



IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 88 OF 2023 (IKJ)

**AND IN THE MATTER OF THE ENFORCMENT OF AN ARBITRAL AWARD OF THE ICC
INTERNATIONAL COURT OF ARBITRATION CASE NUMBER P**

BETWEEN

A

for itself and on behalf of

B

Applicant

-and-

(1) X

(2) Y

(3) Z

Respondents

IN CHAMBERS

Before: The Hon. Justice Kawaley

Appearances: Mr Andrew Johnstone and Ms Rhiannon Zanetic of Harneys for the Applicant

Heard: 14 December 2023

Judgment Delivered: 14 December 2023

HEADNOTE

Originating Notice of Motion for appointment of receiver and/or charging order-Grand Court Rules Orders 30, 51

EX TEMPORE JUDGMENT

Background

1. The Applicants in this matter apply by Ex Parte Originating Motion dated 2 October 2023, for:

“1. A charging order pursuant to section 29 and Schedule 3 of the Judicature Act (2021 Revision) and Order 50, Rule 1(1) of the Grand Court Rules (GCR) over the Third Respondent’s shares in the First Respondent (the CS Shares); and

2. The appointment of receivers on an interim basis pursuant to Order 30, Rule 1(1) and/or Order 51, Rule 1 of the GCR over the CS Shares, and over the First Respondent’s shares in IH Limited (the IH Shares) (referred to collectively as the Shares);

in order to preserve and control the Shares for the purpose of satisfying the debt which remains due and owing by the Respondents under the Enforcement Order.”

2. Alternative relief was also sought (under paragraph 3 of the Motion) but was not pursued. At the hearing, Mr Johnstone for the Applicant also indicated that the appointment of Receivers under paragraph 2 of the Originating Motion would be pursued and the charging order under paragraph 1 would not be sought.

3. The procedural background to this matter is set out in the Applicant's Skeleton Argument. On 18 May 2023, the Applicant sought leave to apply to enforce the Final Award obtained on 20 March 2023, and leave was granted by the Court on 18 May 2023. Following an application by Ex Parte Summons on 1 June 2023, the Applicants obtained a 20 June 2023 Freezing Order.
4. The essence of the current position was summarised by Mr Johnstone in opening in the following way. The Final Award held that the Respondents were liable to pay in excess of US1.7 billion dollars to the Applicants and it has not been paid one cent.
5. Against this background, it is understandable that even though a challenge to the Award is pending in Dubai, the Applicant wishes to take further fulsome steps on an interim basis in order to try and secure, to the fullest extent as possible, the ability to make some recovery.

Legal Principles

The Court's jurisdiction

6. The legal principles were referred to and are not really subject to any doubt. Section 11 of the Grand Court Act (2015 Revision) confers on this Court the same jurisdiction as Her Majesty's High Court of Justice. And this Court possesses the same power to grant relief which the English High Court enjoys under its inherent jurisdiction and under its traditional common law and equitable powers.
7. The Rules of Court have dealt with the question of the appointment of receivers more explicitly, and Order 30, which was referred to, provides:

"Application for receiver and injunction (O.30, r.1)

1. (1) *An application for the appointment of a receiver may be made by summons or motion.*
- (2) *An application for an injunction ancillary or incidental to an order appointing a may be joined with the application for such order.*
- (3) *Where the applicant wishes to apply for the immediate grant of such an injunction, the applicant may do so ex parte on affidavit.*

(4) The Court hearing an application under paragraph (3) may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of a summons for the appointment of the receiver and may require such a summons, returnable on such date as the Court may direct, to be issued.”

8. In substance, only O.30 rule 1(1) is relevant in the present case. O.51 deals with the power to appoint receivers by way of equitable execution and that jurisdiction is defined in the following way:

“Appointment of receiver by way of equitable execution (O.51, r.1)

1. Where an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of the receiver’s appointment and may direct an inquiry on any of these matters or any other matter before making the appointment.”

9. Mr Johnstone admitted that all that was really relevant for the purposes of the present application was that the jurisdiction was very broad and flexible one. He also invited the Court to have regard to the size of the amounts due under the Final Award, and in referring the Court to a draft form of Order pointed out that that, as one would expect, the Applicant will be meeting the upfront cost of the Receiver.

