assignment was for a proper purpose, of a wider reorganization of Biosensors' business going back as far as 2016. The Applicants respond, however, that there is no evidence for any meaningful reason behind the reorganization. The Applicants point to the timing at which key decisions and steps were taken by those behind Biosensors and/or SDBVI. Notably, the Applicants say, the transfer of Biosensors' interest to SDBVI coincided with (i) an apparent decision by Biosensors not to make any further payments in accordance with the MD joint venture agreements and (ii) a point in time at which the relationship between SDBM and Biosensors was at breaking point.
- [8] Shortly after the assignment, in August 2017, SDBVI unilaterally terminated the license agreement and announced that it would (i) be making no further payments to MD and (ii) claim repayment of all financing provided by Biosensors to MD.
- [9] Following this assignment and purported termination, SDBVI developed, marketed and sold a medical imaging camera which it calls the 'Veriton'. The Applicants say the Veriton infringes MD's intellectual property rights.
- [10] The Applicants contend that the assignment was intended to insulate Biosensors and its assets from any liability incurred as a result of SDBVI's actions taken following the assignment and to

facilitate the sale of the assets that were the subject of the agreements between the Applicants and Biosensors.

- [11] In April 2018 SDBVI commenced arbitration proceedings in Switzerland seeking (i) a declaration that the MD agreements be rescinded; and (ii) repayment of US\$10 million in financing and interest that Biosensors provided to MD pursuant to the MD agreements. The Applicants filed an Answer and Counterclaim in those proceedings in August 2018. The Applicants there seek damages on a joint and several liability basis from Biosensors and SDBVI in respect of loss caused to them by Biosensors' and SDBVI's (alleged) breaches of the MD agreements, including for allegedly ongoing infringement of MD's intellectual property rights by SDBVI. It is in support of the Applicants' Counterclaim in the Swiss arbitration proceedings that the Applicants had sought and obtained the WFO, pursuant to section 43 of the Arbitration Act, 2013, Cap. 6 of the Revised Laws of the Virgin Islands, No.13 of 2013.

Evidence for a possible sale of SDBVI

- [12] Prior to the commencement of the arbitration proceedings, the Applicants say representatives of Biosensors and SDBVI indicated that they were looking at the possibility of selling SDBVI to a third-party purchaser. At the *ex parte* hearing the Applicants informed the Court that a sale appeared close to materializing as the Applicants understood that a large electrical goods manufacturer, Royal Philips, had made an offer of US\$70 million for SDBVI. The Applicants submitted there was a real likelihood of a sale taking place imminently.
- [13] The Applicants also urged upon the Court that in recent months prior to the *ex parte* hearing the Applicants 'have been made aware that SDBVI's owners and controllers intend to sell the company and SDBVI's owners had conveyed that they were "desperate" to achieve a sale of either SDBVI or its assets'. Those ultimate owners and controllers of SDBVI are a company called CITIC Private Equity Funds Management Co. Ltd ('CITIC PE'). The evidence before me is that this is a Chinese state-owned investment banking company that has more than a hundred investments under its portfolio and taken more than thirty companies public. SDBVI urges that it is highly unlikely that an investment business such as this would risk its reputation, standing, and credibility, visible to potential business partners and investors, by organizing its affairs in a short-sighted way to avoid satisfying judgments.

- [14] The Applicants did not inform the Court that they themselves had made an offer to purchase SDBVI but that SDBVI's owners had rejected this. I accept the Respondent's submission that this provides important context to the Applicants' application for a WFO. It shows that it is possible to construe the Applicants' steps as being informed by a desire to render it more unattractive or difficult for other potential purchasers of SDBVI or its assets so that the Applicants' own efforts to do so might stand a greater chance, or to put commercial and legal pressure on SDBVI. It also suggests that SDBVI and/or its owners are not quite so desperate to sell SDBVI or its assets as the Applicants would have the Court believe.
- [15] SDBVI admits that it has received non-binding letters of intent from an entity within the Royal Philips group, with a view to a purchase of SDBVI by way of a purchase of shares in that company. That entity is Philips North America LLC ('Philips'). But SDBVI's evidence is also that SDBVI has not signed any of these letters of intent, a fact which the Applicants also did not disclose at the *ex parte* hearing. SDBVI's evidence is that Philips' offer for the purchase of shares in SDBVI has only been at a rudimentary stage, subject to due diligence, and conditional upon settlement of the Swiss arbitration. The Applicants counter this by pointing out that Philips had communicated mixed messages in this regard. A representative of Philips had communicated in an email that '[h]opefully with a better understanding of the situation on both parts we can make progress'. The Applicants interpret this to mean that with a better understanding of the litigation Philips could make progress with completing the purchase, even if the arbitration is not settled. Thus, say the Applicants, any condition upon settlement that Philips had set up could be waived by them. The Applicants also give evidence that the same representative of Philips told the Applicants' representative that 'Philips wanted to own the company' because Philips were 'very keen to acquire SDBVI's asset (in particular the Veriton machine)'. The Applicants say there is a real possibility that SDBVI could be sold in the near future if a freezing order is not in place.
- [16] The evidence before me suggests that Philips is the only potential buyer that SDBVI or those who own and control it have been giving serious consideration to. SDBVI admits that it has had discussions with other potential buyers and/or investors in 2019, but SDBVI says that none of those discussions have progressed to an acceptable offer.
- [17] SDBVI points out moreover that a potential sale of SDBVI itself does not give rise to a risk of dissipation of SDBVI's assets. If someone else buys SDBVI, it will still be possible to enforce

an award against SDBVI. The Applicants counter this by suggesting that a purchaser of SDBVI, such as Philips, could strip out its assets and leave SDBVI as a shell, to prevent eventual enforcement, or to merge or integrate SDBVI's assets into the acquiror's pre-existing assets. The Applicants say in their evidence that 'this frequently occurs within the medical device industry'. SDBVI replies that this suggestion is purely speculative.

Evidence for a possible sale of SDBVI's assets

- [18] The Applicants raise an alternative argument that there is a real risk SDBVI's assets will be dissipated before an arbitration award is made. The evidence the Applicants relied upon in this regard at the *ex parte* hearing was contained in an affidavit of one Mr. Keyes, a director of MD.
- [19] In this, Mr. Keyes attests that at a meeting on 15th March 2019 between a Professor Ben-Haim (a representative of the Applicants), a Mr. Jump (who headed a Biosensors business unit for a period of time) and a Mr. Joos (a former representative of Biosensors/SDBVI), Mr. Joos 'stated that he and the shareholders of SDBVI were interested in selling SDBVI (or its assets) to third parties and were making progress to achieve this'.
- [20] Mr. Keyes further attests that at a further meeting, two months later, between Prof. Ben-Haim, Mr. Jump and a Mr. Simon Li (who Mr. Keyes described as the CEO of Biosensors at the time of his Affidavit and a director of SDBVI), Mr. Li said that 'the shareholders of SDBVI were eager to sell their shares', that CITIC PE 'was desperately looking for buyers for the shares and that he advised the Chairman of SDBVI to sell SDBVI (or its assets) as soon as possible'. SDBVI points out in its evidence in response that Mr. Li was never a director of SDBVI, but does not take issue with his description as CEO of Biosensors.
- [21] SDBVI points out that Mr. Keyes was not at these meetings. Mr. Keyes admits this is correct. He explains that his knowledge and information of what transpired there derives from Prof. Ben-Haim. SDBVI contends that the alleged desire of SDBVI's owners/controllers to sell SDBVI's assets is thus second-hand hearsay: Mr. Keyes received the alleged information from Prof. Ben-Haim, and Prof. Ben-Haim allegedly heard it from Mr. Joos and Mr. Li. SDBVI's point is that second-hand hearsay is inherently less reliable than first-hand knowledge, or indeed first-hand hearsay.

- [22] Apart from these second-hand hearsay statements I am not aware of any other evidence that SDBVI and/or Biosensors or any of SDBVI's owners or controllers have sought to sell any of SDBVI's assets, as opposed to seeking a sale of SDBVI itself.

Discussion

The legal principles

- [23] The parties are not seriously divided as to the law. The Applicants correctly submitted in their skeleton argument for the *ex parte* hearing that the test for the grant of freezing relief is that the applicant must show:
- (1) It has a good arguable case; and
 - (2) The refusal of the injunction would involve a real risk that a judgment or award in favour of the applicant would remain unsatisfied; and
 - (3) It is just and convenient to grant the relief sought in all the circumstances.

The Applicants rely in this regard on the English High Court case of **Irish Response Limited v Direct Beauty Products Limited**.¹

- [24] In relation to the second limb of the test, the Applicants refer to *dicta* of Waksman, QC J. in **Cherney v Neuman**² that

"It is trite law that the applicant for such relief must show that there is a real risk that any judgment in his favour which he may obtain at trial will remain unsatisfied if injunctive relief is refused... In order to consider that risk, the applicant is often said to have to show a risk of "dissipation" of the Defendant's assets. But a risk that the assets will be hidden or otherwise dealt with so as to make any judgment nugatory will suffice as well. There needs to be "solid evidence" of this risk."

- [25] The Applicants refer to our Court of Appeal's decision in **Konoshita & Anor v JTrust Asia Pte Ltd**³ in which the Court adopted the test laid down in the English High Court case of **Holyoake v Candy**.⁴

"the threshold in relation to conventional freezing orders is well established. There must be a real risk, judged objectively, that a future judgment would not be met because of unjustifiable dissipation of assets. But it is not every risk of a judgment being unsatisfied which can justify freezing order relief. Solid evidence will be required

¹ [2011] EWHC 37 (QB) paragraphs 24 to 34 (Seymour QC, J).

² [2009] EWHC 1743 (Ch.) at paragraphs 69 and 70 (Waksman QC, J).

³ BVIHCMAP2018/0047 and BVIHCMAP2018/0020 (delivered 18th December 2018, unreported) at paragraph 29 (Thom JA).

⁴ [2016] EWHC 970 (Ch.) at paragraph 34 (Gloster J).

to support a conclusion that relief is justified, although precisely what that entails in any given case will necessarily vary according to individual circumstances.”

- [26] The Applicants observe that in **Konoshita & Anor v JTrust Asia Pte Ltd** ‘solid evidence’ of dissipation included evidence that the respondent was a sophisticated businessman with a network of companies through which he could move assets quickly.⁵
- [27] The Respondent supplements these statements of the law by referring the Court to the English Commercial Court case of **Mobil Cerro Negro Ltd v Petroleos de Venezuela SA**,⁶ to the effect that there must be a risk that the asset will be used otherwise than for normal and commercial purposes. The conduct in question must be unjustifiable.
- [28] Furthermore, the Respondent refers to a decision of our Court of Appeal in **Yukos CIS Investments Limited & Anor v Yukos Hydrocarbons Investments Limited & Ors**⁷, reiterating that there must be ‘solid evidence’ of a risk of dissipation and that the court is not concerned with the probabilities of what will happen but whether there is evidence establishing a real risk that assets may be dissipated. This was expressed in the dissenting judgment of Justice of Appeal Redhead, but the other members of the Court of Appeal panel did not disagree with the learned Justice of Appeal on this aspect.
- [29] The Respondent additionally refers to the English Court of Appeal decision in **Thane Investments Ltd & Ors v Tomlinson & Ors**⁸ as authority for the proposition that unsupported statements, suspicions or expressions of fear carry little weight in establishing a risk of dissipation.

Analysis

- [30] In my respectful judgment there is no solid evidence that there is a real risk, judged objectively, that a future judgment against SDBVI would not be met because of unjustifiable dissipation of assets. My reasons for finding this are as follows.

⁵ BVIHMAP2018/0047 and BVIHMAP2018/0020 (delivered 18th December 2018, unreported) at paragraph 30 (Thom JA).

⁶ [2008] All ER 1034 (Comm.) at paragraphs 41 to 42 (Waller J).

⁷ BVI HVCAP2010/028 (delivered 26th September 2011, unreported) at paragraphs 35, 36, 44 (Redhead JA).

⁸ [2003] EWCA Civ 1272 at paragraphs 21 and 26 (Gibson LJ).

- [31] Concerning, first, the possibility that SDBVI itself might be sold, a sale of SDBVI itself does not prevent the Applicants from enforcing an award or judgment against SDBVI. A sale of SDBVI is not itself a dissipation of SDBVI's assets.
- [32] Then, even if the Applicants' affiant Mr. Keyes is correct that it is a frequent occurrence within the medical device industry for assets to be hived out of a purchased corporate vehicle and merged or integrated in the purchaser's own pre-existing assets, this does not mean that there is a risk of this happening in the present case, nor that that would necessarily amount to 'unjustifiable dissipation'.
- [33] A factual flaw in the Applicants' position is that the only seriously prospective purchaser, Philips, has been and is being cautious about purchasing SDBVI whilst SDBVI has the pending claim or eventual liability hanging over it. Indeed, Philips is apparently reluctant to conclude the transaction. The evidence shows that Philips is indeed interested in purchasing SDBVI, but that Philips would prefer SDBVI to settle the arbitration litigation first. This indicates that Philips does not wish to embark upon a strategy of purchasing SDBVI and then stripping out its assets to leave SDBVI to face eventual enforcement as an empty shell. There is simply no evidence (at least none that I am aware of) that Philips is planning upon doing so in order to acquire the asset. If Philips had such a strategy in mind it would matter little whether SDBVI were to be found liable or not. Philips could simply go ahead and buy SDBVI, comfortable in the knowledge that it could take the benefit of the assets but leave SDBVI as an empty shell to face eventual liabilities. Regardless whether those owning or controlling SDBVI are (or are not) 'desperate' to sell SDBVI, Philips is clearly not 'desperate' to buy it.
- [34] It is of course possible that Philips might buy SDBVI and strip out its assets even with the potential liability hanging over SDBVI. But the Court is not moved by possibilities. It is moved by evidence. As accepted by our Court of Appeal in **Konoshita & Anor v JTrust Asia Pte Ltd**,⁹ '[s]olid evidence will be required to support a conclusion that relief is justified'. The Court is concerned with whether there is solid evidence of a risk that certain things may occur. I find that, at this moment, such solid evidence is lacking with regard to the actions Philips might take should it proceed to purchase SDBVI. The concerns Mr. Keyes claims to have concerning steps that Philips could possibly take do not amount to solid evidence. They are no more than

⁹ BVIHMAP2018/0047 and BVIHMAP2018/0020 (delivered 18th December 2018, unreported) at paragraphs 25 and 29 (Thom JA).

unsupported speculation. Following **Thane Investments Ltd & Ors v Tomlinson & Ors**¹⁰ I attach little weight to them.

- [35] There is, moreover, no solid evidence that CITIC PE and/or those owning or controlling SDBVI seek to sell SDBVI's assets.
- [36] First, there is no documentary or other evidence that those owning or controlling SDBVI have sought to transfer any assets out of that company. The only transfer contemplated appears to have been that of SDBVI itself.
- [37] Secondly, the Applicants' evidence that those owning or controlling SDBVI are 'desperate' to sell SDBVI's assets is second-hand hearsay evidence. Such evidence is inherently unreliable. It could be (and in my view, in this case, it could very well be) self-serving. Furthermore, it is human to err. Even with good faith, narratives can be distorted in transmission. I am unable to treat such second-hand hearsay evidence as solid evidence, particularly without the benefit of cross-examination. There is no documentary evidence which supports the Applicants' alleged recollection.
- [38] Thirdly, if those owning or controlling SDBVI were indeed 'desperate' to sell its assets, they have been remarkably inept at doing so. Although they have admittedly had a number of discussions with potentially interested parties or investors, at some level, the evidence is that none of those discussions have resulted in a deal.
- [39] Fourthly, the assignment of assets from Biosensors to SDBVI is not evidence of a risk that SDBVI might transfer its assets.
- [40] The considerations surrounding the assignment are quite complex. The assignment was expressly contemplated as part of the contractual documents behind the MD joint venture. Biosensors were expressly permitted to effect that assignment, at their own discretion, without even having to give notice of it. For their part, Biosensors' contractual counterparts agreed to accept the risk that Biosensors might assign away its rights.

¹⁰ [2003] EWCA Civ 1272 at paragraphs 21 and 26 (Gibson LJ).

[41] However, I accept that the timing points to a likelihood that those behind Biosensors and SDBVI chose to wait until the assignment had taken place before ceasing to contribute to the joint venture. I put it that way, because I am not in a position to rule on whether or not the assignment had been made in good faith as part of a wider overall commercial reorganization or as part of an asset protection strategy to facilitate termination of the joint venture. That issue would require documentary disclosure and oral evidence to be tested through cross-examination.

[42] I also accept that those owning or controlling SDBVI may be adept at using complex offshore corporate structures, such that they could use them to defeat enforcement and/or otherwise render a judgment nugatory. I accept that such use and familiarity can amount to sufficiently solid evidence of a risk of dissipation, following **Konoshita & Anor v JTrust Asia Pte Ltd**.¹¹ But one must bear in mind that there can be perfectly legitimate and *bona fide* reasons for using off-shore structures. In **Konoshita** it was not only the use of a network of companies through which a sophisticated businessman could move assets quickly that contributed to the finding that there was solid evidence of a risk of dissipation. There was also a history of financial misconduct and breach of disclosure obligations in a freezing order.¹² A state-owned investment bank with a reputation to uphold is a different proposition from, say, an individual with a questionable record or tarnished reputation as a responsible businessman. Whether or not the existence of an offshore structure amounts to evidence of a risk of dissipation necessarily comes down to context. Here, in my judgment the context is insufficiently clear that the use of complex offshore arrangements behind SDBVI points to a risk of dissipation.

[43] These matters said, whatever may have been the motive(s) behind the assignment, one is brought back to the key factor that there is no solid evidence of any desire or intention of those owning or controlling SDBVI to sell off its assets piecemeal, as opposed to selling the company as a whole.

[44] Fifthly, the Applicants inform the Court that their legal practitioners wrote a letter dated 9th January 2020 to SDBVI's legal practitioner, inviting SDBVI to provide an undertaking not to dispose of its assets or to permit a sale of the shares in SDBVI (save with certain limited

¹¹BVIHCMAP2018/0047 and BVIHCMAP2018/0020 (delivered 18th December 2018, unreported) at paragraph 30 (Thom JA).

¹² BVIHCMAP2018/0047 and BVIHCMAP2018/0020 (delivered 18th December 2018, unreported) at paragraph 30 (Thom JA).

exceptions) pending conclusion of the arbitration proceedings and satisfaction by SDBVI of any adverse award made against it in the arbitration. The letter closed by observing that should SDBVI not provide the undertaking as requested, the Applicants would invite the Court to draw the relevant adverse inferences. A copy of that letter has been shown to the Court, but it has not been included in the evidence. The Court was informed at the hearing on 29th January 2020 that the legal practitioners for SDBVI responded on 23rd January 2020, declining to provide the undertaking. That letter has also been produced. The main reason for SDBVI's refusal was stated to be SDBVI's confidence that the WFO should be discharged and should indeed never have been granted.

[45] This exchange of correspondence is not in evidence. The Court cannot be moved thereby. Secondly, as it is not evidence, it cannot be treated as 'solid evidence'. Thirdly, as discussed above, a sale of shares in SDBVI does not amount to dissipation of SDBVI's assets: it remains possible to enforce an award against SDBVI regardless of whether or not SDBVI itself is sold. So, a refusal by SDBVI to give the undertaking sought is not of itself indicative of a risk of dissipation.

[46] This appears to have been an attempt by the Applicants to create evidence for a risk of dissipation, in circumstances where such evidence as there might be does not come up to the standard of 'solid evidence'. As such, the Applicants are asking the Court to make assumptions adverse to SDBVI on the basis of matters that are not in evidence. In my respectful judgment such assumptions cannot safely be made.

Disposition

[47] The lack of solid evidence of a risk of dissipation is, in my respectful judgment, determinative of the matter. The WFO granted on 31st July 2019 and as subsequently continued ought to be discharged forthwith, and an inquiry as to damages conducted, if the Respondent satisfies the Court, on closer examination, that such an inquiry is appropriate. I will expressly leave this open for determination. Costs should also follow the event. The Court will hear the parties as to the appropriate terms for the Court's order.

[48] For completeness, and in case the matter goes further, I should say that the *ex parte* hearing was not, with the benefit of hindsight, an altogether satisfactory affair. The official transcript

indicates that the learned judge had some difficulty navigating the facts and the applicable law. Learned counsel for the Applicants affirmed the learned judge's initial understanding that the WFO was being sought in support of a claim by the Applicants over ownership of intellectual property rights. That understanding was erroneous. This aspect emerged from the official transcript of the hearing, but not from counsel's note of the *ex parte* hearing, which should have reflected this. The WFO was being sought in support of a claim for damages for breach of contract. Consequently, it would appear, learned counsel for the Applicants and the learned judge were speaking at cross-purposes for a large part of the hearing. Later in the *ex parte* hearing the learned judge realized the correct basis for the application. He then accepted, apparently uncritically, the Applicants' assertion that the quantum of their damages would be at least US\$100 million. Whilst contained in an affidavit, no cogent basis for this (or any other) figure was set out in this evidential vehicle. The Respondent has contended that the Applicants had committed numerous breaches of their duty of full and frank disclosure at the *ex parte* hearing. I think that is right. However, whilst one or more of the Applicants' breaches might warrant a discharge of the WFO, upon reflection I have come to a conclusion that its or their materiality is arguable. That said, the lack of solid evidence of a real risk of dissipation is pivotal in my respectful judgment and requires a discharge of the WFO. That will be the order of the Court.

[49] I take this opportunity to thank learned counsel for their assistance during this matter.

Gerhard Wallbank
High Court Judge

By the Court

Registrar