Exercising the Court’s jurisdiction

10. The authorities that were referred to can be briefly mentioned. The first decision referred to was the decision of Justice Mangatal in this Court in *Y v R* [2018 (1) CILR 1]. And at paragraph 45, Mangatal J set out a distillation of principles advanced in argument by Mr McKie, which described the way the Court should exercise its discretion. The essence of the point is that the remedy is a discretionary one:

“(a)...

(b) The jurisdiction is ‘unconstrained by rigid expressions of principle and responsive to the demands of justice in the contemporary context (see Masri (6) ([2008] EWHC 2492 (Comm), at para. 17)).

(c) The jurisdiction will not be exercised unless there is some hindrance or difficulty in using the normal process of execution, but there are no rigid rules as to the nature of the hindrance or difficulty required, which may be practical or legal, and it is necessary to take into account all the circumstances. It will be sufficient if it would be difficult to enforce the judgment by other means and the appointment of a receiver is the only realistic prospect available to the judgment creditor to enforce its judgment in the short term....”

11. In regard to the question of why a receiver should be appointed, Mr Johnstone referred to the decision of Justice Segal in *Top Jet Enterprises Limited* [2021 2 CILR 310] and referred the Court to the following “astute” observations of Segal J at paragraph 23 of his judgment in which he said:

“As I noted during the hearing, a more direct route for enforcement and arguably a less costly option would be for a receiver to be appointed over the first defendant and its assets.”

12. That relief was not sought by the applicant in that case, but as Justice Segal rightly pointed out, the flexibility of the receivership mechanism makes it particularly well-suited for large corporate structures where the underlying assets cannot be preserved merely by gaining control, through other mechanisms, of the shares in the top company in a group.

13. Reference was also made to *Jian Ying Ourgame High Growth Investment Fund (In PL) v Powerful Warrior Limited*, FSD 255 of 2021 (DDJ, Judgment dated 15 September 2021). This is a decision of Justice Doyle in which he summarised the principles relating to appointing receivers over shares. And counsel referred in particular to the citation from the decision of Justice Males in *Cruz City I Mauritius Holdings v Unitech Ltd & Others* [2014] EWHC 3131 (Comm), which appears at paragraph 27 of Justice Doyle’s judgment. At paragraph 48 of the English High Court decision, Males J said this:

“...However, a receiver would be able to exercise the judgment debtor's rights over its shareholdings which are assets of the judgment debtor itself. That could include a sale of the shares, the exercise of voting powers, the appointment of directors and seeking a winding up of the subsidiary companies and, in consequence, a distribution of any of their surplus assets.”

The factual merits of the present case

14. The factual circumstances of the present case may helpfully be gleaned from the corporate structure chart that I was referred to earlier in the hearing. What that shows is that the Applicant seeks to appoint receivers over:
 - (a) the 75% shareholding interest of the 3rd Respondent (Z) in the 1st Respondent (X), a Cayman Islands company; and
 - (b) The 1st Respondent's 56% shareholding interest in another company, which was, as I understand it, a joint venture vehicle (“JV”). And that joint venture vehicle is a DIFC company and accordingly is a foreign asset.
15. It is clear that there is no legal objection to this Court appointing a receiver over a foreign asset as long as there are sufficient connections with this jurisdiction. The connection in this case is plainly made out by virtue of the fact that the asset in question is owned by a Cayman Islands company.
16. The circumstance that the Court finds itself in, is that it is being asked to make a receivership order which is described in the proposed order as being interim in nature because it seeks to, as Mr Johnstone put it, “hold the ring” while the challenge to the Award itself works its way through in the Dubai Court. It seems to me that this is a relatively conservative enforcement step for the Applicant to be permitted to take with a view to protecting its ability to enforce, in real world terms, a very substantial Award which is technically subject to a challenge. I assume in the Respondents' favour that it might possibly be set aside, but on superficial analysis it appears to be a very sound Award which is likely to ultimately be upheld.

Disposition

17. For these reasons, I grant the Order sought in terms of the draft which was handed up. And it is only necessary to recite the first two paragraphs:

“1. Jeffrey Stower and Jason Robinson of Teneo (Cayman) Limited, be appointed as receivers, pursuant to Order 51, Rule 1 of the GCR by way of equitable execution, over the Third Respondent’s shares in the First Respondent (the [X] Shares), and the First Respondent’s shares in [JV] (the [JV] Shares), (referred to collectively as the Shares).

2. The purpose for which the Receivers are appointed is to preserve and control the Shares for the purpose of satisfying the debt which remains due and owing by the Respondents under the Enforcement Order.”



**THE HONOURABLE MR JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT**